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WOMEN'S BANKS AND WOMEN'S ACCESS TO CREDIT: COMPETITION BETWEEN MARKETPLACE AND REGULATORY SOLUTIONS TO GENDER DISCRIMINATION

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I. INTRODUCTION

During the 1970's, as more women entered the work force as managers, laborers and entrepreneurs, women's credit and financing needs intensified. Yet banks and other financial institutions persisted in discriminating against women in extending credit.¹ This discrimination reflected a view that women were bad credit risks because they generally had no independent source or control of income.² Without access to

¹ For accounts of women's credit needs and discrimination against women in the 1970's before women's banks were established and the Equal Credit Opportunity Act of 1974 was passed, see Economic Problems of Women: Hearings Before the Joint Economic Comm., 93rd Cong., 1st Sess. 428 (1973); Kendig, Discrimination Against Women in Home Mortgage Financing, 3 Yale Rev. L. & Soc. Action 166 (1973); Hyatt, No-Account Females: Women Complain They Often Can't Get Credit Because of their Sex, Wall St. J., July 18, 1972, at 1, col. 6.

² As the President of the American Banker's Association conceded in a 1973 interview, "[b]anks along with the rest of the credit industry, do in fact discriminate against women when it comes to granting credit." Adams, Bankers Urged to Reconsider Assumptions Regarding Women and Credit, Am. Banker, June 25, 1973, at 22.

³ One standard credit manual, for example, identified divorcees, along with Indians living on reservations and those living in untidy homes, as poor credit risks. M. Neifeld, Neifeld's Manual on Consumer Credit 512 (1961).
credit, women could not develop independent sources of income, build an asset base or develop their own credit histories. This in turn precluded future extensions of credit to women. Denial of access to credit for women was a cause as well as an effect of women being excluded from full participation in the economy.3

As one response to this credit discrimination, businesswomen and liberal feminists organized "women's banks" that were aimed at providing banking services to women. The women's banks were originally owned and operated by women and represented an effort to provide a marketplace solution to the problem of gender discrimination in access to credit. The number of women's banks grew rapidly nationwide, and between 1975 and 1980, nine women's banks had formed.4 The women's banks commenced business with considerable optimism and liberal support. Amid much press coverage of its novel profit strategy, First Women's Bank of Manhattan (FWBM) opened its doors in 1975 as the initial women's bank with such feminist luminaries as Betty Friedan on its board of directors. Yet women's banks have never become a significant force in the financial marketplace; on the contrary, the number of women's banks has declined. The remaining women's banks have minimal asset bases and have deliberately de-emphasized their original feminist focus, stressing instead a muted, gender-neutral orientation.6

4. "[B]y 1979, there were nine [banks]; by 1982, that number had been reduced to eight." Gardner & Mills, Women's Banks—Where to Now? THE BANKERS MAG., Jan.-Feb. 1983, at 40, 41. Identifying a "women's" bank is sometimes difficult because of variations in the criteria for calling a bank a "women's" bank. See infra note 23 and accompanying text. By our count there are now eight such banks: First Women's Bank of Manhattan, The Connecticut Women's Bank, The Women's Bank (San Diego, California), The Western Women's Bank (San Francisco, California), The Women's Bank (Denver, Colorado), The Women's National Bank (Washington, D.C.) and The Women's Bank (Richmond, Virginia). See Gutis, In the U.S. Fewer Women's Banks, N.Y. Times, Sept. 15, 1985, § III, at 13, col. 1. Some of these banks have been changing their names as well as other features, leaving their status as a women's bank in doubt. See infra note 6.
6. See, e.g., Hellyer, What's in a Name? AM. BANKERS ASS'n BANKING J., May 1979, at 104 (noting name change by The Women's Bank (San Diego, California) to California Coastal Bank); Kaiser, What's in a Name Matters to Board of Women's Bank, Wall St. J., Apr. 13, 1984, at 4, col. 4 (noting that "[h]alf of the bank's customers are men, but the board thinks that a more neutral name . . . could boost profit"); Salamon, Idealism Gives Way to Laws of Business as First Women's Bank Heads for Recovery, Wall St. J., Aug. 26, 1981, at 25, col. 4 (quoting new First Women's Bank of Manhattan (FWBM) President Judy Mello, "‘We aren't running around finding women to do good things for’").
Indeed, by early 1987, FWBM had announced plans to fire its woman president and replace her with a man to coincide with an infusion of new capital from a largely male controlled investment group.7

This Article examines how and why the women’s banks came to abandon women as their primary target market. It seeks to explain why women’s banks were unable to carry out their agenda of remedying credit discrimination against women and why women’s banks experienced lower profitability than other banks.

First, we critique the internal logic of the women’s banks’ target market strategy.8 Women’s banks sought to exploit a market inefficiency created by irrational sexist discrimination in the capital markets; creditworthy women’s enterprises presented a profit opportunity not captured by traditional banks with misogynist lending practices. This Article questions, however, whether women’s banks could exploit that market inefficiency when they necessarily obtained their capital for making loans from those very same sexist capital markets. If the general capital market perceived women’s loans as bad loans, then presumably it would reflect that perception by extending funds to women’s banks at a proportionately higher cost of capital. This higher cost would lower the profitability of women’s banks and discourage them from extending loans to women.

Second, even if the market inefficiency envisioned by the women’s banks did create potential profit, the women’s banks had to contend with the tremendous pressures of bank deregulation which occurred between 1975 and 1986.9 Because bank deregulation made profitability more volatile, banks of all types and sizes—including women’s banks—had to devise new market strategies simply to survive. Thus, even if women were a profitable target market, they were not sufficiently profitable for the economic survival of women’s banks, and women’s banks were forced to diversify their market strategies. Bank deregulation helped force women’s banks to redirect their focus away from women.

Third, the passage of the 1974 Equal Credit Opportunity Act (ECOA),10 the 1977 Amendments to ECOA,11 and the Federal Reserve’s

7. See Kleinfield, Running First Women’s Bank Is Now a Man’s Job, N.Y. Times, Feb. 8, 1987, § III, at 6, col. 1; Sex Change at the Bank, TIME, Feb. 9, 1987, at 53 (“A group of five male and three female investors has acquired a 42% interest in the bank for $2.9 million and has offered $7.1 million for the rest.”).
8. See infra text accompanying notes 20-52.
9. See infra text accompanying notes 53-78.
implementation of Regulation B (Reg B)\textsuperscript{12} undermined the existence of a target market of unserved, creditworthy women.\textsuperscript{13} ECOA was an intentional legislative response to outlaw credit discrimination against women. Thus, rather than offering a marketplace solution to the problem of gender discrimination, ECOA changed the rules of the market itself. To the extent that ECOA successfully remedied credit discrimination against women, women's banks no longer had an unserved population to target. As a result, the profitability of women's banks declined.\textsuperscript{14}

This third explanation for the failure of the women's bank market strategy—the legislative erosion of the target market—illustrates the tension between regulatory and market responses to an identified social need.\textsuperscript{15} ECOA's goal was to end this need by regulatory fiat, while women's banks sought to fulfill it and simultaneously turn a profit. However, if the need disappears, so does the profit, and so too do women's banks if they lack alternative sources of profitability.

