WOODSTOCK INSTITUTE

*Advancing Economic Security and Community Prosperity*



October 19, 2015

Thomas J. Curry
Comptroller of the Currency
Office of the Comptroller of the Currency
Constitution Center
400 7th St SW, Suite 3E-218
Washington D.C. 20219

Martin J. Gruenberg
Chairman
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Dr. Janet L. Yellen
Chair of the Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue N.W.
Washington, D.C. 20551

RE: Re: Federal Register Notice 80 FR 7980, Regulatory Publication and Review under the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA)

Dear Comptroller Curry, Chairman Gruenberg, and Chair Yellen,

Woodstock Institute appreciates the opportunity to submit comments on regulations prescribed by the prudential regulators as part of the Economic Growth and Regulatory Paperwork Reduction (EGRPRA) Act. We support the regulators' efforts to identify obsolete, outdated or unnecessarily burdensome regulations while also identifying regulations that are essential to ensure the safety and soundness of financial institutions and the financial system. We believe the EGRPRA process creates the opportunity to identify regulations that need to be updated and modernized in order to best meet their original purpose and intent. Woodstock encourages regulators to address much needed changes to a number of existing regulations, including the Community Reinvestment Act (CRA), the Bank Holdings Company Act, and Bank Merger Act. In addition, we support the work of the Consumer Financial Protection Bureau (CFPB) and disagree with any assertion that its regulations are overtly or unnecessarily strict or burdensome. In addition to these written comments, Woodstock also supports the comments we submitted jointly with the California Reinvestment Coalition, Reinvestment Partners, and New Economy Project.

While the assumption might be that outdated or burdensome laws ought to be eliminated, they may still have a crucial role to play in creating a safe and sound financial system.  We urge regulators to see EGRPRA as an opportunity to identify laws and regulations that no longer serve their intended purpose effectively and to update and modernize them to better reflect the intent of the law in today's environment.

**About Woodstock Institute**

Woodstock Institute is a leading nonprofit research and policy organization in the areas of equitable lending and investments; wealth creation and preservation; and safe financial products, services, and systems. Woodstock Institute works locally and nationally to create a financial system in which lower-wealth persons and communities of color can safely borrow, save, and build wealth so that they can achieve economic security and community prosperity. Our key tools include: applied research; policy development; coalition building; and technical assistance. Woodstock Institute has been a recognized economic justice leader and bridge-builder between communities and policymakers in this field since it was founded in 1973 near Woodstock, Illinois.

**The Community Reinvestment Act**

Woodstock staff, allies, and partners were integrally involved in advocating for passage of the CRA in 1977. Almost 50 years later, CRA has led to the investment of trillions of dollars into low- and moderate-income communities across the nation through grants, loans, and other investments by financial institutions. CRA requires that regulated financial institutions have affirmative obligations to meet the credit needs of the neighborhoods and communities in which they are chartered consistent with sound financial practices. Since its establishment, CRA has undergone a variety of modifications, including: the creation of metrics and guidelines for evaluating the CRA performance of differently sized financial institutions; specific regulations outlining how bank activities will be measured and assessed; and, mostly recently, clarifications to the CRA Interagency Questions & Answers on retail banking and community investment. Over the years, regulators and Congress have attempted to streamline the exam process for smaller financial institutions and offer banks the opportunity create their own strategic plan with community input as opposed to undergoing a regulator exam.

CRA is an incredibly important tool for regulators and the general public to ensure that banks adequately meeting the credit needs of the communities in which they do business. At a time when consumers and communities are still working to recover from the effects of the housing and financial crisis, CRA plays an even more critical role. Unfortunately, the financial system looks and operates differently than it did when the law was first created and later modified. We urge regulators to consider how CRA can be updated to adapt to new business models, including online banking, and ensure a safe, sound, and equitable financial system for all consumers and all communities.

*Definition of Assessment Areas should be updated*

Woodstock has consistently called for updating the basis for determining bank's assessment areas. Under current law, regulations at 12 CFR §§25.41, 228.41, 345.41, and 195.41, bank assessment areas include the geographies in which the bank has its main office, its branches, and its deposit-taking ATMs, as well as the surrounding geographies in which the bank originated or purchased a substantial portion of its loans. While that definition may have been an adequate measure of a bank's footprint at the time it was adopted, many banks now have significant business activity online without having a physical, on-the-ground presence. Woodstock has called for updating the way assessment areas are determined for many years and argued that the definition based solely on brick and mortar bank locations is outdated. Our research showed one important impact of the definition of a bank's assessment area:  CRA-regulated institutions had a much higher percentage of higher-cost loans when lending outside of their assessment area than they did when lending within their assessment areas.[1] We urge regulators to update the definition of assessment areas to include any state, metropolitan area, or rural county where a CRA-covered institution: 1) maintains retail offices; 2) is represented by an agent; **or** 3) has at least a 0.5 percent market share in housing-related loans, securities, insurance, or any other financial instrument designated as CRA-eligible for the purposes of establishing an assessment area. We believe this new, more inclusive definition will better ensure that banks are meeting the credit needs of the communities where they do business and update the CRA regulations to serve their intended purpose in the new banking environment.

