



Reforming the Community Reinvestment Act Regulatory Framework

Docket ID OCC-2018-0008

Comments by the CDFI Coalition

The Coalition of Community Development Financial Institutions (The Coalition) appreciates the opportunity to respond to the August 2018, Advance Notice of Proposed Rulemaking inviting public comment on ways to transform or modernize the regulations that implement the Community Reinvestment Act (CRA).

The CDFI Coalition is the unified national voice of community development financial institutions. Our mission is to encourage fair access to financial resources for America's underserved people and communities. Through its member organizations, the Coalition represents CDFIs working in all 50 states and the District of Columbia. This national network of CDFIs includes community development loan funds, community development banks, community development credit unions, microenterprise lenders, community development corporations and community development venture capital funds. The CDFI Coalition coordinates industry-wide initiatives to increase the availability of capital, credit, and financial services to low-income communities across the nation.

CDFIs – like the CRA - emerged in response to disparities in capital allocation by traditional financial institutions to many urban neighborhoods and rural areas, particularly those with high poverty and unemployment rates. As community-based, mission-driven institutions, CDFIs understand and can respond effectively to the needs of their target market and provide the flexible, market-driven products and services that consumers and small business owners need to grow and thrive. CDFIs help communities address the same challenges cited in the creation of CRA by serving communities and market sectors that conventional lenders cannot and helping bring their customers into the mainstream economy as bank customers, homeowners, and entrepreneurs. CDFIs also play a vital role in financing the development or redevelopment of neighborhoods by financing retail, grocery, and other community services, as well as health care, education, and community services.

Financial institutions often look to CDFIs when they seek to meet the requirements of the CRA. Nationwide, CDFIs have forged strong partnerships with banks and thrifts, working to establish CDFIs as an integral part of the financial services and community development delivery system. Banks help capitalize CDFIs with grants and equity as shareholders and provide them with deposits, loans, and investments. In return, banks receive CRA consideration for serving borrowers outside their normal customer profile through a responsible CDFI partner.

CDFIs rely on CRA to secure capital from private financial institutions. For example, CDFI loan funds received a plurality (36.2 percent) of their capital from financial institutions in Fiscal Year (FY) 2015. Without CRA, the CDFI industry today would be a fraction of its current size and the scale of its lending and impact correspondingly reduced. But despite its successes, CRA needs an update to account for developments since its inception, including the birth of fintech, an evolving community development toolkit, regulatory uncertainty, and persistent gaps in CRA coverage.

Below, are comments from the CDFI Coalition on how CRA modernization might continue and expand upon its success. For each recommendation, we have noted the corresponding question(s) from the ANPR in a footnote.

Redefining CRA-Qualifying Activities

Recommendation: Adopt clear metrics for measuring community development activities, but resist an overly simplified OneRatio approach¹

The CDFI Coalition opposes a simplified OneRatio approach to CRA rating because it would silence the voices and input of community groups in conducting CRA exams and developing CRA ratings. CRA was created to spur positive investments in underserved communities and, therefore, the needs of these communities should be placed front and center in examining how well a bank has served its obligations. Those needs vary and, to ensure they are being met, communities need organized and centralized voices, in the form of organized community groups and agencies, to speak on their behalf and inform banks on the needs of the community.

The OneRatio rule, however mathematically simple, fundamentally undermines the purpose of CRA: thoughtful, beneficial, and robust community investments. Currently, exams reward banks responding to actual needs in its assessment areas. For instance, preserving affordable housing is a priority need in a metropolitan area experiencing rapid housing price increases, whereas financing small businesses and job creation is a priority need for a metropolitan area with high unemployment. If a bank performs well in its job creation initiatives in the high unemployment metro area, but not so well in financing affordable housing in the expensive metro area, it would most likely receive higher marks for its performance in the area with high unemployment than the expensive area.

In contrast, utilizing OneRatio would prevent examiners from contextualizing investments and determining how well they met the specific needs of a community.

Furthermore, banks would have an incentive to make fewer loans at a larger scale to meet their benchmark, leaving large swathes of neighborhoods underserved and exacerbating the problem of CRA-deserts. Given the credit challenges facing small businesses in LMI areas, it makes little sense to encourage banks to shift to a smaller number of larger loans and investment.

