

November 19, 2018

The Honorable Joseph Otting
Comptroller of the Currency
Office of the Comptroller of the Currency
400 7th St SW #3E-218
Washington, DC 20219

Re: Reforming the Community Reinvestment Act Regulatory Framework

Dear Comptroller Otting:

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 \$65 billion in financing in urban, rural and Native communities through 2017. 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. Our members are also reaching the hardest to serve communities. Forty percent of OFN member lending occurs in persistent poverty census tracts.¹ These are loans and investments that would not be made but for CDFIs' mission driven business model.

CDFIs and the Community Reinvestment Act

The Community Reinvestment Act has been a primary factor enabling the CDFI industry to grow and deliver responsible financial services and products to low-wealth communities. Changes to the CRA regulatory framework could have a significant impact on the CDFI industry's capacity to lend and invest in low-wealth markets and contribute to economic revitalization. There are currently more than 1,100 CDFIs certified by the Department of Treasury's Community Development Financial Institutions (CDFI) Fund with over \$150 billion in total assets.² With cumulative net charge-off 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.

CDFIs rely on the CRA to incentivize banks to make credit and capital available to underinvested communities. Banks typically meet their CRA obligations through their own direct lending however in recent years, CDFI-bank partnerships have flourished because banks recognize the CDFI industry's strong track record of financing in LMI communities. Under current CRA regulations and guidance, banks are assured CRA consideration for community development lending including loans

¹Opportunity Finance Network, OFN CDFI Coverage Map 2010-2016, Accessed October 22, 2018.

<http://ofn.org/cdfi-coverage-map>

² Annie Donovan, "Directors Report", CDFI Fund Advisory Board Meeting, August 23, 2018. Accessed October 29, 2018. <http://treas.yorkcast.com/webcast/Play/7b6cdda3ecd142dea1051ddc12fc3dad1d?autostart=true>



and investments to CDFIs.³ Existing guidance from the OCC, Federal Reserve Board of Governors and Federal Deposit Insurance Corporation regarding treatment of CDFIs should be retained and strengthened in any modernization of CRA regulations.

Access to Credit in Underserved Communities Must Remain CRA's Primary Goal

OFN agrees with OCC's stated goal in the ANPR "to revise the CRA regulations to encourage more local and nationwide community and economic development – and thus promote economic opportunity – by encouraging banks to lend more to LMI areas, small businesses and other communities in need of financial services."⁴

The primary purpose of CRA is to ensure that banks meet the credit and financial services needs of LMI communities. Ten years after the Great Recession, credit standards remain tight and some borrowers still face significant challenges accessing capital. Restricted capital access has an adverse impact on the markets that CDFIs serve, many of which have yet to fully rebound from the financial crisis. There is still a need for a CRA that is focused on connecting LMI places and people with the financial mainstream, and ensuring access to fair, affordable financial products and services.

As the OCC notes in the ANPR, CRA modernization is also necessary because both the financial services industry and community development practice have changed dramatically since the passage of the law in 1977. Changes to the regulatory framework are both overdue, and highly desirable to align with how financial services are delivered today.

Greater transparency and predictability must also be a goal of CRA modernization and would benefit communities, CDFIs and their bank partners. Increased clarity in advance regarding which activities will receive CRA credit is particularly important. Banks will provide more financing, especially for community development, if they can be reasonably confident that activities will receive CRA credit.

OFN's comments are organized by topics that flow from the questions asked in the ANPR.

METRIC-BASED PERFORMANCE MEASUREMENT (questions 1 – 12)

Opportunity Finance Network opposes the elimination of the existing CRA framework in favor of a single metric comparing total dollar volume of CRA activity to a bank's size. A single ratio metric would undervalue the unique economic conditions existing in different communities as well as the highly divergent business models pursued by different banks. The challenges facing LMI neighborhoods in Washington, DC are very different from those in Baltimore, MD or rural counties in Virginia. Internet banks with customers spread across the nation are very different from retail banks with hundreds of branches. One size does not fit all.