The analysis results in three observations concerning women's banks and women's struggle for access to credit. First, women's banks cannot arbitrage sexism out of the marketplace at a rate faster than the general capital market is willing to accept.\textsuperscript{16} Women's banks, to a considerable degree, serve as a conduit for capital priced according to the sexist perceptions of the capital markets. Second, insofar as eliminating gender discrimination in access to credit is a socially desirable goal, regulatory solutions to credit discrimination are necessary because marketplace solutions are inadequate. Rather than contributing to the end of credit discrimination, marketplace solutions will simply reflect whatever prejudices exist in the market.\textsuperscript{17} Third, a regulatory solution which eliminates credit discrimination displaces marketplace solutions which are aimed at making a profit from this target group.\textsuperscript{18} Thus, a completely successful ECOA displaces women's banks which pursue a wholly women-oriented target market strategy.\textsuperscript{19}

Each of these observations has significant qualifications. The account as a whole, however, offers some guidance concerning the direction of the struggle to end gender discrimination in credit access. There is no substitute for changes in the market rules themselves because the internal

\textsuperscript{13} See infra text accompanying notes 79-91.
\textsuperscript{14} Id.
\textsuperscript{15} See infra note 91 and accompanying text.
\textsuperscript{16} See infra note 33 and accompanying text.
\textsuperscript{17} See infra note 36 and accompanying text.
\textsuperscript{18} See infra note 91 and accompanying text.
\textsuperscript{19} Id.
forces which might arbitrage sexism out of credit practices are insufficient to move the market to eliminate sexism. Therefore, this Article argues that the only suitable response is stringently enforced regulation.

II. The Profit Strategy of the Women's Banks

The women's banks began with an insightful profit strategy: target creditworthy women who experienced irrational discrimination from traditional lending institutions. Because this was an untapped market, women's banks would initially avoid competition from other banks and would gain a competitive edge in the market for women borrowers in the future. Despite the apparent soundness of the strategy, women's banks experienced profitability lower than similarly situated traditional banks. Moreover, women's banks never became a significant nationwide alternative means of credit for women. This is partially because the women's banks' profit strategy was internally inconsistent, focusing primarily on a lending market and less on the source and cost of capital. Since women's banks obtained their capital from the general capital market, they could not sufficiently free their lending decisions from the sexist prejudices of that capital market. With some qualifications, this explains in large part why women's banks experienced relatively low profitability,

20. For descriptions of such irrational credit discrimination, see Hyatt, supra note 1. Gardner & Mills, supra note 4, describe the women's bank strategy, but place the blame for its failure partly on management inexperience and partly on the inability of women's banks to commit the necessary marketing funds:

[T]he idea of targeting women customers—scoffed at by some when First Women's Bank opened its doors in 1975—is being actively pursued today by some of the largest banks in the United States. . . . Women's banks were actually ahead of the game in recognizing this idea.

. . . . [T]he idea of targeting women as customers was not accompanied by the necessary marketing budgets in the women's banks to insure success. Large banks today are committing funds to market segmentation in the belief that they will pay big dividends.

Gardner & Mills, supra note 4, at 44 (emphasis in orginal).

Our viewpoint is substantially different from the view expressed by Gardner and Mills. The failure of the women's banks to achieve relative profitability reflects more than a mere failure to commit enough funds to marketing budgets. The movement of large, traditional banks into the women's market reflects both gains in women's aggregate economic wealth and changes in the perceptions of the general capital marketplace towards women and women's businesses. The relatively low profitability of women's banks also reflects more than simple management inexperience. Unlike Gardner and Mills, we argue that targeting women as a market was a structurally flawed strategy, not merely poorly executed, and that experienced women's bank management showed its acumen precisely by abandoning the strategy.

21. See infra notes 40-41 and accompanying text.

22. See supra note 4.
and why marketplace solutions to gender discrimination are generally inadequate.

The women's banks sought to attract women customers by identifying themselves as "women's banks." Some indicators of a "women's bank" include: women's ownership of over half of its stock interest, women's control of significant blocks of stock, women dominating the board of directors, women as the bulk of employees, bank charter provisions emphasizing service to women, the word "women" in the bank name, women as the target market for lending, women as the principal source of deposits and lending criteria favorable to women. All these factors distinguished women's banks from the more traditional banks. Nevertheless, despite these characteristics, women's banks shared fundamental features with traditional banks, leaving them vulnerable to control by the capital markets. These shared features also led to an inconsistent profit strategy and thwarted the original goal of providing women access to credit while achieving a profit.

First Women's Bank of Manhattan (FWBM), for example, billed itself as a "women's bank." Its top management, board of directors and significant shareholders consisted largely of women. The bank's name emphasized its commitment to women's financial services. It publicized its policy of applying lending criteria favorable to women. Yet FWBM remained dependent upon traditional capital institutions for its source of funds. For example, the bank publicly traded its shares, and anyone, male or female, could purchase them. FWBM had to consider both its fiduciary duty to its shareholders and its fundamental need to make a profit or face shareholder flight. In 1982, the bank management endorsed an ultimately unsuccessful tender offer by a Brazilian investment group to acquire at least fifty-one percent of the outstanding shares. It had to fight off a male dissident ex-director who claimed he

23. For a discussion of these factors in the context of one women's bank, The Women's Bank (Denver, Colorado), see Johnson, Bank Head Nearing 'American Dream,' The Denver Post, Oct. 10, 1977, at D27, col. 1.

24. "The First Women's Bank was organized to provide access to credit for women and men . . . in a non-discriminatory . . . manner. . . . The Bank does not 'favor' women but it has a special obligation and relationship, having as its main criteria the credibility of the woman's or man's finances." FWBM 1985 Press Release from The First Women's Bank (1985) (discussing organization of FWBM) (copy on file at Loyola of Los Angeles Law Review office) [hereinafter Press Release].