*Harmful practices should receive negative credit*

Woodstock firmly believes that banks should not receive any CRA credit for the consumer investments or community investments made as a result of any enforcement actions or settlements. Activities and investments made in response to an enforcement action or settlement are a compensatory obligation to remedy the harm caused by the bank's illegal actions and practices. The activities are to make consumers whole, to compensate for the harm that the bank caused, to put consumers in the position they would have been in if the bank had not engaged in the illegal activity. Banks should not receive credit under CRA, which is intended to reward actions which improve the lot of LMI consumers and communities, for engaging in illegal activity and then, when forced to, undoing the harm that their illegal activity caused to consumers. Regulators should refuse CRA credit for services or investments performed, including loan modifications, principal reductions, affordable housing financing, grants, or other activities, that are part of a settlement or enforcement action. This should be specifically delineated within the CRA regulations as well as the CRA Q&A.

*Exams should consider impact of bank activity on low-income residents*

To be truly effective, CRA must ensure that the needs of low-income residents are actually being met by a bank's activities, services, and performance in its assessment area. Woodstock believes there are a number of ways to revise the existing CRA service test to better ensure that regulators are measuring a bank's performance. Woodstock staff testified at the public hearing the prudential regulators held in Chicago in August 2010, including on needed revisions to the CRA service test, and submitted comments on the agencies proposed changes to the Interagency Q&As on community investments, and retail banking and community development in 2013 and 2014. We appreciate the regulators' efforts to provide clarity and make some modest changes through updates to the Q&As, but we continue to believe that more comprehensive regulatory changes are necessary. Specific recommendations include:

- Banks should disclose, and regulators should consider as part of the CRA exam, demographic information on account holders, accounts, and transactions, including key variables such as the census tract of the account holder's residence, number of new accounts opened, age of account, and percent of bank income generated by fees. Currently, the only quantitative measure in the service test is the number of bank branches in low- and moderate-income communities. The mere existence of a branch in a low- and moderate-income tract does not serve as an adequate measure of actual services provided to low- and moderate-income individuals.

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[1] Paying More for the American Dream III: Promoting Responsible Lending to Lower-Income Communities and Communities of Color. Woodstock Institute et al, 2010. Web. 23 Jul 2010.

- Regulators should require that CRA exams assess and scrutinize lending, investing, and service to minorities and communities of color. This assessment should take place alongside the detailed examination of lending to LMI borrowers and within LMI communities. While exams already include a fair lending component to assess whether banks openly discriminated against or steered minority applicants into higher-cost loans, exams do not assess whether a bank is affirmatively making loans to people, and within communities, of color.

- Financial institutions should ensure that communities are aware of the bank's reinvestment goals and can actively participate in achieving them. A publicly available community reinvestment plan would ensure that these goals are both transparent and allow the public and regulators to determine if the financial institution achieved those goals leading up to a regulatory performance evaluation. Financial institutions should also seek input and participation from community organizations when creating their community reinvestment plans.

- We also recommend that the CRA give regulators the ability to provide favorable consideration for financial institutions that provide support for national investment funds, work with local organizations to develop local or regional CRA commitments, offer affordable small dollar loan products, or provide increased equity investments in CDFIs.

- Banks should be evaluated under the CRA retail service test based on the extent to which they *actually meet* specific quantity and quality goals established for each institution and assessment area based on their market share, LMI need factors, and other relevant factors unique to the particular performance context in their assessment areas. Banks should not be evaluated solely against their peers, which institutionalizes existing levels of effort and could generate a race to the bottom. Instead, regulators should focus on the extent to which banks are actually meeting a broad range of LMI consumers' retail financial services needs, regardless of the system for delivering those services. The focus should not be on mere availability of, or access to, a product or system of delivery which is not actually used by diverse segments of the LMI population. Even when a product or service reaches a fraction of LMI people, banks must also offer other products, services, and delivery systems that meet the needs of a broader range of LMI people so that no one is left out of the financial mainstream.

- Regulators should consider how banks can better reduce the number of unbanked or underbanked consumers within their assessment areas. One option might be to use census data and results from the FDIC's National Survey of Unbanked and Underbanked Households overlaid with a bank's assessment areas. Specific goals for reducing the unbanked/underbanked population should then be included in the bank's community reinvestment goals and plan.

