

April 8, 2020

Chief Counsel's Office
Attention: Comment Processing
Office of the Comptroller of the Currency
400 7th Street, SW., Suite 3E-218,
Washington, DC 20219

Robert E. Feldman, Executive Secretary
Attention: Comments RIN 3064-AF22
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

Re: Docket ID OCC-2018-0008 and RIN 3064-AF22

To Whom It May Concern:

Opportunity Finance Network (OFN) appreciates the opportunity to comment on Docket ID OCC-2018-0008, the "Advanced Notice of Proposed Rulemaking (ANPR) on Reforming the Community Reinvestment Act Regulatory Framework." Our organization strongly supports the Community Reinvestment Act (CRA) while also acknowledging that there are aspects of the law and its administration that could be improved.

OFN is a national network of community development financial institutions (CDFIs). CDFIs are mission-driven community development banks, credit unions, loan funds and venture capital funds investing to benefit low-income and low-wealth communities across America. OFN's membership has originated \$74 billion in financing in urban, rural and Native communities through 2018. This financing has helped to create or maintain 1.6 million jobs, start or expand 419,000 businesses and microenterprises, and support the development or rehabilitation of over 2.1 million housing units and 11,600 community facility projects. Roughly half of this financing is devoted to affordable housing with the balance going to small business, community facilities, commercial real estate and consumer products.¹ These are loans and investments that would not be made but for CDFIs' mission driven business model.

OFN strongly supports an effective, well-enforced Community Reinvestment Act that keeps pace with the changing financial services industry. Our comments reflect a commitment to a community development finance industry in which banks and CDFIs are important partners in expanding access to capital and credit.

¹Opportunity Finance Network, "Inside the Membership: Statistical Highlights from OFN Membership: 2018", Published December 6, 2019. Accessed April 1, 2020. https://ofn-drupal-pub.s3.amazonaws.com/s3fs-public/insidemembership_fy2018.pdf.



CDFIs and the Community Reinvestment Act

Part of the 1977 Housing and Community Development Act, the CRA is a landmark civil rights accomplishment, rooted — along with the Voting Rights and Fair Housing Acts — in the Civil Rights Act of 1964. Together, these laws have taken us closer to being a nation that lives up to its stated founding principles of equality for all.

Inspired by the civil rights movement, the very first CDFIs set out to prove that access to affordable, responsible credit can transform a community. There are now more than 1,100 CDFIs certified by the Department of Treasury’s Community Development Financial Institutions (CDFI) Fund with more than \$185 billion in total assets.² With cumulative loan loss rates of less than 1 percent, CDFIs lend prudently and productively in exactly the low- and moderate-income (LMI) communities that are the focus of CRA.³

CDFIs have demonstrated that when you remove access to credit as a systemic barrier, communities in decline can begin to come back, and even thrive. Today, CDFIs provide financing where it is needed most—marginalized people in every community in the United States, as well as persistently poor inner cities, the Delta, Appalachia, Indian Country, and in other struggling communities.

Banks often partner with CDFIs to enter new markets that were previously ignored or “redlined.” These communities have reaped benefits, not only from the growth in CRA-motivated capital, but also from the partnerships between banks and CDFIs. Both banks and CDFIs have realized that working in partnership can enhance both institutions' effectiveness in reaching underserved markets. The Community Reinvestment Act has played a key role in this effective collaboration, fostering millions of new homeowners, thriving businesses, and accountholders. Any reform should build on this successful record, not reverse or pull back.

Proposed Reforms to the Community Reinvestment Act Regulations

Over the past 40 years, CRA has helped bring affordable housing, small businesses, jobs, and banking services to underserved communities. While greater clarity and consistency for banks and other stakeholders is valuable, reforms to the regulatory framework of the Community Reinvestment Act (CRA) must advance the primary purpose of the statute: assuring that banks provide appropriate access to capital and credit to low- and moderate-income (LMI) people and places.

Regrettably, several aspects of the proposal could reduce certain bank lending and investment. OFN is concerned that the provisions of the Proposed Rule will not ensure fair, responsible, and affordable lending in America's underserved communities.

² CDFI Fund FY 2018 Annual Certification Report database.

³ Id at 1.



While OFN is submitting comments on the OCC-FDIC proposal, our ability to thoughtfully respond was limited by the lack of available data to test the underlying assumptions of the framework. It is of great concern that the OCC and FDIC are moving forward with changes to the CRA regulations without thorough testing of the potential impact the changes might have on both banks and communities.

With hundreds of billions of dollars in investment at stake, the ramifications of implementing a proposal without fully understanding its impact could be devastating on the very communities that CRA investment intends to reach. Meaningful analysis and commentary on the proposed rule will require extensive research and examination to determine how the changes might impact the availability of credit and capital for low- and moderate-income people and places. It is critically important that any changes to the system be thoroughly reviewed and tested before the implementation of a new regulatory regime. There is no reason to move too fast on making changes to the regulatory framework.