³ Federal Financial Institutions Examination Council, "Interagency Questions and Answers Regarding Community Reinvestment" July 15, 2016 <https://www.gpo.gov/fdsys/pkg/FR-2016-07-25/pdf/2016-16693.pdf> §.12(g)(3)-1, §.12 (h)-1, §.12 (t)-4

⁴ Office of the Comptroller of the Currency, "Advance notice of proposed rulemaking: Reforming the Community Reinvestment Act Regulatory Framework, August 28, 2018. <https://www.occ.gov/news-issuances/news-releases/2018/nr-occ-2018-87a.pdf>



With a single ratio metric, a bank could make the rational choice to meet its CRA obligations by engaging in fewer, larger deals. Low- and moderate-income markets where incomes and home values are lower would be at a disadvantage in attracting CRA-motivated bank investment. Highly impactful activities that are complex, longer-term, smaller, or not maximally profitable would be less attractive to a bank seeking to hit a certain dollar goal for CRA activity. One \$1 million loan is an easier transaction for a bank to make than ten \$100,000 mortgages.

Bank partnerships with CDFIs are among the most impactful for low- and moderate-income communities but these CDFI transactions are usually small scale. Under a single ratio CRA test, banks are likely to choose the easier transaction over the more complicated CDFI transaction even if CDFI activity is weighted more or secures “extra credit.”

OFN recommends retaining – and expanding – the obligation to measure large banks’ community development activities as part of an overall CRA rating. Community development activities undertaken by banks are highly beneficial to LMI communities and should be afforded greater weight in CRA examinations.

Banks have different business models, products and strategies. Community development activities should comprise at least 35-40% of the CRA rating for large banks and more for large banks with limited or no home mortgage and small business/farm lending activity. The suggested 35-40% weight is based on the current 25% investment test weight with 10-15% attributable to community development lending within the lending test.

A bank should receive full credit for community development activities beyond its assessment areas nationwide if it attained a satisfactory CRA rating on its most recent exam.

REDEFINING COMMUNITIES AND ASSESSMENT AREAS (questions 13 – 14)

OFN recommends changes to the CRA regulations designed to drive more investment to less-populated regions including rural and Native communities.

Under the current assessment area structure, banks have a strong incentive to lend and invest in the assessment areas that receive full-scope CRA exams, and much less of an incentive to do business elsewhere. As a result, too many less-populated communities across our nation attract minimal CRA-motivated bank investment. These so called “CRA-deserts” are concentrated in rural areas and Native lands – communities already dealing with high levels of poverty and a lack of credit and financial services.

OFN’s own membership data underscore this point. In 2016, CDFIs in OFN’s membership with an urban focus sourced 53% of borrowed funds from banks while CDFIs focused on rural areas sourced only 30% of their borrowed funds from banks.⁵

OFN recommends the following reforms to Assessment Areas to drive more bank investment to less populous areas:

- A bank should receive full credit for community development activities beyond its Assessment Area nationwide if it satisfactorily served its Assessment Area, in the aggregate,

⁵ Opportunity Finance Network, Database of Annual Member Survey Data 2010-2016, Accessed October 22, 2018.



based on its most recent exam. Branchless banks that conduct business nationwide should be evaluated on their activities nationwide and not have local assessment areas.

- Added weight should be given to activities in high poverty markets and other communities with documented levels of distress. Numerous federal definitions could guide bank examiners in determining distress such as the Census Bureau designation of geographies with persistent poverty, New Markets Tax Credit (NMTC) eligible census tracts, high levels of unemployment, poverty or out-migration, etc.
- Existing Interagency Questions and Answers allow banks to invest in community development “in a broader statewide or regional area” outside of Assessment Areas and receive CRA credit if they are adequately meeting the needs inside their assessment areas. This guidance requires greater clarity and such activity afforded greater weight. “Broader statewide or regional area” must be more clearly defined and lists of regulator-approved regional areas should be public so banks can have more certainty before undertaking a community development transaction.
- To incent bank activity in non-metropolitan areas, the non-metro portions within a state should be consolidated into a single Assessment Area (or in very large states with diverse non-metro regions, a few Assessment Areas). Community development activity in limited scope review areas should be aggregated rather than being largely ignored as is currently the case.

