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April 8, 2020

Joseph M. Otting
Comptroller of the Currency
Office of the Comptroller of the Currency
400 Seventh Street, SW
Suite 3E-218
Washington, DC 21219

Jelena McWilliams
Chair
Federal Deposit Insurance Corporation
550 17th Street, NW
4th Floor
Washington, DC 20429

https://www.occ.treas.gov/news-issuances/federal-register/2020/85fr1204.pdf

Dear Comptroller Otting and Chair McWilliams:

On behalf of the 1.4 million members of the National Association of REALTORS® (NAR), I submit this letter in response to the notice of proposed rulemaking (NPRM) titled *Community Reinvestment Act Regulations* issued by the Office of the Comptroller of the Currency (OCC) and the Federal Deposit Insurance Corporation (FDIC). NAR thanks the OCC and FDIC for their effort to modernize the *Community Reinvestment Act* (CRA) through which credit for housing and community development is made available from depository institutions to low and moderate-income Americans. REALTORS® support communities all across the United States, including low and moderate-income Americans, and NAR will continue to advocate for a CRA that is effective at advancing credit to credit worthy homebuyers, while tempered by the need to avoid a prohibitive burden on small lenders.

The National Association of REALTORS® is America's largest trade association, including NAR's five commercial real estate institutes and its societies and councils. REALTORS® are involved in all aspects of the residential and commercial real estate industries and belong to one or more of some 1,200 local associations or boards, and 54 state and territory associations of REALTORS®. NAR represents a wide variety of housing industry professionals, including approximately 25,000 licensed and certified appraisers, committed to the development and preservation of the nation's housing stock, along with its availability to the widest range of potential homebuyers.

The American dream should not be out of reach for low-income, rural and, minority borrowers who lack access to traditional forms of credit. Therefore, the OCC and FDIC must work together with the Federal Reserve to advance this rulemaking to modernize the CRA to support homeownership for underserved communities.

Modernizing the CRA

The CRA was created to rectify redlining practices and deposit exportation practices that resulted in underserved communities such as, African American, low and moderate-income, and rural communities in the middle of the 20th century. In the NPRM, the OCC and FDIC outline a number of proposed changes to modernize the CRA. Among these changes are updates to the definition of lenders' "assessment areas" as technological innovations have allowed traditional lending services to migrate online without the need for brick and mortar service centers. Streamlining of the examination and qualification metrics is also raised. Finally, the NPRM strives to make clear which activities count for CRA credit. In this letter, NAR will focus on those aspects of the NPRM that most directly affect consumers' access to credit and specifically, supporting LMI borrowers across the country.

Regulatory Harmony is Critical to Modernization

To date, the CRA examination process and regulatory updates has been jointly overseen by the OCC, the FDIC, and the Federal Reserve. However, the NPRM is authored by only the OCC and FDIC. This disharmony threatens to incentivize banks to charter shop to the regulator that they view as most lenient, shifting oversight burdens and weakening CRA outcomes. Furthermore, it is unclear how banks regulated by the OCC and FDIC will gain bank holding company (BHC) status if their CRA report, which is critical to gaining BHC status, is not recognized by the Federal Reserve that administers the review process. All efforts by the three regulators should be in concert and re-propose a cohesive, collaborative rule that would benefit all regulated parties to enhance the reach of the CRA

Robust Analysis Should Inform Any CRA Changes

Governor Lail Brainard outlined extensive analysis that was conducted by the Federal Reserve to evaluate the costs and benefits of different changes to the CRA.1 No such analysis was published by the OCC and FDIC in support of the NPRM proposals. The Federal Reserve made data2 on CRA lending available and this NPRM would be greatly improved by collaborating with the Federal Reserve to analytically vet and demonstrate the impact of proposed changes. The OCC and FDIC should take advantage of this opportunity to better ensure that any new rule continues to further the goals of CRA rather than risk undermining those goals.