25. See Salamon, supra note 6.


wanted to “preserve the institution as a women’s bank” but sought to acquire thirty-five percent of the shares. By 1987 it had announced plans to take on a male president, and a male-dominant group of shareholders had bought a forty-two percent interest in the bank, with an offer to acquire the rest.

Yet women's banks originally believed that they could both maximize shareholder profits and pursue an anti-discrimination policy. They reasoned that in an efficient capital market, those who sought credit and could repay at market interest rates should receive credit. As women moved into the market economy as businesswomen, professionals, managers or consumers, they began seeking credit to finance their activities. Like anyone else seeking credit, some women would have solid ideas and plans with strong probabilities of repayment, while others would not. In an efficient capital market, the former ought to receive credit and the latter ought not, while the projects with higher risk should receive credit at an appropriately adjusted interest rate.

But the credit allocation system—banks, other financial institutions and the capital market—traditionally has been overlaid with irrational and inefficient sexism. This irrational sexism has persisted despite the fact that a profitable return could be made from creditworthy women’s enterprises. Irrational sexism exists in the capital markets insofar as the rules and practices of credit allocation have not kept pace with the changing social mode of production which incorporates women into the labor market not only at the working class level, but also at the small-business and managerial levels where their assets represent an opportunity for a profitable return.

The inefficiency created by irrational sexism produces an opportunity to make a profit by lending to creditworthy women denied credit at traditional institutions. Women’s banks seek to profit by capitalizing on


29. See [*supra* note 7].

30. It has occasionally been argued that, as a psychological matter, women are better credit risks than men, all financial factors being equal. See Smith, *Measuring Risk on Consumer Installment Credit*, 11 MGMT. SCI. 327 (1964); see also Baer, *The Equal Credit Opportunity Act and the “Effects Test”*, 95 BANKING L.J. 241, 248 (1978). Of course, reliance on such behavioral criteria assumes that women have income in the first place.

31. See [*supra* note 7].

In this neglected market of creditworthy women. In effect, this profit strategy proposes a form of arbitrage which capitalism uses to purge from the economy the cultural prejudices and irrational sexism which inhibit full economic efficiency.\(^{33}\)

In order to achieve this form of arbitrage, however, women's banks would have to charge a higher-than-market interest rate. The ability of women's banks to charge a higher-than-market interest rate is due to the presence of women in the marketplace who need credit and cannot obtain it elsewhere. According to the law of supply and demand, these women should be willing to pay a premium to any bank willing to lend to them, provided that the premium is not so high as to wipe out any future return from investment of the loan proceeds.

This move seems counter-intuitive to the goal of women's banks to provide women access to credit at a cost equal to, or even lower than, the cost at a traditional bank. Nevertheless, only by charging this higher-than-market interest rate could the women's banks, even in theory, achieve the full arbitrage effect and force traditional financial institutions to change their lending policies. If the women's banks were to achieve a significant market presence while charging their women customers the premium interest rate, they would succeed both in providing women with an alternative source of credit and in pressuring the traditional financial institutions to alter their lending policies. Rational investors would identify the extra profitability and invest more heavily in women's banks.

33. Arbitrage is defined as the "[p]urchase of one security and simultaneous sale of another to give a risk free profit." R. BREALEY & S. MYERS, PRINCIPLES OF CORPORATE FINANCE, 809 (2d ed. 1984). The term has gradually come to be applied more broadly to transactions which tend to push prices toward equilibrium.

This argument assumes that irrational sex discrimination in fact has existed in the capital markets. It could be argued that there was no sex discrimination in lending when the women's banks started, and that the women's banks' strategy was misguided because women with adequate resources were, even in 1975 when First Women's Bank of Manhattan (FWBM) opened, receiving credit from traditional banks. If this were true, then the real problem of credit discrimination would not be discrimination so much as helping women gain the income necessary to have adequate resources against which to make loans. This difference can be captured in the terminology of "horizontal equity" between men and women of similar economic resources and "vertical equity" which would redistribute economic resources downward to women without income, partly by granting them credit for which they otherwise would not qualify. See infra notes 92 & 95 and accompanying text.

This argument has considerable merit, but we offer two replies. First, the evidence reviewed in supra notes 1-3 suggests that there was considerable credit discrimination even against women of adequate resources when the women's bank movement started. Second, we are adopting the fundamental assumptions of the women's banks themselves in order to show internal inconsistencies in the strategy. It was clearly an assumption of the women's banks that irrational credit discrimination existed—that is, women of adequate resources were not receiving credit, or in other words, horizontal equity between men and women did not exist.
while divesting from traditional banks. Traditional banks would then have an economic incentive to abandon their sexist lending criteria in order to maintain maximum profitability. This possibility is offered as counter-factual in order to demonstrate how they would have to behave as economic actors to influence the capital markets, ignoring the fact that women's banks never achieved a significant market presence.

If women's banks were to offer their women customers an interest rate equal to the market rate, then the possibility of an arbitrage effect would turn on whether the women's banks achieved higher profitability relative to traditional banks. Higher profitability would depend on whether the women's banks could generate a greater volume of business than other banks of similar size. With profitability equal to or less than that of traditional banks, investors would have little incentive to divest from traditional banks and invest in women's banks. Thus, a women's bank that extends credit at an interest rate equal to the market rate and gained no additional profit would fail to bring about the arbitrage effect.

Similarly, if the women's banks were to offer an interest rate lower than that urged by supply and demand, then the source of extra profitability would disappear. Women's banks would not earn for their shareholders an extra return not captured by traditional banks. Consequently, shareholders would have no incentive to invest in women's banks and divest from traditional banks. Traditional banks, in turn, would have no incentive to change their practices to match the women's banks' extra source of profits because women's banks would have denied themselves that profit. The failure to capture a presumed source of higher profit would deflect shareholders away from women's banks and retard the banks' growth as players of any significance in the market. At a minimum, this consideration suggests that the growth of women's banks as a market force is not necessarily compatible with the goal of giving their customers the lowest interest rate possible. Thus, there is a tension between the potential role of women's banks as arbitrage players in the market and their role of offering low-cost, accessible capital to women.

Thus far this Article has discussed the arbitrage strategy as it relates to bank lending practices while ignoring the source of those funds. Yet insofar as the arbitrage strategy employs capital received from the general capital markets which flows through women's banks as a conduit, then the arbitrage is only apparent and not real. As a lending strategy, it ignores the mechanism for pricing capital and thus ignores the cost of the capital loaned.