We are also extremely concerned that the Federal Reserve has not joined in the rulemaking process. Since the law's inception, bank regulators have enforced CRA through a joint regulatory framework. Under this proposal, there could be multiple regulatory regimes to enforce the same law. This might encourage regulatory arbitrage, with banks "flipping" their charters from one agency to another to find the most advantageous regulations. OFN strongly encourages the Federal Reserve, FDIC, and OCC to continue to enforce CRA through a shared regulatory framework.

The economic impact of the COVID-19 pandemic underscores the need for a CRA regulatory structure that encourages banks to do more to support low- and moderate-income communities, not less. OFN urges the FDIC and OCC to suspend this rulemaking process and publish a second proposed rule, this time with all three regulators and based on the analysis of the data submitted by the banks. There is precedent for reissuing a proposed rule related to CRA. During the last major overhaul of the regulations in 1994, regulators heeded public feedback, re-evaluated their initial proposal and issued a second NPR before publishing the final CRA regulations in 1995.

Performance Evaluation

Questions referenced: 14-19

The performance evaluation process outlined in the NPR would significantly weaken the banking industry's requirements to serve low wealth markets. A metric relying on a ratio comparing the dollar volume of a bank's CRA activities to its size is insufficiently responsive to local community needs and economic conditions. Instead of the specific credit needs of a local market driving a bank's CRA activities, banks would be evaluated on their ability to meet a certain dollar volume goal to achieve a satisfactory or outstanding rating. Performance context, as it is defined in the current CRA regulations, would be an afterthought in the OCC-FDIC proposal. This flaw in the performance evaluation design is so fundamental that it outweighs any other positive changes included in the NPR.



Under the dollar volume ratio framework, banks will be incented to make the largest, easiest investments in communities that need it least. This approach devalues smaller, more impactful, loans such as those made in LMI markets where incomes and home values are lower or most transactions involving CDFIs.

The proposed framework requires a 6% minimum ratio to obtain a Satisfactory rating and a 11% minimum ratio to obtain an Outstanding rating. Two percent of the ratio must be in the form of community development loans and investments. The remaining 4% (Satisfactory) or 9% (Outstanding) could be met through a bank's retail lending. Community development loans and investments are significantly more valuable to LMI people and places and should be afforded more weight in any performance evaluation.

The proposed framework also includes a retail lending distribution test similar to the current practice of measuring the number of qualifying retail loans to LMI people and places in assessment areas. Measuring the number of loans, rather than the dollar value of a bank's lending, is preferable as it accords greater weight to the geographic disbursement of CRA activity. It also recognizes that a relatively small loan can have a very positive impact on the LMI individual and community.

The proposal acknowledges the valuable role of CDFIs by providing a multiplier of two for activities undertaken with CDFIs. When taken in the context of the dollar volume ratio framework, the multiplier is unlikely to incent a bank to choose a CDFI transaction over the many other options for higher dollar volume CRA eligible activities.

The new evaluation of CRA performance does not retain the separate community development test currently in place for Intermediate Small Banks and Wholesale and Limited Purpose Banks, or the evaluation of community development activity at large banks through the Lending, Investment and Service tests. Eliminating a community development test diminishes the value of community development lending and CDFI partnerships, impacting the ability of CDFIs to reach markets banks are not serving.

Even with multipliers to provide additional credit for certain transactions, the activities undertaken in partnership with CDFIs are not likely to reach the scale needed to create the value proposition for banks to make those investments instead of engaging in larger, less complex transactions.

Assessment Areas

Questions referenced: 11-13

The NPR recommends the creation of a new type of assessment area to complement the existing "facility-based" assessment areas in effect under current CRA regulations. Under the proposal, markets where a bank collects 5% of its deposits would become "deposit-based" assessment areas. This reform is aimed at addressing how the banking industry has evolved to include banks with no or limited "bricks & mortar" presence. It is unlikely that the creation of "deposit-based" assessment areas will do enough to address the "CRA deserts" problem facing rural, Native and other low-wealth markets today. Communities with high concentrations of low-income residents are unlikely



to generate the level of bank deposits to trigger the creation of a deposit-based assessment area. Similarly, low population communities are also likely to be missed.

The NPR recommends that CDFIs be accorded the same treatment as Minority Depository Institutions, Women's Depository Institutions and Low-Income Credit Unions for bank investments outside their assessment areas. Allowing banks to receive CRA credit outside their assessment areas for activities clearly targeting LMI people and places such as investments in CDFIs is a positive reform.

Under the proposal, a bank cannot receive a Satisfactory or an Outstanding rating unless it also receives that rating in a "significant portion" of its assessment areas. The NPR proposes that 50% be the threshold used to determine a "significant" portion of a bank's assessment area. A bank should not be able to obtain a Satisfactory or Outstanding rating in a CRA exam if CRA activities meet the performance evaluation measures in only half of the bank's assessment areas.

