

## **PUBLIC DISCLOSURE**

11/21/2005

### **COMMUNITY REINVESTMENT ACT PERFORMANCE EVALUATION**

**The Bank of New York (Delaware)  
24867**

**700 White Clay Center  
Newark, Delaware 19711**

**Federal Deposit Insurance Corporation  
20 Exchange Place  
New York, New York 10005**

**NOTE:** This evaluation is not, nor should it be construed as, an assessment of the financial condition of this institution. The rating assigned to this institution does not represent an analysis, conclusion or opinion of the federal financial supervisory agency concerning the safety and soundness of this financial institution.

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## GENERAL INFORMATION

*The Community Reinvestment Act (CRA) requires each federal financial supervisory agency to use its authority when examining financial institutions subject to its supervision, to assess the institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with safe and sound operation of the institution. Upon conclusion of such examination, the agency must prepare a written evaluation of the institution's record of meeting the credit needs of its community.*

*This document is an evaluation of the Community Reinvestment Act (CRA) performance of **The Bank of New York (Delaware)** prepared by **Federal Deposit Insurance Corporation**, the institution's supervisory agency, as of **11/21/2005**. The agency evaluates performance in assessment area(s), as they are delineated by the institution, rather than individual branches. This assessment area evaluation may include the visits to some, but not necessarily all of the institution's branches. The agency rates the CRA performance of an institution consistent with the provisions set forth in Appendix A to 12 CFR Part 345.*

## **INSTITUTION**

***INSTITUTION'S CRA RATING:*** This institution is rated Satisfactory.

An institution in this category has a satisfactory record of helping to meet the credit needs of its assessment area, including low- and moderate-income neighborhoods, in a manner consistent with its resources and capabilities.

The institution made an adequate level of community development loans and grants. Additionally, bank employees provided community development services. Activities support affordable housing initiatives, financial literacy programs, and organizations that promote community development for the assessment area's low- and moderate-income individuals and families.

**DESCRIPTION OF INSTITUTION:**

The Bank of New York (Delaware) {(BNY (DE))} is a wholly-owned indirect subsidiary of The Bank of New York Company, Inc., New York, New York. BNY (DE) was chartered in 1983 as a limited purpose bank under a provision of the Delaware Banking Law originally known as the Delaware Financial Center Development Act (Chapter 8, Title 5 of the Delaware Code). Due to Chapter 8 limitations, BNY (DE) is prohibited from operating in a manner that is likely to attract customers from the general public. The bank's main office, located in Newark, New Castle County, Delaware, is not open to the general public. The bank does not maintain any domestic offices; however, it does operate one foreign branch in the Cayman Islands that accepts international time deposits to support its cash management businesses. BNY (DE) had total assets of \$489 million as of September 30, 2005. Loans totaled \$143 million, of which 95.7 percent were consumer loans.

In August 2003, BNY (DE) purchased a portfolio of consumer loans from its affiliate The Bank of New York. The institution also began to originate lines of credit in its own name (Instant Credit product). The Instant Credit product is a multi-purpose revolving open-end line of credit that can be used for debt consolidation, major purchases, extra cash or overdraft protection. The product is only offered to The Bank of New York checking account customers in amounts ranging from \$1,000 to \$25,000. The product is accessible through Instant Credit checks, an ATM card, or debit card. BNY (DE) is the originator, owner and service provider of the Instant Credit accounts. Other business activities include providing loan processing and administration services for its affiliate The Bank of New York, and providing cash management services to corporate clients.

The bank received its "limited purpose" CRA designation on May 24, 2004. A limited purpose bank means a bank that offers only a narrow product line to a regional or broader market and for which a designation as a limited purpose bank is in effect. However, for community development purposes, the bank originates and/or participates in loans to nonprofit organizations within its assessment area and/or broader statewide area that include its assessment area.

There are no legal, financial, or other impediments which could hamper the bank's ability to help meet the community development needs of its defined assessment area.

This performance evaluation will be conducted using the Community Development Test of the limited purpose bank CRA evaluation procedures. This is the first performance evaluation conducted since the institution received its limited purpose designation.