The source of funds for women's banks is ultimately the general capital market, whether the funds stem from shares purchased or deposits
made. The capital market, in the process of supplying women's banks with capital, will assess the risk and potential return of women's bank loans and set—that is, raise—the interest rate accordingly. This will occur either as depositors demand higher interest on deposits or as shareholders demand greater return on equity. To the extent that the capital market shares the irrational, patriarchal and sexist prejudices of traditional financial institutions, it will impose those prejudices by charging a higher cost for capital, even if in subtle ways, to women's banks. This leads to lower profitability for women's banks, and continued lower profitability will lead women's banks to abandon women as a target market strategy.

34. This consideration, in effect, applies the Efficient Market Hypothesis to the specific situation of women's banks as purchasers of capital. See R. Brealey & S. Myers, supra note 33, at 117, 263.

35. It will be observed that the argument of this Article addresses irrational credit discrimination against women seeking credit who, but for their gender, would meet traditional lending criteria, that is, horizontal equity. It does not address rational credit discrimination—vertical equity—based on the simple fact that a woman has no money. We have ignored this class of women—principally working class and poor women—because the women's banks have never taken an interest in that class anyway. Poor women do not represent the possibility of a profitable return. Those women do not count insofar as this discussion attempts to adopt the profit strategy assumptions of the women's banks themselves. B. LaRae Orullian, President of the Denver-based Women's Bank, summarized that the Women's Bank of Denver expressed the view from the very beginning that women seeking loans "will have to meet all the credit requirements. Just because you walk through the door and you are a woman, that doesn't mean you are going to be handed a loan." Johnson, supra note 23, at D27, col. 4 (quoting B. LaRae Orullian). See supra note 35 and infra notes 92, 95.

The question of where women, who become suddenly poor by reason of divorce, fit into these categories has not been satisfactorily answered either by women's bank strategy or legislation on credit access. It is not clear whether these women will be regarded simply as poor women not deserving of credit because, frequently lacking middle income employment and raising children, they do not present a good credit risk or whether, alternatively, they will be regarded as fundamentally "middle class" women irrationally denied credit because of their gender. The credit industry, no doubt, would point out that even if they were unfairly pushed out of the middle class, that does not make it irrational to deny them credit, and that forcing the credit industry to grant them credit amounts to a vertical wealth transfer. Even those supporting vertical equity would have to answer, in the context of newly-poor women, why these women particularly deserve such wealth transfers over women who have always been poor.

36. In addition to a higher cost of capital, women's banks may experience higher transaction costs for two reasons. First, as small community banks, women's banks would not realize whatever economies of scale are available to large, money center banks. Second, women's enterprises are generally small businesses, and loans to these enterprises may be smaller than the average loan at a larger bank. But the cost of processing a large or small loan is about the same. Since a return is based on interest accrued from the principal, the return on a small loan, however, would drop. FWBM noted in its 1984 Annual Report that the bank had reduced the documentation costs for variable rate co-op conversion loans, suggesting that there is some truth to these transaction costs. First Women's Bank of Manhattan, 1984 Annual Report 2 (1985) [hereinafter FWBM 1984 Report]. However, Benston and others
The arbitrage theory suggests that if women’s banks charge an interest rate higher than or equal to the market interest rate, they will gain a premium not captured by traditional banks. Where women’s banks are a significant force in the market, they would then cause traditional banks to change their lending behavior. Yet the arbitrage theory fails to consider the higher cost of capital that a sexist capital market will charge to women’s banks. Furthermore, charging a higher interest rate conflicts with the goal of women’s banks to offer their women customers access to credit at a cost equal to, or even lower than, the cost at a traditional bank. In fact, the supposed arbitrage effect forces women’s banks to conform to the lending criteria of the traditional banks in order to maintain profits and reduce the perceived risk of their loan portfolios. Women’s banks, therefore, could not expect to reduce irrational, sexist credit discrimination at a rate any faster than the market as a whole reduces it.

This conclusion has two important qualifications. First, even if the cost of capital is higher for women’s banks, women’s banks may still provide an important arbitrage function because they are willing to lend money to women and women’s enterprises. If the option is between receiving and not receiving a loan, and not merely between receiving a loan at a higher or lower interest rate, then women’s banks may have created a market that otherwise would not exist. Women’s banks may lend to women on their own credit histories unrelated to “responsible males,” and thus succeed in acting where the capital market and the traditional banks failed. By providing loans to women, women’s banks may already have shifted the discussion of “to loan or not to loan” into a question of pricing the loan.

This paradigm shift undercuts somewhat the earlier claim that women’s banks reflect only the existing perceptions of the general capital markets which might not have loaned the money at all. For if women’s banks are merely a conduit of capital for the capital markets, then why would the capital markets allow women’s banks to make loans which the markets themselves would not make through traditional banks?

The answer to this question lies in the second qualification on the conclusion that women’s banks cannot arbitrage credit discrimination out of the system any faster than the capital markets. The claim that have suggested that there are not really economies of scale in retail banking, which would make the effect of such transaction costs rather murky. Benston, Hanweck & Humphrey, *Scale Economics in Banking: A Restructuring and Reassessment*, 14 J. MONEY, CREDIT & BANKING 435 (1982); see McCall, *Economies of Scale, Operating Efficiencies and the Organizational Structure of Commercial Banks*, 11 J. BANK RES. 95 (1980).

37. *See supra* notes 1-3.
women's banks' lending activities are necessarily disciplined by the preferences of their capital source ignores other non-market features of the banking and credit system. Solely by virtue of having a bank charter, a bank is entitled to certain standard privileges. Those privileges include access to funds at the Federal Reserve Board's (Fed) discount window. They also include access to deposit insurance which spreads some of the risk of non-performing loans and bank failure among all banks and the government. Moreover, women's banks have qualified as “minority” banks under Fed guidelines, and thus receive preferential treatment in holding government funds. Despite their volatility, government funds can be a powerful boost to the bank's deposit base.  

To some degree, a women's bank with a government-granted bank charter is shielded from the unvarnished preferences of the capital markets. Women's banks, like other banks, receive privileges that protect them from the sexist assessments of the capital markets. For example, women's banks make independent decisions regarding how to commit their money once they have it. And, if their view that loans to women's enterprises are a source of profit were to prove correct, then presumably the market would continue to supply them with money to continue such loans. Furthermore, the subsidies women’s banks receive—either directly from the federal government, through access to the Fed discount window or through deposit insurance—partly offset the discipline imposed by the market in its pricing of funds.