What Activity Counts

REALTORS® appreciate the OCC and FDIC's efforts to identify and clarify the investments that should receive CRA credit under the proposal. Banks have reported wasted time, resources, and confusion over which investments qualify for CRA credit and have resorted to assumptions and guesses when making investments. A fluid list of activities with the ability to revise and adjust the list over time to account for new opportunities would clarify the applicability of existing activities. However, the proposed regulation doesn't seem to weigh innovation in lending as heavily as the current rule. NAR is at the forefront of promoting necessary innovations in order to advance credit to all credit worthy borrowers. The OCC and FDIC should consider whether it has struck the right balance between clarity and innovation.

Additionally, well informed consumers who are prepared to become homeowners are critical to the success and stability of America's housing market. NAR supports counseling and homebuyer education so that consumers are better equipped to make sound decisions at every step of the transaction and to help them become default-resistant. However, the definition of financial literacy included in the NPRM is broad and not specific to LMI borrowers. As written, the benefit of improved counseling for middle and upper income borrowers would accrue to banks as stronger credit quality and lower cost to the bank rather than serving the LMI community. Consequently, regulators should consider revising the language to clarify that the activity primarily benefits low- or moderate-income individuals or families in order to receive CRA credit.

The current housing market faces historically low levels of inventory, which are driving home prices up at a steady clip. REALTORS® recognize the important inclusion of construction loans for 1-4 family homes as mortgage loans in the NPRM and the critical effort to expand the housing supply for low and moderate-income households.

The NPRM further stipulates small loans to farms located in a low- or moderate-income census tracts as well as loans to family farms for "(i) Purchase or lease of farm land, equipment, and other farm-related inputs, (ii) Receipt

[1] https://www.urban.org/events/conversation-dr-lael-brainard-modernizing-community-reinvestment-act
[2] https://www.federalreserve.gov/consumerscommunities/data_tables.htm

of technical assistance and supportive services, such as shared space, technology, or administrative assistance through an intermediary; or (iii) Sale and trade of family farm products" would receive credit. However, as with financial literacy there is no requirement that these farms be owned or benefit low and moderate income individuals or families – the intent of the CRA.

Lastly, the NPRM proposes a dollar value of lending rather than a unit count to be used for values of both the *bank-level qualifying activities* and *assessment area qualifying activities.* This shift in methodology incentivizes larger dollar investments rather than smaller investments that would more directly benefit individual LMI households. Furthermore, the proposal indicates that critical infrastructure investments potentially serving a community must be discounted by the share of that community that would fall under the CRA definition. While this change may help to stimulate more large scale investments in critical community infrastructure, it could result in fewer lenders satisfying their CRA requirements with direct investments that build the assets of persons in the LMI community. This potential shift is increased when coupled with the deemphasis of the banks' retail test, which includes mortgage originations that are not held on balance sheets.

Where the Activity Counts

Financial technology has and will continue to dramatically reshape how depositories do business, particularly regarding where and how banks take deposits. As more banks shift away from brick and mortar retail outlets, financial technology will impact what lending falls under a CRA assessment area and where banks make their CRA investments.

To this end, the OCC and FDIC have proposed a new method of accounting for broader geographic sources of banks' deposits. The NPRM would rename the current assessment area to the facility-based assessment area (AA). A bank who yields more than half of their deposits from outside of this facility-based AA would be required to define a deposit-based AA to include every area outside of the facility-based AA from which it receives 5 percent or more of its total deposits.

A reliable and affordable source of mortgage capital for consumers in all types of market is critically important. To that end, NAR supports reforms that help to provide CRA credit in all markets, both urban and rural, and avoid so called CRA "deserts." We appreciate the OCC and FDIC's efforts to better quantify banks' AAs. However, a financial institutions' CRA investments in their facility-based AA should be met before they receive credit for CRA investments outside of their AA. It is difficult to say whether the new definitions will on net stimulate or reduce investment in CRA areas; therefore, a collaborative review of the data and analysis with the Federal Reserve would be insightful.