**DESCRIPTION OF THE ASSESSMENT AREA:**

The institution's assessment area is New Castle County, Delaware. In conformance with the CRA regulation, the area does not arbitrarily exclude any low- or moderate-income geography. New Castle County is located within the Philadelphia-Camden-Wilmington, PA-NJ-DE-MD Metropolitan Statistical Area 37980 (MSA 37980). The assessment area includes 127 census tracts. Based upon 2000 U.S. Census data, 10 (7.9 percent) qualify as low-income, 23 (18.1 percent) moderate-income, 61 (48.0 percent) middle-income, and 32 (25.2 percent) upper-income, 1 (0.8 percent) census reported no income. In June 2003, The Office of Management and Budget announced that 11 Metropolitan Statistical Areas with core populations of 2.5 million or more were subdivided into Metropolitan Divisions (MDs). Consequently, New Castle County is now part of MD 48864, which also includes Cecil County, Maryland and Salem County, New Jersey.

The U.S. Department of Housing and Urban Development (HUD) issues annual estimates which update median family income from the metropolitan and non-metropolitan areas. HUD starts with the most recent U.S. Census data and factors in information from other sources to arrive at an annual estimate that more closely reflects current economic conditions. The median family income is used to determine the percentage of families that qualify as low-, moderate-, middle- or upper-income. Low-income defined as individual income that is less than 50 percent of the area median income, moderate-income is individual income that is at least 50 percent and less than 80 percent of the area median income, middle-income is individual income that is at least 80 percent and less than 120 percent of the area median income and upper-income is more than 120 percent of the area median income. The HUD-adjusted median family incomes for MD 48864 were \$69,700 and \$73,800 for 2004 and 2005, respectively. Based upon 2000 U.S. Census data, the assessment area had 127,997 families, of which 18.5 percent qualified as low-income, 17.3 percent moderate-income, 23.5 percent middle-income and 40.7 percent upper-income.

New Castle County, Delaware is home to two-thirds of the state's population. The county's economic strengths include a high concentration of finance, insurance and real estate industries. According to the Delaware Economic Development Office, New Castle County's top five employers are E.I. du Pont de Nemours, MBNA America (recently acquired by Bank of America), Christiana Care Health Services, University of Delaware, and FCC National Bank. Recent consolidation in banking and the chemical industry could result in future job losses for the area. Bank of America purchased the Delaware-based credit card bank MBNA earlier this year. Consolidation plans suggest a significant job loss between the two banks, with the bulk likely to come from the Delaware site.

According to the FDIC State Profiles, employment gains, healthy income grown, and low mortgage rates have contributed to robust housing activity in Delaware. Home price appreciation for the second quarter of 2005 in Wilmington, New Castle County is close to its historic high of 16.3 percent.

As part of this evaluation, information was obtained from community contacts recently conducted within the assessment area to gain insight into community development opportunities. The contacts identified affordable housing and housing related services as assessment area credit needs. The need for additional monies to support homeownership counseling was specifically mentioned by one of the contacts.

### **CONCLUSIONS WITH RESPECT TO PERFORMANCE:**

A limited purpose bank is evaluated based on its record of helping to meet the credit needs of its assessment area(s) under the community development test through its community development lending, qualified investments, and community development services. A limited purpose institution may perform well under the community development test by engaging in one or more of these activities.

#### **Scope**

The scope of the institution's CRA performance includes community development loans originated, grants made and community development service activities conducted since May 24, 2004, the effective date of the institution's limited purpose designation.

#### **Community Development Lending**

BNY (DE) made an adequate level of community development loans during the period reviewed. Since May 24, 2004, the institution committed \$2 million to a nonprofit, multi-bank community development corporation's (CDC) Housing Loan Fund III. The corporation provides funding to nonprofit and for profit affordable housing developers throughout Delaware. The Housing Loan Fund program provides long-term financing for special needs housing and for affordable rental housing developments, including new construction and the rehabilitation/preservation of existing housing. The corporation has provided approximately \$73 million towards assisting in the production of 3,362 units of affordable housing through its Housing Loan Funds, according to its 2004 Annual Report.

To qualify as an affordable housing project, rent structures must include sufficient low-income units to satisfy one of the following requirements: 51 percent or more units to households earning less than 80 percent of the area median income; 40 percent or more units to households earning less than 60 percent of the area median income; or 20 percent or more units to households earning less than 50 percent of the area median income.

Prior to receiving its limited purpose designation, BNY (DE) made commitments totaling \$1.7 million to the CDC's Affordable Housing Loan Funds I and II. Additionally, a commitment of \$250,000 was made to the corporations Equity Fund II. The Equity Fund has assisted in the production of approximately 2,400 units of affordable housing. The institution also made a \$24,102 commitment to the Community Investment Loan Fund, which provides long-term financing for commercial real estate projects that contribute to the revitalization of communities.