These two considerations qualify the conclusion that women's banks can act no faster to eliminate gender discrimination than the general capital market. Of course, for women’s banks to engage in arbitrage at all, they must make profitable loans. Significantly, women's banks generally have been less profitable than other traditional community banks of their size and age. Moreover, women's banks have been less profitable even relative to similarly sized and aged community banks which the Fed has

38. FWBM, for example, states that “[t]he Bank has been designated as a minority bank by the U.S. Treasury Department . . . and, accordingly, has obtained deposits from the U.S. Government and Federal agencies.” FWBM 1984 REPORT, supra note 36, at 11.

39. On the other hand, since all banks have these privileges, as Professor Hal Scott of Harvard Law School has pointed out, it is unclear how these subsidies protect women’s banks from the capital markets relative to other banks.


40. See Gardner & Mills, supra note 4, at 42. Gardner and Mills, for example, note in their study that the profitability of women's banks “has not, for the most part, kept up with industry standards.” Id.
identified as “minority” banks.41

In fact, profitability has risen for women’s banks as they have moved away from their original market strategy of targeting women.42 A southern California women’s bank, for example, changed its management and dropped the word “women” from the bank’s name after three years of losses.43 The Women’s Bank of Denver, Colorado, eventually merged as a subsidiary under a holding company in 1980,44 and in 1982 proposed to open a new bank, Equibank South, that would not identify an emphasis on women through its name.45 FWBM de-emphasized women as a target market, and instead focused on the boutique retail trade in the ten-block radius around its Park Avenue location.46 Judy Mello, elected president of FWBM in 1981, received full authority to shift strategies to save the bank. As Mello told the Wall Street Journal, “ ‘We aren’t running around finding women to do good things for.’ ”47 Instead the bank now seeks wealthy individuals, professionals, and small to medium-sized businesses and offers extremely high quality, personal service in return.48 Gender, except gender-neutrality in lending criteria, is no longer a major issue.49 Simultaneously, profitability has risen.50

The conclusion that the women’s banks’ lending strategy was flawed because it did not consider the cost of capital, therefore, explains why women’s banks were less profitable than similar traditional banks. How large a factor it was in comparison to bank deregulation51 and ECOA52 cannot be determined with exactitude. Nonetheless, this failure indicates the tendency of women’s banks to abandon their profit strategy and conform to the lending criteria of traditional banks. However, a lesson can

41. Gardner and Mills found that profitability indicators for women’s banks have not generally “reached the levels attained either by the minority bank population or by nonminority banks of similar size and age.” Id.
42. See id.; Gutis, supra note 4; Salamon, supra note 6.
43. See Hellyer, supra note 6.
44. WOMEN’S BANK [Denver, Colorado], 1981 ANNUAL REPORT [hereinafter WOMEN’S BANK 1981 REPORT].
46. See Salamon, supra note 6.
47. Id. (quoting Judy Mello).
48. Id.
50. Gardner & Mills, supra note 4, at 42 (Gardner and Mills report a rising return on equity and return on investment for the women’s banks in the early 1980’s).

However, because profitability has not risen sufficiently, the bank has experienced a very recent change in management and ownership. See supra note 7.
51. See supra notes 53-78 and accompanying text.
52. See supra notes 80-91 and accompanying text.
be learned from this. Arbitraging irrational sexism out of the capital markets can only occur when the would-be arbitrageurs have, first, irrevocable control over the use of capital, and second, access to capital at a price reasonably free of sexist assumptions. While women’s banks may have met the first condition by virtue of the fact that they held a bank charter and hence were entitled to make some irrevocable decisions about the disposition of funds, they could not meet the second condition.

Even in the best of times, therefore, women’s banks would be driven from their market strategy of targeting women. The profit strategy was internally inconsistent. But these were not the best of times for women’s banks; the pressures resulting from bank deregulation and the passage of ECOA chiselled away at their target market from the outside. This Article now considers the effect that these two factors had on women’s banks.

III. BANK DEREGULATION

The inception of women’s banks occurred at a time of considerable tumult in the banking industry.53 Bank deregulation to some extent strengthened a bank’s ability to compete with other financial institutions, but it also eroded competitive barriers between banks and ended the rapidly crumbling protection which banks enjoyed against competition from non-bank financial institutions.54 Women’s banks experienced considerable pressure from bank deregulation and the market forces which impelled it.55 In response, women’s banks began to abandon their initial women-oriented strategy in favor of strategies offering higher profitability.56 By magnifying the competitive pressures already existing in the market, bank deregulation further explains both the lower profitability of women’s banks relative to other banks and the inadequacy of a market-place solution to the problem of gender discrimination in credit access.


56. FWBM, for example, noted with understandable pride in its 1984 Annual Report that “the year 1984 marked the seventh consecutive and the second highest year of profitability for the Bank. This was achieved despite the impact of the deregulatory changes affecting the banking industry in general . . . .” FWBM 1984 REPORT, supra note 36, at 3. It achieved this profitability by means of the strategy changes reported by Salamon, supra note 6, which is to say it gave up women as its target market. FWBM noted in its 1984 Annual Report, for example, that it had emphasized “matching assets and liabilities with particular attention directed to variable rate fee oriented lending such as co-op conversions.” FWBM 1984 REPORT, supra note 36, at 2.
Federal legislation deregulating banks affected four areas. The legislation: (1) relaxed geographical restrictions on bank activities;\textsuperscript{57} (2) expanded the functional, economic activities permitted to banks;\textsuperscript{58} (3) eased entry restrictions into banking for non-banks;\textsuperscript{59} and (4) deregulated interest rates on deposits paid by banks.\textsuperscript{60}

Geographical deregulation lifted some of the restrictions on interstate and intrastate branching, and interstate acquisitions of bank holding companies. The increased financial power of large banking chains poses a significant threat to small community banks with few offices,\textsuperscript{61} including most women’s banks.\textsuperscript{62} Deregulating the functional activities of banks has allowed larger banks to expand into previously forbidden areas such as investment banking, brokerage, and other non-banking lines of business. These banks possessed the resources necessary to take advantage of these new opportunities and compete with other financial services firms.\textsuperscript{63} But for small community banks, including women’s banks, these investment activities may be prohibitively expensive.

Through a loophole in the Bank Holding Company definition of a “bank,” legislation easing entry restrictions on non-bank holding companies has permitted national retail firms, such as Sears, to open nationwide banking networks virtually overnight, along with complete brokerage and investment services—not to mention retail shopping.\textsuperscript{64} The result has been increased competition with both large and small banks.