CRA Eligible Activities

Questions referenced: 1-10

OFN agrees with the OCC and FDIC that inconsistent decisions on the part of examiners and a lack of transparency can leave bankers and stakeholders guessing about what qualifies for CRA credit and how much credit an activity will receive. We appreciate the attempt to add more consistency to CRA rules by being clearer about what counts for CRA.

The transparency embraced by the NPR in providing and updating an illustrative list of CRA qualifying activities is welcome. A public list of CRA eligible activities provides clarity and certainty, helping banks make better investment decisions without waiting years after engaging in a transaction to find out if an activity qualifies for CRA credit. Still, just because an activity may appear on a list of CRA eligible activities does not guarantee any bank will chose to conduct that activity.

Retail lending:

Mortgage lending and small loans to businesses and farms are still included in the retail lending test under the proposal. In addition, the NPR recommends adding consumer loans to the retail lending test for banks where that product line accounts for more than 15 percent of a bank's total lending. OFN is concerned that many banks will be able to meet their presumptive CRA ratios solely with their consumer lending, potentially crowding out mortgage and small business lending in LMI communities. Further, when evaluating a bank's consumer lending for CRA purposes, the quality of the consumer product is extremely relevant. High-cost credit card, car and student loans which may be detrimental to the financial health of the borrower should not receive CRA credit.

The NPR also proposed increasing the threshold for small business and small farm lending from \$1 million to \$2 million for both the size of the business and the size of the loan, in spite of the well documented need for smaller dollar lending for business owners. The Federal Reserve's 2019 Small



Business Credit Survey found that 92 percent of business owners seeking capital sought financing of less than \$1 million, with 57 percent seeking less than \$100,000 in financing. ⁴

The small business and small farm lending threshold should remain at \$1 million for the size of the loan and the size of the business to encourage banks to meet the demonstrated capital needs of small businesses in LMI communities. Doubling the dollar threshold allows banks to obtain CRA credit for making larger loans likely to have been made in the normal course of business.

Community development loans and investments:

The NPR retains affordable housing in the definition of community development but removes references to economic development, revitalization and stabilization. It also weakens the emphasis on meeting the needs of specific communities by permitting larger scale projects or activities with diffuse or unclear benefits to LMI people and places.

Certain eligible activities offer banks a pro rata share of CRA credit based on the direct benefit to LMI people, but this is not consistently applied throughout the proposal. OFN is concerned that investments in community facilities, essential infrastructure, municipal bonds and mortgage-backed security products that may only partially benefit low-income people or places could represent a very sizeable portion, if not the entirety, of community development investments for banks. We are especially concerned about granting full CRA credit for infrastructure projects and projects supported by Opportunity Zone funds. These types of activities may be much more attractive from an economic standpoint than affordable housing, without providing commensurate community impacts.

OFN echoes the National Association of Affordable Housing Lenders (NAAHL) recommendation that only partial CRA credit – and not full credit – should be given for activities where LMI people and places receive the minority of benefit. Activities where LMI people and places receive less than 20 percent of the benefit should not receive any CRA credit at all. The 20 percent threshold is standard for federal affordable housing policies, including Low Income Housing Tax Credits, tax-exempt multifamily housing bonds, and HUD’s HOME Investment Partnership program. Community Development activities from which LMI people or places receive 20-50 percent of the benefit should qualify for pro-rata credit.

Opportunity Zones:

OFN has concerns about automatically qualifying all activity in Opportunity Zones for CRA credit without additional guardrails and reporting put in place to ensure that investments are benefitting LMI people. Right now, high end luxury housing that displaces low income residents is an acceptable Opportunity Zone investment; banks should not receive CRA credit for those types of investments.

NeighborWorks Organizations:

⁴ “Small Business Credit Survey: 2019 Report on Employer Firms”, Federal Reserve Banks, Accessed February 7, 2020. <https://www.fedsmallbusiness.org/medialibrary/fedsmallbusiness/files/2019/sbcs-employer-firms-report.pdf>



We appreciate the addition of capital investment, loan participations or other venture undertaken in conjunction with CDFIs to the list of qualified activities and would encourage the final rule to also include NeighborWorks Organizations in that list.

Data Collection, Reporting and Record Keeping

The existing CRA reporting system makes it difficult for the public to analyze CRA performance data and assess how well banks are meeting the needs of communities. CRA reports on an individual bank's performance are very complex and rarely timely, limiting their usefulness. Currently banks are not required to report on the community development lending or investments undertaken in concert with a CDFI. This makes it difficult to track, measure and assess this activity

The NPR seeks to shorten gaps between performance evaluations and publication and to provide more incentives for banks to engage in longer-term activities. OFN supports providing greater public access to CRA exams and timely publication of bank evaluations in a user-friendly format, as well as the enhanced reporting on community development activities.

Conclusion

OFN appreciates the opportunity to comment on potential changes to the CRA regulatory framework. Please do not hesitate to contact OFN with any questions or for more information.

Thank you,

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