**Investment/Grant Activities**

The institution made an adequate level of qualified community development grants and donations during the period reviewed. Grants totaling \$296,150 were made to various organizations that provide community development services. The following table details the level of grants provided since the institution was granted its limited purpose designation. A detailed description of the more notable grants follows.

<i>Table 1 – Qualified Grants</i>		
<b>DESCRIPTION</b>	<b>NUMBER</b>	<b>DOLLARS</b>
Affordable Housing Providers	8	\$115,000
Financial Literacy Programs	9	\$45,000
Facilities that promote community development in LMI areas for LMI people	21	\$128,650
Organizations supporting activities essential to the capacity of LMI individuals and geographies to utilize credit or to sustain economic development	2	\$7,500
<b>Total Qualified Grants and Donations</b>	40	\$296,150

*Source: Bank Records*

- BNY (DE) provided \$30,000 to support affordable housing through Habitat for Humanity of New Castle County. The organization develops and empowers persons, families, and communities, through the construction of new and rehabilitated quality affordable housing.
- The institution made a \$20,000 grant to the New Knollwood Civic Association. The group works to revitalize and redevelop residential properties located in the Knollwood section of Claymont, New Castle County thereby providing decent homes for low-income, first time homebuyers.
- The bank provided grants totaling \$20,000 to West End Neighborhood House, located in Wilmington. The organization provides a wide range of programs in employment preparation, child care, crisis alleviation, health care, social outreach and tutoring/drop-out prevention to individuals needing help in achieving self-sufficiency. Part of the contribution was used to fund the one of the organization’s housing related programs, the Security Deposit Loan Program. The loan program provides low-interest loans for security and utility deposits.

- The institution made a \$15,000 grant to support the YWCA of New Castle County's homeownership education program. The program assists low- and moderate-income families in buying and maintaining their homes. Instruction is provided relating to the mortgage application process, acquiring a home and settlement. Funding homeownership counseling programs was identified as an opportunity for financial institutions to meet community credit needs by one of the community contacts.
- The institution donated \$45,000 to various financial literacy programs, including a \$25,000 grant to the Delaware Financial Literacy Institute. The organization's mission is to help individuals, particularly low- and moderate-income, become equipped with the tools to get their financial lives in order so that they can become self-sufficient.
- A total of \$21,000 in donations to the Claymont Community Center. The organization unites the efforts of 36 human service agencies, government and community organizations to serve the needs of the low- and moderate-income population of Wilmington and the surrounding neighborhoods.

### **Community Development Services**

Community development services provided by BNY (DE) are evaluated by the level, initiative, and responsiveness to the community development needs within the bank's assessment area. Bank officers and employees provide technical expertise to a few community development organizations in the bank's assessment area. Bank employees have also provided financial literacy training. Following are specific examples of BNY (DE) community development service efforts.

*New Knollwood Civic Association* – The New Knollwood Civic Association was formed in 1996 to help revitalize this low-income community in Claymont, New Castle County. In addition to a housing initiative, the Civic Association maintains a community center which provides after-school care and serves as a summer day camp. The bank's CRA Officer is a member of the organization's advisory board. The position includes evaluating the organization's 2006 goals with respect to acquiring additional properties for rehab and raising additional capital and operating funds.

*West End Neighborhood House* - An assistant vice president is on the loan review committee of this organization. As a member of the loan review committee, the assistant vice president evaluates applications for the Security Deposit Loan Program.

*Boys and Girls Club of Delaware* – The president is a member of the group's Board of Directors. The organization works to inspire and enable young people, especially those from disadvantaged circumstances, to realize their full potential as productive citizens. Drug and alcohol prevention, and after school programs are examples of activities provided by the organization.

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*Claymont Community Center* - A senior vice president is on the Board of Claymont Community Center, an organization that provides health and counseling services to low- and moderate-income individuals and families in Wilmington and surrounding areas.

*Financial Literacy Training* – Several bank employees have provided financial literacy training in local schools and to organizations that provide community development services to low-and moderate-income individuals and families.

### **Compliance with Antidiscrimination Laws and Regulations**

No violations of the substantive provisions of the antidiscrimination laws and regulations were identified during the CRA performance evaluation.