The strongest impact stems from the deregulation of interest rate


\textsuperscript{60} See Loring & Brundy, supra note 53, arguing that interest rate deregulation has been the only substantive deregulation of banks.


\textsuperscript{62} Women’s banks are almost entirely single office, community banks. The Women’s Bank, Denver, Colorado, is apparently the only exception, and rather than a branch, it has a separate bank, Equitable South, under the same holding company. See WOMEN’S BANK 1981 REPORT, supra note 44; WOMEN’S BANK 1982 REPORT, supra note 45.

\textsuperscript{63} See Lovett, supra note 59, at 1063.

ceilings paid on deposits. Pressure to remove interest rate ceilings began in the late 1970's as banks found themselves noncompetitive with money market accounts paying market interest rates. Although money market accounts were not insured by the Federal Deposit Insurance Corporation (FDIC), they offered a high return which partly offset this risk. As a result, fifty billion dollars were drained from bank and savings and loans savings deposits over the period from 1979 to 1982.

These funds flowed out of all depository institutions, but the effect was especially severe for community banks. FWBM was one of several women's banks forced to recapitalize in this period, a move indicating a decline in capital adequacy stemming in part from insufficient deposits. In response, depository institutions demanded to compete on equal terms by deregulating interest rate ceilings on their own accounts. This move proved especially risky for small banks because it removed the comfortable, government-mandated structure in which all banking institutions, large and small, paid the same maximum rate for depository funds. Community banks would have to compete with larger banks and financial service organizations not only on interest rates received for loans, but also on interest rates paid on deposits. Deregulation of interest rate ceilings took place over several years with the final controls lifted in 1986 by the congressionally-mandated Depository Institutions Deregulation Committee. Women's banks faced the higher cost of deposits along with other community banks. The Women's Bank, N.A., of Denver, for example, reported in its 1982 Annual Report that "the greatest single expense experienced by the Bank was the cost of funds. Interest paid on deposits increased 20 percent over the prior year."

The combination of depression in 1980-82 and deregulation placed new pressures on women's banks. Regarding managerial experience, however, women's banks were no worse off than other community banks facing deregulation for the first time. But by adhering to their market strategy, women's banks lost relative profitability. In the difficult economic years of 1980-81, commentators Gardner and Mills note, when

65. See Loring & Brundy, supra note 53.
66. See id. at 351.
67. See Women's Bank 1982 Report, supra note 45; Salamon, supra note 6.
68. See Loring & Brundy, supra note 53, at 351.
69. See id. at 356; Wall & Eisenbeis, Risk Considerations in Deregulating Bank Activities, FED. RESERVE BANK OF ATLANTA ECON. REV. May 1984, at 6.
traditional banks reduced their consumer and commercial loans, 
"[w]omen's banks, in contrast, increased the proportion of funds invested 
in these two categories."\(^2\)

This lending policy reflected a desire to serve the credit needs of the 
women's target market. However, a severe depression with spiraling in-
terest rates did not provide a favorable climate for lending money to 
small, undercapitalized service industries and was an even less opportune 
time to lend money to hardpressed consumers of either gender. During 
this period, with surging personal and small business bankruptcies, the 
"increase in default, combined with continuing write-off of bad loans 
made in earlier periods, undoubtedly contributed to the poor perform-
ance of the loan loss ratio for women's banks."\(^3\) The women's banks 
eventually cured this downward trend by abandoning their original mar-
ket strategy.

Bank deregulation also put pressure on women's banks to merge 
with other banks, both large and small. In general, the FDIC encourages 
merger in lieu of liquidation since merger saves it from having to pay out 
funds on insured accounts. Even without a threatened failure, however, 
a small bank can combine with other small banks to diversify loan port-
folios and develop a staff sophisticated enough to manage increasingly 
complex financial transactions, including matching maturities of assets 
and liabilities.\(^4\) Or a small bank can also merge with larger banks to 
obtain the same services. Women's Bank of Richmond, for example, 
merged into First Virginia Bank, Inc., in 1984.\(^5\) Either way, the wo-
men's bank usually lost its identification with women. This loss of iden-
tity was virtually inevitable, however, given the failure of the women-
oriented target strategy.

The mere fact that the bank industry has been deregulated does not 
entirely explain women's banks' lower profitability relative to other com-
munity banks of similar size and age.\(^6\) Other community banks faced 
the same pressures as women's banks. Unlike community banks gener-
ally, however, women's banks did not abandon a losing financial strategy 
fast enough but clung to management and strategy for several years even 
when it was clear the banks were not doing well. The women's banks' 
strategy did not fail because it was ineffectively implemented, but rather

\(^2\) See Gardner & Mills, supra note 4, at 42.
\(^3\) Id.
\(^4\) Heggestad & Wolken, Mergers and Acquisitions in Commercial Banking: Economic 
\(^6\) See supra notes 40-41 and accompanying text.
because the strategy was inappropriate during a period marked by rising costs of depositor funds, as well as unprecedented competition from other banks and non-bank financial intermediaries, and severe economic depression. In addition, other banks, hungry for profitable new markets, abandoned irrational gender-discrimination practices to target the most profitable women's businesses and female professionals. Some very large banks, such as Chase Manhattan, even targeted the women's sector by establishing a special women's branch that saved money by taking advantage of Chase Manhattan's big bank automation, national marketing and possible economies of scale. However, Chase Manhattan's women's loan portfolio, unlike that of women's banks actively pursuing a women's loan strategy, was a tiny part of a larger diversified portfolio of loans, which reduced the risk from a strategy failure.

Lower profitability relative to other community banks may have reflected—at least in part—rational perceptions in the capital marketplace of women's banks and their loan portfolios. Market participants may hold economically irrational, sexist beliefs about gender and the ability to repay a loan. But there is nothing irrational about an investor's fear that a women's bank may be making risky loans when, in the middle of a depression, it lends to consumers and small scale entrepreneurs of either gender. Moreover, market participants might perceive that the social agenda of women's banks represents not a profit strategy for shareholders, but instead subsidization of a social agenda using shareholder capital.

Such a perception is not aimed directly at the women's banks' profit strategy as we have described it, since that strategy aims to return a profit to the shareholders. However, some investors might well fear that the profit strategy is really just rhetoric to cover a subsidization agenda. The perception is rational to the degree that it is true, and it appears that in the earliest days of women's banks, management was somewhat divided as to their central purpose, or at least believed that enough profit would be made to fund the social agenda without driving away shareholders. Any tendency to subsidize a social agenda disappeared, however, with changes in management in the wake of the failure of the women's banks' market strategy to prove profitable. Nevertheless, such perceptions could rationally depress stock value and profitability.