These reforms could result in more investment in communities beyond the nation’s major metropolitan areas and also streamline the evaluation process for banks and examiners.

DEFINING CRA-QUALIFYING ACTIVITIES (questions 15 – 28)

Greater clarity about which activities qualify for CRA credit would benefit all stakeholders: residents of LMI communities, CDFIs and other community groups, banks and bank examiners. This is particularly important with regard to community development activities.

For purposes of CRA qualifying activities, OFN recommends treating certified CDFIs the same as Minority- and Women-Owned Depository Institutions and Low-Income Credit Unions.

CRA regulations should explicitly afford CDFIs the same status as current law provides for minority- and women-owned depository institutions and low-income credit unions (MWLI). The CRA provides that, in assessing the CRA performance of banks, examiners may consider capital investments, loan participations, and other ventures undertaken in cooperation with MWLIs, provided that these activities help meet the credit needs of local communities in which the MWLIs are chartered. Banks receive CRA consideration for said ventures regardless of whether these communities overlap with the bank’s CRA assessment areas.

In 1977, the CDFI industry was nascent and the US Department of the Treasury’s CDFI Fund had not yet been created; however, with the passage of the Riegle Community Development and Regulatory Improvement Act of 1994⁶, a system for supporting mission-driven financial institutions serving low wealth communities was established.

⁶ RIEGLE COMMUNITY DEVELOPMENT AND REGULATORY IMPROVEMENT ACT OF 1994, Pub. L. No. 103—325, 108 Stat. 2163 (1994).



One of the first actions the CDFI Fund took was to implement a system for screening and credentialing financial institutions seeking to operate as “certified CDFIs”. To obtain CDFI certification, a financial institution is required to:

- Have a primary mission of promoting community development. Certified CDFIs must direct at least 60% of financial product activities to areas meeting certain poverty or income standards, low-income targeted populations, or other targeted populations that lack adequate access to capital and historically have been denied credit.
- Provide both financial and educational services.
- Serve and maintain accountability to one or more defined target markets.
- Maintain accountability to a defined market through representation on a governing or advisory board or through outreach activities.
- Be a legal, non-governmental entity at the time of application (with the exception of Tribal governmental entities).

Today, CDFI certification by the US Treasury is an established credential, recognized by the federal government as well as the private sector. CDFI certification is a precondition for participating in numerous federal programs not only at the CDFI Fund but at the Small Business Administration, US Department of Agriculture, and US Department of Housing and Urban Development.⁷ The Federal Home Loan Bank System requires CDFI certification in considering a CDFI loan fund for membership. Bank regulators can rely with confidence on CDFI certification as a legitimate credential for determining a financial institution’s accountability to community development mission.

Such an update to the regulations recognizes the increasingly valuable role CDFIs have played in low-wealth markets since the CRA was first enacted. More importantly, it could result in expanded investment in “CRA deserts” including many of the nation’s rural and Native communities.

OFN recommends that bank loans to CDFIs receive equal treatment under CRA as bank investments in CDFIs.

Bank loans to CDFIs should receive CRA credit for each year the loan is outstanding. Currently, investments made in prior exam periods generate CRA credit for each year the investment is held but loans do not. This policy incents banks to make short-term loans that correspond to their exam cycle rather than longer-term loans that better meet the needs of CDFI borrowers.

OFN recommends that loan originations receive greater CRA credit than loan purchases, particularly sequential purchases of the same mortgage backed security (MBS).

In determining CRA credit, loan originations should be valued more highly than loan purchases. Regulators should limit how many banks may get CRA credit for sequential purchases of the same mortgage backed securities, particularly single-family MBS guaranteed by Fannie Mae, Freddie Mac and Ginnie Mae which are highly liquid.

Recommendation: Update existing definitions of small business and small business loan under the CRA.