**APPENDIX A**

**SCOPE OF EXAMINATION**

<b>SCOPE OF EXAMINATION:</b> The scope of the CRA performance evaluation covered community development lending, grant and service activities.		
TIME PERIOD REVIEWED	5/24/2004 to 11/21/2005	
<b>FINANCIAL INSTITUTION</b> The Bank of New York (Delaware)  Newark, DE		<b>PRODUCTS REVIEWED</b> Community Development Loans Community Development Grants Community Development Services

<b>LIST OF ASSESSMENT AREAS AND TYPE OF EXAMINATION</b>			
<b>ASSESSMENT AREA</b>	<b>TYPE OF EXAMINATION</b>	<b>BRANCHES VISITED</b>	<b>OTHER INFORMATION</b>
New Castle County, DE	On-site, Full Scope	NA	

## APPENDIX B - GENERAL DEFINITIONS

### GEOGRAPHY TERMS

**Block:** Small areas bounded on all sides by visible features such as streets, roads, streams or rail road tracks, and invisible features like city or town boundaries or property lines. Blocks are subdivisions of census tracts or block numbering areas (BNA), and are assigned a unique three-digit number.

**Block Group:** Clusters of blocks within a census tract or BNA, having a four-digit number and a three-digit suffix. The four-digit number corresponds to the same number given to the census tract or BNA in which it is located.

**Block Numbering Areas (BNAs):** Statistical subdivisions of a county for grouping and numbering blocks in non-metropolitan counties where local census statistical area committees have not established census tracts. BNAs do not cross county lines.

**Census Tract:** Small subdivisions of metropolitan and other densely populated counties. Census tract boundaries do not cross county lines; however, they may cross the boundaries of metropolitan statistical areas. They usually have between 2,500 and 8,000 persons, and their physical size varies widely depending upon population density. Census tracts are designed to be homogeneous with respect to population characteristics, economic status, and living conditions to allow for statistical comparisons.

**Metropolitan Area (MA):** One or more large population centers and adjacent communities that have a high degree of economic and social integration. Each MA must contain either a place with a minimum population of 50,000 of Census Bureau-defined urbanized area and a total MA population of at least 100,000 (75,000 in New England). An MA comprises one or more central counties and may include one or more outlying counties that have close economic and social relationships with the central county. In New England, MAs are composed of cities and towns rather than whole counties.

**Metropolitan Statistical Area (MSA):** One or more metropolitan areas that have economic and social ties.

**Primary Metropolitan Statistical Area (PMSA):** A large urbanized county or cluster of counties that demonstrate very strong internal economic and social links, in addition to close ties to other portions of the larger area. If an area qualifies as an MA and has more than one million persons, PMSAs may be defined within it.

**Consolidated Metropolitan Statistical Area (CMSA):** The larger area of which PMSAs are component parts.

**Non-Metropolitan Area:** All areas outside of metropolitan areas. The definition of non-metropolitan area is not consistent with the definition of rural areas. Urban and rural classifications cut across the other hierarchies; for example, there is generally both urban and rural territory within both metropolitan and non-metropolitan areas.

**Urban Area:** All territories, populations, and housing units in urbanized areas and in places of 2,500 or more persons outside urbanized areas. More specifically, “urban” consists of territory, persons, and housing units in: places of 2,500 or more persons incorporated as cities, villages, boroughs (except in Alaska and New York), and towns (except in the New England states, New York, and Wisconsin) but excluding the rural portions of “extended cities”; census designated place of 2,500 or more persons; and other territory, incorporated or unincorporated, including in urbanized areas.

**Rural Area:** Territories, populations and housing units that are not classified as urban.

### **HOUSING TERMS**

**Family:** Includes a householder and one or more other persons living in the same household who are related to the householder by birth, marriage, or adoption. The number of family households always equals the number of families; however, a family household may also include non-relatives living with the family. Families are classified by type as either a married-couple family or other family which is further classified into “male householder” (a family with a male householder and no wife present) or “female householder” (a family with a female householder and no husband present).

**Household:** Includes all persons occupying a housing unit. Persons not living in households are classified as living in group quarters. In 100 percent tabulations, the count of households always equals the count of occupied housing units.

**Housing Unit:** Includes a house, an apartment, a mobile home, a group of rooms, or a single room that is occupied as separate living quarters.

**Owner-Occupied Units:** Includes units occupied by the owner or co-owner, even if the unit has not been fully paid for or is mortgaged.

### **INCOME TERMS**

**Median Income:** The median income divides the income distribution into two equal parts, one having incomes above the median and other having incomes below the median.

**Area Median Income:** The median family income for the MSA, if a person or geography is located in an MSA; or the statewide non-metropolitan median family income, if a person or geography is located outside an MSA.

**Family Income:** Includes the income of all members of a family that are age 15 and older.

**Household Income:** Includes the income of the householder and all other persons that are age 15 and older in the household, whether related to the householder or not. Because many households consist of only one person, median household income is usually less than median family income.