Because of rational and irrational perceptions in the marketplace, as

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77. See Gutis, supra note 4.

78. To the extent this perception is true, it illustrates merely a rather convoluted form of philanthropy effectively directed toward entrepreneurial and managerial women who meet lending criteria, rather than toward poor and working class women who do not.
well as highly intensified competition caused by deregulation, there is considerable doubt concerning the women's banks' long term profitability in serving women as a special market. Simultaneously, the ability of the market to provide a meaningful alternative for women seeking credit is also questionable. For those who would be certain that gender discrimination plays no role in credit access, there remains the alternative of a regulatory solution. But the regulatory solution, if effectively carried out, may be mutually exclusive with the market solution over time, since the regulation is designed to change the structure of the market.

IV. ECOA AND REG B: DID FEDERAL REGULATION UNDERCUT THE WOMEN'S BANK TARGET MARKET?

ECOA,\textsuperscript{79} enacted in 1974 and amended in 1977, and its implementing Regulation B (Reg B)\textsuperscript{80} comprise the existing regulatory solution to the problem of gender discrimination in credit access. ECOA prohibits anyone from denying credit on the basis of sex or marital status. The question addressed here is whether ECOA and Reg B produced a change in the market rules for granting credit which deprived the women's banks of a significant portion of their target market. The general tendency of ECOA and Reg B is to undercut the target market for women's banks by providing women with greater options for obtaining credit. However, this general tendency is mitigated first by loopholes in ECOA which permit continued discrimination, second by a synergistic effect where women's banks benefit from having a greater pool of women in the commercial field, and third by the reportedly lax enforcement of the statute by the Federal Trade Commission, which is charged with policing the Federal Reserve's Reg B.\textsuperscript{81}

The evidence suggests that the statute and regulations cure the most blatant forms of credit discrimination. Furthermore, they have helped change the climate for women applying for credit, while simultaneously providing traditional financial institutions with more experience and hence more confidence in serving creditworthy women. Even with these enactments, there are still gaping opportunities for financial institutions to discriminate against women. The wording of the statute and regula-


tions is vague and lacks stringent enforcement. 82

ECOA instituted formal changes in the credit granting process which ostensibly give women greater opportunities to obtain credit. 83 By forcing banks to take down the virtual “men only” sign on their doors, ECOA encourages women to seek credit at traditional financial institutions. This simple change reduces the pressure on women to seek out alternative credit institutions, including women’s banks, and thereby undercuts the target market of the women’s banks. This result occurred for two reasons. First, for the women who no longer experience blatant discrimination and who do receive credit from traditional institutions, women’s banks do not present a necessary alternative. Expanding credit opportunities for women undercut the target market of women’s banks.

Second, women who experience discrimination when applying for credit from traditional financial institutions will experience discrimination that is likely to be more subtle and therefore more difficult to detect than in pre-ECOA days. 84 Subtle discrimination may leave a woman unaware that she has been denied credit solely because of her gender. She therefore is not aware she should seek out alternative credit institutions, such as a women’s bank. After hearing, for example, that she was denied credit because she did not have enough assets to secure the loan, rather than because of her low number of assets combined with her gender, a woman might conclude that she was simply not creditworthy and abandon any attempt to seek credit. 85

Although the regulatory solution tends to reduce the target market of women’s banks, this effort is somewhat mitigated by the loopholes in ECOA which permit continued discrimination. One such loophole concerns the spousal cosignature rules. Reg B permits financial institutions to inquire into the marital status of an applicant if the “applicant lives in a community property state or is relying on property located in such a state as a basis for repayment of the credit requested.” 86 Moreover, if a married applicant requests unsecured credit and resides in a community property state, or if the property on which the applicant is relying is

82. See Blakely, Credit Opportunity for Women: The ECOA and Its Effects, 1981 Wis. L. Rev. 655, 690-95.
85. See Jacobs, supra note 81. In reviewing attempts by Congress to stop discrimination against women, congressional aides concede that various legislation introduced will have little impact, noting that “after all, no bank would write in a file that an applicant was rejected because she was a woman.” Id. (quoting a congressional aide).
located in a community property state, then "a creditor may require the signature of the spouse on any instrument necessary, or reasonably believed by the creditor to be necessary, under applicable state law to make community property available to satisfy the debt in event of default." Applicants residing in community property states—including California, Texas, Washington and Arizona, among others—may have their marital status investigated and may be required to provide a spousal cosignature in order to qualify for credit.

The general effect of these rules, which have many complex permutations in their interactions with state laws, is to bind married women, and especially non-working married women, to the credit possibilities of their spouses. The rationale behind the regulation speaks to creditors' interests, especially where a non-working spouse applies for credit relying on community property consisting mostly of income earned by the other spouse. Nonetheless, women's banks do not have an incentive to fill this breach, for as creditors, they also want protection against default. Unless a woman has income of her own to guarantee the loan, the credit risk she presents is relatively high. This restriction on lending preferences of the women's banks is consistent with the women's banks' profit strategy, which sought clients out of the class of women with money, a job, or a business. Women without at least one of these qualifications are not usually good credit risks—for either women's banks or traditional banks. On this narrow point ECOA and Reg B have not undercut the target market for women's banks, but on the other hand, women without income were never part of the women's banks' target market anyway.

Another loophole concerns Reg B's business credit exemption to the "no inquiry into marital status" rule. This exception in ECOA potentially increases the size of the women's bank target market because it permits traditional banks wide latitude to discriminate against women's businesses. Section 203.3(e) of Reg B permits creditors in business transactions to inquire into parties' marital status where joint property is relied upon to guarantee credit. One commentator has suggested that "[s]uch a distinction and the resulting exemption for business credit may be serious denials of protection to an increasing number of women who are active in the work force and the business world." Women's banks would tend to find a promising clientele in women's businesses denied credit through this loophole. Unlike the consumers

88. See Taylor, supra note 86, at 1045-55.
90. Blakely, supra note 82, at 665 n.61; see also Jacobs, supra note 81.
without resources in the earlier category which the women's banks do not include in the target market, women's businesses may have possibilities of repayment. Thus this loophole in ECOA has a tendency to increase the size of the women's target market. The climate in which women were forced by sexism at traditional banks to seek out women's banks, however, would also be a climate driving women out of the commercial field altogether. This would, in such circumstances, operate as a countervailing tendency to reduce the target market.