How Activity is Counted

The proposed rule would dramatically change the way CRA credit is tabulated. First, the proposal would look at a single ratio for a bank that is the sum of two sub-ratios. The first sub-ratio is the volume of aggregate CRA-eligible investments relative to the quarterly average of retail deposits, while the second ratio looks at the distribution of a bank's branches. The combined ratio must reach a specified benchmark, which can be adjusted based on a bank's performance context. Second, the proposal measures qualifying activity relative to deposits by AA. In addition, it creates minimum levels of investments for several classifications of retail and community development loans by AA.

While the desire to clarify and standardize a CRA exam is ideal, it is not clear how this new scheme will affect either banks or the consumers that the law is intended to help. For instance, the NPRM is ambiguous on how the minimum thresholds and benchmarks measure relative to historic norms and whether there may be unintended consequences from this break from the current system. In short, a single metric could make too many simplifying assumptions and ignore important aspects of the lender's operations or the community

In a similar vein, the test is relaxed for smaller institutions with $500 million or fewer in assets. This presents a potential tradeoff between easing the regulatory burden on small banks and potency of the CRA regulation. The lean of this tradeoff is unclear and would also benefit from a thoughtful quantitative analysis.

Finally, the retail test which includes originations of mortgages to CRA-eligible borrowers is not mandatory, but supplemental in the proposal. It's worth noting that under current CRA regulations, mortgage lending appears to be more heavily weighted under the proposed rating systems. In combination with the new emphasis on assets held in portfolio, the proposal would appear to disincentivize the securitization of FHA or GSE-backed loans which have been shown to greatly support the CRA segment.[3]

Weighing Modernization and Burdens for Small Lenders

While committing to the availability of credit and investment opportunities in underserved communities, NAR recognizes the ongoing need for improvements to the CRA without increasing burdensome requirements on banks or jeopardizing the safety and soundness of financial institutions. To this end, NAR supports policies providing targeted reforms for appropriately sized community banks to ensure such institutions can continue to offer safe and affordable mortgage credit to their local consumers while meeting their CRA requirements. NAR appreciates the NPRM's attempts at this end.

For small banks that choose to follow the general performance standard, they will be required to provide the same data as other banks specified in §§ 345.19, 345.22, and 345.23, including data on their qualifying activities, certain non-qualifying activities, the location and donor of retail deposits, as well as their AAs and the dollar value of investments. Likewise, small banks that do not follow the general performance standard would still need to collect data on the value of their retail investments, as well as, their physical location of each depository on a quarterly basis. These heightened reporting standards could be onerous and taxing, but would benefit the process and hopefully be streamlined over time.

CRA Efforts are Critical to Pandemic Response

Housing security is critical to stifle the spread of COVID-19. REALTORS® appreciate the bank regulators' guidance urging banks take safe and sound measures to support consumers experiencing financial stress as a result of COVID-19. Furthermore, the bank regulators' joint guidance providing regulated banks CRA credit for similar efforts in low and moderate income communities affected by COVID-19 as well as community development lending to aid in the response.[4] However, given the tremendous challenges faced by the lending and financial community in response to COVID-19, REALTORS® believe the NPRM should be deferred until after the end of the declared national emergency. This delay would allow regulators and the financial community time to focus their efforts on the response to COVID-19 and would safeguard a thoughtful and robust modernization effort for the CRA.

Conclusion

The OCC and FDIC's notice of proposed rulemaking for the *Community Reinvestment Act's* Regulations is a notable effort in the attempt to modernize and strengthen an important vehicle for spreading homeownership to groups that have historically been left out of mainstream housing finance. However, modernization of the CRA should balance the effectiveness of improving homeownership and housing security of low- and moderate-income Americans against a reasonable regulatory burden. NAR appreciates the opportunity to provide input and look forward to continuing to work together on these important issues. If you have any questions, please contact me or NAR Senior Policy Representative, Ken Fears, at 202-383-1066 or KFears@Nar.Realtor.

Sincerely,

Vince Malta
2020 President, National Association of REALTORS®

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[3] https://www.urban.org/sites/default/files/publication/99427/community_reinvestment_act_lending_data_highlights_update.pdf
[4] https://www.fdic.gov/news/news/financial/2020/fil20019a.pdf