*Institutions should be held accountable when they fail to meet community needs*
The fact that 92 percent of financial institutions receive an overall score of satisfactory suggests that the evaluation criteria are merely ratifying the status quo and do not set meaningful goals to which the banks should aspire. There are still opportunities for improvement and situations in which the bank received lower scores in certain portions of its assessment area or on one of the different tests. We urge regulators to hold banks accountable for low scores or for not meeting their reinvestment goals. If a

bank fails to live up to its reinvestment goals or receives a low-satisfactory score or lower, it should be required to prepare and submit a public improvement plan. For financial institutions that still do not improve after receiving a low-satisfactory or lower rating, we recommend meaningful corrective action – for example, prohibit them from selling mortgages to the GSEs, be ineligible to contract with federal agencies, and/or require them to pay any applicable fines to a national reinvestment fund.

**Bank Merger Act and Bank Holding Company Act**

Bank mergers and acquisitions present important opportunities for regulators to assess a bank's CRA performance, and if necessary, enforce specific requirements within CRA. For nearly 50 years, The Bank Merger Act and the Bank Holding Company Act have required prudential regulators to consider the public's interest and community benefits when approving bank mergers and acquisitions. Section 225.24(a) (iii) of Regulation Y specifically states that every applicant has a duty to state the public benefits that can reasonably be expected to result from the acquisition. Assessing both the institutions' past records of serving classes protected under the Equal Credit Opportunity Act and underserved borrowers and communities indicates how well the merged institution will address public needs going forward.

Woodstock has already seen increased merger and acquisition activity over the last two years and expects to see a significant number of applications in the next few years in Illinois and across the country. We encourage regulators to consider important regulatory changes to ensure that the general public has enough information to adequately assess whether a merger or acquisition is in the public's interest and to ensure that community groups and organizations have adequate time and means to comment on proposals. Regulators should:

- Provide a central, unified portal for public notice of CRA examinations, mergers and acquisitions to enable the public to more easily access information and determine when comments may be submitted. Extend public comment periods beyond 30 days to ensure that the public has adequate time to learn about a bank merger or acquisition, assess each bank's performance in its assessment area, and provide written comments to the appropriate regulator. Oftentimes, public groups or individuals do not learn about a potential merger or acquisition with enough time to provide worthwhile and important feedback. We encourage regulators to extend the comment period.

- Increase utilization of public hearings to ensure regulators are hearing from community groups and individuals that will be directly impacted. Despite the significant number of mergers and acquisitions that have taken place over the years, regulators rarely hold public hearings. Directly engaging with the public learn more about a bank's current performance and how a merger could affect access to services, branches, or affordable loans is crucial. Regulators should make public hearings the norm and not the exception, and should also considering facilitating public meetings between the banks and community groups.

- Delay or deny the approval of any merger or acquisition application for a bank engaged in a fair lending or fair housing investigation by any other agency, and for any bank which has not fulfilled the terms of any prior community benefits agreement.

- Disallow mergers between institutions with a needs-to-improve or worse rating in any assessment area unless and until the bank creates a community investment plan and shows significant improvement in lending, services, and community development and investment.

**Consumer Financial Protection Bureau**

We realize EGRPRA is intended to focus on regulations overseen by the prudential regulators, but we think it is important to address the significant pressure from industry and members of Congress applied to the CFPB and the regulations it has adopted for being unnecessarily burdensome. The CFPB, created as part of the Dodd Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank), is the only regulatory agency specifically tasked with protecting consumers by creating and maintaining a safe financial marketplace. Woodstock fully supports the work and mission of the Bureau, and has commented on requests for information, proposed rules, and final rules issued by the CFPB on a variety of products and services, including mortgage lending, prepaid cards, student loan servicing, consumer complaint narratives, and the expansion of HMDA data. We believe CFPB staff and the Bureau's policies and procedures ensure that rules are informed by sound research, input from businesses and consumer stakeholders, are necessary to address significant issues that negatively impact millions of consumers, and are not unnecessarily or unduly burdensome. The CFPB's regulations have provided consumers with significant relief and are creating a safer, more accessible, and transparent financial marketplace.

*Significant Relief for Consumers*

Since the creation of the CFPB in the summer of 2011, the Bureau has secured approximately $11 billion in relief for consumers across the country, including $3.4 billion in restitution to consumers and $7.7 billion in the form of principal reductions, cancelled debt and other consumer relief. Through the Bureau's enforcement actions, approximately 25 million consumers will receive some form of relief, and another 1.8 million consumers will receive relief through the CFPB's supervisory actions. The CFPB has also created important tools that consumers and industry groups are increasingly using. For example, almost 3,000 colleges have voluntarily adopted the CFPB's and Department of Education's Financial Aid Shopping Sheet to help students better understand their financial aid options. The Bureau has also created a variety of tools for home buyers, homeowners, and mortgage servicers as part of its "Know Before You Owe" initiative. These resources increase transparency and make important information easier to understand for consumers. They also provide institutions and businesses with forms, formats, and guidelines that enable them to meet existing regulatory requirements. The Bureau continues to prioritize helping consumers while also minimizing burdens on businesses.