Amending the loopholes in Reg B and ECOA may undercut somewhat the size of the women's banks' target market, but the statutes and regulations may also have an opposite, synergistic effect beneficial to women's banks. As credit barriers fall in the general marketplace because of regulation, and as the atmosphere becomes less hostile to women's enterprises, the pool of women's businesses grows and the potential customer base for women's banks correspondingly expands.\(^9\)

Despite this synergy, the regulatory solution ECOA proposes is in principle incompatible with the market solution proposed by women's banks. The general tendency of ECOA is to reduce the target market for women's banks because the regulatory changes, if enforced, give women greater options for obtaining credit. They would not have to go to women's banks. Economically rational women would go to women's banks only if those banks could provide them with a favorable interest rate or other advantage, and it is not clear that women's banks could.

V. CONCLUSION

The arguments set forth in this Article, taken together, suggest that stringently enforced regulation, and not reliance on marketplace solutions, is the appropriate means to guarantee women horizontal equity with similarly situated men in access to credit. This conclusion is based on three considerations, all confirmed by the experience of women's banks.

First, institutions such as women's banks, which attempt to arbitrage sexism out of the capital marketplace, cannot eliminate sexism in access to credit at a rate faster than the general capital market permits. To the degree that these women's institutions serve as a conduit for capi-

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91. Much of the hardline view against credit for women's businesses makes perfectly good sense to lenders from a non-gender laden viewpoint. According to a bank executive vice-president, "Women have been very successful in the service industries . . . [but] [t]here usually are no hard assets for collateral other than leasehold improvements." Jacobs, supra note 81 (quoting Patrick L. Flinn, executive vice-president of Citizens & Southern National Bank, Atlanta).
tal priced according to the sexist perceptions of the capital markets, they reflect rather than change those perceptions. This conclusion is mitigated where the mere fact of having a bank charter permits women's banks to externalize part of those higher capital costs onto the federal government and other banks through access to federal funds, deposit insurance and other subsidies.

Second, if marketplace solutions merely reflect rather than change the level of gender discrimination in the capital markets, then the only real response to achieve access to credit is regulation. This Article has not addressed the regulatory changes that are necessary to guarantee equal access to credit and has instead focused on why the marketplace solution is inadequate. However, it also has identified inadequacies in ECOA such as the spousal cosignature rules and the business credit exemptions.

At a minimum, of course, any regulatory system must be effectively enforced, otherwise the result is the institutionalization of less blatant, but just as objectionable, gender discrimination. The more fundamental question for any regulatory regime in combatting credit discrimination, however, is the degree to which the regulations ought to promote more than mere horizontal equity between men and women of similar economic resources, and actually cause a transfer of wealth and credit to women—vertical equity—who would not, even in a discrimination free environment, qualify for credit. Neither women's banks nor existing federal legislation have sought to achieve wealth transfers.92

Third, a regulatory solution to credit discrimination tends to displace marketplace solutions by eliminating the discrimination which gave rise to the target market in the first place. A wholly successful ECOA displaces women's banks insofar as they pursue a women oriented market strategy.

92. Since the real problem faced by most women is lack of income leading to lack of credit, rather than women of income lacking credit, arguably the real issue concerning women's access to credit ought not to be mere equal access for women of means, but instead the use of the credit system to transfer income to women.

Any debate over the merits of wealth transfers is likely to be heated, invoking notions of fairness and distributional justice. It is noteworthy, however, that marketplace solutions to women's credit access, such as women's banks, effectively frame the problem and the solution so as to preclude a policy of wealth transfers, since women's banks seem to have made a profit and could only have done so by extending credit to women with income. Only a regulatory regime permits the explicit choice between horizontal equity and wealth transfer policies. Nonetheless, both banks and existing federal regulation may be seen as compromise positions which tend to foreclose the possibility of real wealth transfers by having, in effect, bought off for mere horizontal equity the women of income who might otherwise agitate for both horizontal and vertical equity. See infra note 95.
This leaves, then, the question of the future of women's banks. Clearly, the trend is that women's banks have abandoned a woman oriented market strategy—the names of women's banks, for example, have either changed or will slowly turn into a quaint anachronism, much like the names of many older banking institutions. Because women's banks may continue to be principally owned and managed by women, they become simply another group of businesses owned by women. Or, like FWBM, they may sell out to male investors, leaving only a historical shell of their past relationship to either women as owners and managers or women as a target credit market. In either case, as that process moves forward, women's banks become less and less relevant to the discussion of credit access for women—a position sometimes urged by the owners of women's banks themselves.

Women's banks remain an instructive institution, however, in defining the direction that the struggle for women's access to credit ought to take. That direction is regulation, with a full-blown debate over whether the regulatory regime ought to create wealth transfers to women who lack the income necessary to secure credit. There is no substitute for changes in the market rules themselves to eliminate gender discrimination.

93. For example, the Seamen's Bank was originally organized to serve particular populations but has gradually become like any other bank.

94. See supra note 7.

95. For example, in 1979, the chairwoman of the California Coastal Bank (previously The Women's Bank) [San Diego, California] remarked that "[n]one of us on the board ever wanted this bank to be in the position that it was cause-oriented"—meaning, oriented to the course of women's credit access. The president of California Coastal went on to say that "[t]he real purpose [of women's banks] was to allow minorities to serve on boards and in management positions. It was not, as some assume, primarily to service the minorities. Enough pressure could be exerted on existing financial institutions to achieve that purpose." Hellyer, What's in a Name? AM. BANKERS ASS'N BANKING J., May 1979, at 104.

It remains for another article to discuss whether such women's institutions as women's banks legitimate the failure to create wealth transfers which would help alleviate the growing feminization of poverty. See generally R. SIDEL, WOMEN AND CHILDREN LAST: THE FLIGHT OF THE POOR IN AFFLUENT AMERICA (1986).

Women's banks may be seen as exemplifying institutions which, in pursuit of horizontal equity serving managerial and business women, tacitly consent to a denial of wealth transfers to poor and working class women. Indeed, women's banks are, in one sense, the example par excellence, since they illustrate women triaging other women for loans, sorting them out precisely according to their wealth and ability to pay, and thereby explicitly denying wealth transfers. Pursuit of this strongly critical, structuralist claim would require the background theory of legitimation and rationalization in monopoly capitalism, and thus is appropriate for a separate discussion. However, for a general overview of such critical theory applied to law, see Brosnan, Serious but Not Critical, 60 S. CAL. L. REV. 259 (1987). With luck, we will one day see critical theory and feminism applied to the complex relations between women in poverty and women of income.