**Low-Income:** Individual income that is less than 50 percent of the area median income, or a median family income that is less than 50 percent in the case of a geography.

**Moderate-Income:** Individual income that is at least 50 percent and less than 80 percent of the area median income, or a median family income that is at least 50 and less than 80 percent in the case of a geography.

**Middle-Income:** Individual income that is at least 80 percent and less than 120 percent of the area median income, or a median family income that is at least 80 and less than 120 percent in the case of a geography.

**Upper-Income:** Individual income that is more than 120 percent of the area median income, or a median family income that is more than 120 percent in the case of a geography.

**HUD Adjusted Income Data:** The U.S. Department of Housing and Urban Development (HUD) issues annual estimates which update median family income from the metropolitan and non-metropolitan areas. HUD starts with the most recent U.S. Census data and factors in information from other sources to arrive at an annual estimate that more closely reflects current economic conditions.

## **OTHER TERMS**

**Home Mortgage Disclosure Loan Application Register (HMDA LAR):** The HMDA LARs record all applications received for residential purchase, refinance, home improvement and temporary-to-permanent construction loans.

**Small Business Loan:** A loan included in “loans to small businesses” as defined in the Consolidated Report of Condition and Income (Call Report). These loans have original amounts of \$1 million or less and are either secured by nonfarm nonresidential properties or are classified as commercial and industrial loans.

**Small Farm Loan:** A loan included in “loans to small farms” as defined in the instructions for preparation of the Consolidated Report of Condition and Income (Call Report). These loans have original amounts of \$500,000 or less and are either secured by farmland, including farm residential and other improvements, or are classified as loans to finance agricultural production and other loans to farmers.

## APPENDIX C - INVESTMENT DEFINITIONS

**Community Development Corporation (CDC):** A CDC allows banks and holding companies to make equity type of investments in community development projects. The equity investments are subject to limits specified by the bank's regulator. Bank CDCs can develop innovative debt instruments or provide near-equity investments tailored to the development needs of the community as well as to the financial and marketing needs of the bank. A CDC may purchase, own, rehabilitate, construct, manage and sell real property. Also, it may make equity or debt investments in development projects and in local businesses. The CDC activities are expected to directly benefit low- and moderate-income groups, and the investment dollars should not represent an undue risk on the banking organization. Any real estate ownership should generally be temporary, with ownership reverting to members or organizations in the community.

**Community Development Financial Institutions (CDFIs):** CDFIs are private intermediaries (either for profit or nonprofit) with community development as their primary mission. They procure loans and investments that conventional financial institutions are unable to invest in, and they link financing to other developmental activities. A CDFI facilitates the flow of lending and investment capital into distressed communities and to individuals who have been unable to take advantage of the services offered by traditional financial institutions. CDFIs share a common mission and can be chartered as a credit union or bank. CDFIs can also be unregulated nonprofit institutions that gather private capital from a range of social investors for community development lending or investing. Some basic types of CDFIs include community development banks, community development loan funds, community development credit unions, microenterprise funds, and community development venture capital funds. A certified CDFI must meet eligibility requirements, which include: having a primary mission of promoting community development; serving an investment area or target population; providing development services; maintaining accountability to residents of its investment area or targeted population through representation on its governing board of directors, or by other means; and not constituting an agency or instrumentality of the United States, of any state or political subdivision of a state.

**Low Income Housing Tax Credits:** The Low-Income Housing Tax Credit Program is a housing program contained within the Internal Revenue Code of 1986, as amended, which is administered by the U.S. Department of the Treasury and the Internal Revenue Service. The U.S. Treasury Department, through the Internal Revenue Service, distributes low-income housing tax credits to housing credit agencies. The housing agencies allocate tax credits on a competitive basis. Developers who acquire, rehabilitate, or construct low-income rental housing may keep their tax credits or sell them to corporations or investor groups, who, as owners of these properties, will be able to reduce their own federal tax payments. The credit can be claimed annually for ten consecutive years. For a project to be eligible, the developer must set aside a specific percentage of units for occupancy by low-income residents. The set-aside requirement remains in place throughout the compliance period, usually 30 years.

**Qualified Investments:** A qualified investment is defined as any lawful investment, deposit, membership share, or grant that has as its primary purpose community development to support the following endeavors: 1) affordable housing; 2) community services targeting low- and moderate-income individuals; 3) activities that promote economic development by financing small farms and small businesses; and 4) activities that revitalize or stabilize low- and moderate-income geographies.