*Mortgage Servicing Rules are Helping Consumers and not Limiting Access to Credit*

An example of rules that have helped consumers, despite industry fear-mongering and pushback, are the ability-to-repay rule and the qualified mortgage rule, which went into effect in 2014. Industry argued that these regulations would limit access to credit and would cause banks, credit unions, and other mortgage lenders to exit the market. Newly released HMDA data indicates that the market and the industry are able to adapt to changes in the regulatory environment and have handled the changes quite well. Analysis of the 2014 HMDA show that consumers took out 2.8 million first-lien mortgages for owner occupied homes, an increase of 4.8 percent from 2013. The data also indicate that the market for mortgages remains diverse, with credit unions and independent mortgage companies increasing their market share in 2014. While traditionally large banks dominated the market, credit unions and independent mortgage companies have increased their share of the market since 2010 and continue to do so. Finally, and perhaps most importantly, the HDMA data indicate that fears of lenders leaving the market en masse have not come to pass. While the number of lenders reporting HMDA data went down by 1.8 percent, this is a continuing reflection of consolidation within the industry. When taking consolidations into account, the numbers indicate that were more lenders in 2014 than in 2013.[2] While it's true that this is only a short term picture of the market after the new rules, it creates a strong case for supporting the Bureau's work and acknowledging that its rules are strategic, effective, well-researched, and are made using a balanced approach towards protecting consumers and not overburdening industry.

*Additional Regulations are Needed (Small Business Lending, Payday, Auto Title, and Overdraft)*
Given the success of the CFPB thus far, we encourage the Bureau to release proposed rules for a number of key consumer issues still on its docket, specifically payday and auto title loans, and overdraft products and services. Woodstock encourages the Bureau to release strong proposed rules to curb some of the worst industry practices and abuses in all of these areas. In addition to having the CFPB address small business lending data disclosure, we believe the alternative small business lenders, operating primarily online, should be regulated to ensure that many of the abuses documented in the consumer lending space are not repeated in the small business lending space. A number of lenders and advocacy organizations have joined together to promote a Small Business Borrowers Bill of Rights that can serve as a first step toward regulations that will ensure that the abuses that characterized small dollar consumer loans are not repeated in the small business loan field.

**Conclusion**

Woodstock appreciates the opportunity to participate in the October 19, 2015 public hearing being held in Chicago, Illinois as well as the opportunity to submit these written comments as part of the EGRPRA process. We support the efforts of regulators to identify obsolete, outdated, or unnecessarily burdensome regulations and assess whether those rules ought to be modernized or eliminated. Woodstock strongly encourages the regulators to use this opportunity to acknowledge the importance of CRA and its benefits to communities across the country, as well as identify provisions that no longer serve their original intent because of changes in the financial marketplace. Particular aspects of CRA are outdated and must be modernized to ensure that the Act is working as intended. Specifically, assessment areas should accurately reflect a bank's footprint and include all geographies where a bank does substantial business; negative CRA credit should be assessed for harmful practices discovered during CRA exams or through regulatory enforcement actions or settlements; CRA exams should accurately address whether bank products, services, and practices are adequately meeting the needs of the community and include quantifiable benchmarks for banks to meet; and, any benchmarks set by the bank or its regulator for determining whether a bank is meeting its obligation should be made public in advance of the exam so consumers and the public have the opportunity to accurately understand how the bank's actions will be assessed. We also believe regulators should use this opportunity to acknowledge that the CRA sunshine law creates an unnecessary regulatory burden on banks and community organizations and should be repealed or scheduled to sunset. We support clarifications related to bank mergers and bank acquisitions, including longer comment periods, a more public process, and a true consideration of the bank's CRA commitments and how the merger/acquisition will provide a public benefit. Finally, we strongly support the work of the Consumer Financial Protection Bureau and believe it has made significant progress in making the financial marketplace safer for

[2] http://www.consumerfinance.gov/blog/hmda-data-shows-more-people-took-out-a-mortgage-to-purchase-a-home-in-2014-than-2013/

consumers. We believe attacks on the necessity of its rules and their burden on industry are unfounded and exaggerated.

We thank the prudential regulators for working to create a safe and sound financial marketplace for institutions and consumers alike, and encourage swift action to modernize key laws and regulations.

Sincerely,

Dory Rand, President
Woodstock Institute

Chicago Community Loan Fund

Illinois Asset Building Group

Heartland Alliance

Housing Action Illinois

Northwest Side Housing Center

Open Communities