⁷ SBA: Community Advantage program, USDA: Rural Development Community Facilities Relending Program, HUD/FHA: Section 542(b) risk share program for multi-family housing



CRA consideration should not be given for all loans to businesses that meet the Small Business Administration standards for small businesses. The SBA standards for employee size are simply too high of a threshold to meaningfully segment the small business lending market. Companies with 500, 750 or even more than 1,000 employees in certain industries are still considered “small businesses” by the SBA. While these loans are important for the growth of industry and job creation, it is questionable whether these businesses should still be considered small. Additionally, banks will likely already make these business loans without the incentive of CRA because such loans are more likely to be profitable.

Instead of relying primarily on the number of employees to define a small business, regulators should continue to examine the size of the loan and the size of the business. The current thresholds of defining “small business” as a business with \$1 million or less in annual revenue and the loan size of \$1 million to qualify as a “small business loan” should be retained to ensure that CRA credit for small business lending is targeting businesses facing critical capital gaps.⁸ The 2017 Federal Reserve Small Business Credit survey found that the demand for small business loans of less than \$1 million remains high, with 92% of applicants seeking \$1 million or less in financing.⁹ Examination of small business lending activities should also consider the geographic dispersion of the loans and borrower income distribution to ensure lending is targeted to firms owned by underserved borrowers or operating primarily in underserved communities.

For purposes of the community development test, loans to small businesses located in LMI communities, to LMI or underrepresented borrowers, or that employ LMI workers with quality jobs and benefits should be considered to have a community development purpose and receive favorable CRA consideration. Small business loans that benefit a broader community should be considered only to the extent that LMI people and places benefit directly to help ensure lending is targeted to high need areas that would otherwise see little investment.

Recommendation: Small business lending referral programs between banks and CDFIs be explicitly recognized as CRA-qualifying under the service test.

The current regulations and Interagency Questions and Answers do not explicitly list CDFI-bank referral programs as an example of a CRA eligible community development service although there is guidance that allows bank referral programs for small businesses to qualify for community development service consideration when the financial institution “[provides] technical assistance on financial matters to small businesses or community development organizations, including organizations and individuals who apply for loans or grants under the Federal Home Loan Banks’ Affordable Housing Program.”¹⁰

The lack of explicit CRA consideration for small business lending referral programs with CDFIs creates uncertainty for banks. Given that there is clear guidance that these small business lending referral relationships with CDFIs should receive CRA consideration under the service test, OFN

⁸ Federal Financial Institutions Examination Council, “Call Report Instructions Schedule RC-C, Part II. Loans to Small Businesses and Small Farms”, Published June 2015. Accessed October 30, 2018.

https://www.fdic.gov/regulations/resources/call/crinst/2015-06/615rc-c2_063015.pdf

⁹ “2017 Small Business Credit Survey: Report on Employer Firms”, Federal Reserve System, <https://www.fedsmallbusiness.org/medialibrary/fedsmallbusiness/files/2018/sbcs-employer-firms-report.pdf>

¹⁰ Federal Deposit Insurance Corporation, “Interagency Questions and Answers Regarding Community Reinvestment, FDIC Compliance Examination Manual, Published July 2016. Accessed November 13, 2018. <https://www.fdic.gov/regulations/compliance/manual/index.html>



strongly recommends explicitly naming CDFIs and CDFI referrals and referral relationships as eligible for CRA consideration to increase certainty and transparency.

We also recommend substantial weight be given to banks that work with CDFIs to create systematic small business lending referral programs. Currently, there is no automatic mechanism in place for banks to ensure declined loans will automatically be placed in a referral program, and some banks do not always encourage their lending staff to make the referrals. A systematic referral program can be applied consistently to all declined applicants, helping to reduce the risk of disparate treatment.

RECORD KEEPING AND REPORTING (questions 29 – 31)

OFN recommends greater accessibility of CRA performance and other data.

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.

Regulators should require banks to report on their investments and lending with CDFIs. 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. Banks should be required to collect and report on whether they are partnering with a certified CDFI and the loan or investment amounts where applicable.

CONCLUSION

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

Sincerely,

Jennifer A. Vasiloff
Chief External Affairs Officer