Recommendation: Maintain and expand CRA consideration for community development activities in LMI communities.²

While modernization is needed, CRA must remain true to its original purpose: helping low- and moderate-income (LMI) communities gain access to financial services, loans, and community development investments that would otherwise be unavailable. The banking industry's CRA-eligible community development activities have been highly beneficial to LMI communities. A significant

¹ ANPR Section A, Part 2: Metric-Base Framework

² ANPR Q5: With the statutory purpose of the CRA in mind, what aspects of the current regulatory framework are most successful in achieving that purpose? ANPR Q6: If the current regulatory framework is changed, what features and aspects of the current framework should be retained?

weakening of CRA could reduce lending in lower-income communities up to \$105 billion in the next five years³.

Retaining an obligation to measure community development lending and investment to LMIs and providing greater weight to these activities in CRA exams, is highly recommended.

Any expansion of CRA-qualifying activities should prioritize the needs of LMI communities. For example, community development infrastructure projects should be accessible to LMI communities in order to receive CRA consideration⁴. Financial education and technical assistance should receive CRA consideration if in conjunction with a service or loan made to an LMI individual or community.

Recommendation: Maintain and expand CRA consideration for investments in, loans to, or other collaboration with CDFIs.⁵

Because CDFIs are certified by the CDFI Fund and required primarily to serve a community development purpose, the current Interagency Questions and Answers (Q&A) Regarding Community Reinvestment explicitly recognizes loans to and investments in CDFIs as examples of community development loans and qualified investments.

With boots on the ground in underserved communities, CDFIs are conventional banks' most effective partners in meeting the goals of CRA. Investment by mainstream banks in CDFIs has been consistently successful and, in the case of debt, repaid according to its terms. A recent study found that CDFI banks and credit unions have no more risk of financial failure than mainstream financial institutions, even after controlling for the CDFIs' degree of exposure in the mortgage market during the 2008 financial crisis.⁶

When economic turmoil and changing regulations curbed bank lending to LMI communities, CDFIs helped fill the gap. From 2005 through 2012, CRA-reported lending decreased, while CDFI loan fund reported lending more than tripled. During the recession, this activity provided a counter-cyclical boost to the economy.

In addition, recent research shows that CDFI credit unions outperform their mainstream peers in loan deployment and growth, despite a predominant focus on higher risk, lower-income communities⁷.

Recommendation: Adjust definitions of small business and small business loan.⁸

The CRA regulations' definition of community development includes "activities that promote economic development by financing businesses or farms that meet the size eligibility standards of the Small

³ "National Community Reinvestment Coalition Forecast: Weakening the Community Reinvestment Act would reduce lending by hundreds of billions of dollars." NCRC (2018).

⁴ **ANPR Q17:** Are there certain categories of CD activities that should only receive consideration if they benefit specified underserved populations or areas?

⁵ **ANPR Q5:** With the statutory purpose of the CRA in mind, what aspects of the current regulatory framework are most successful in achieving that purpose? **ANPR Q6:** If the current regulatory framework is changed, what features and aspects of the current framework should be retained?

⁶ "CDFIs Stepping into the Breach: An Impact Evaluation." The Carsey School of Public Policy (2015).

⁷ "Inclusive Finance – Financial Performance and the Economic Impact of Community Development Credit Unions." Inclusiv (2018).

⁸ **ANPR Q23:** Under what circumstances should small business loans receive CRA consideration? **ANPR Q24:** How should small business loans with a CD purpose be considered?

Business Administration’s Development Company or Small Business Investment Company programs or have gross annual revenues of \$1 million or less.”

CRA consideration should not be given for all loans to businesses that meet the Small Business Administration (SBA) standards for small businesses. The SBA size standards for employee size are simply too high of a threshold to meaningfully segment the small business lending market. In certain industries, companies with 500, 750, or even more than 1,000 employees 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 would likely make these business loans without the incentive of CRA, because such loans are more likely to be profitable. Instead of relying on the number of employees to define a small business, a “small business” should be defined as a business with \$1 million or less in annual revenue.

The current maximum 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. The 2017 Federal Reserve Small Business Credit survey found that the demand for small business loans of less than \$100,000 remains high, with 55 percent of applicants seeking \$100,000 or less in financing.

Small business lending activities that impact or support LMI communities should receive consideration under CRA. Lenders should continue to receive credit for providing small business loan referrals to CDFIs and purchasing small business loans from CDFIs. Loans to small businesses located in LMI communities, to LMI or underrepresented borrowers, or businesses 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.

Recommendation: Reward banks that make longer-term loans to CDFIs and engage in other innovative activities with high community impact.⁹

Current regulations reward banks for meeting targets, looking at the number and dollar amount of loans, and short-term loans that match the CRA examination cycle are rated more favorably. The timeframe and the terms of the loans in question are not necessarily consistent with the timeframe of the loan capital that CDFIs need to make meaningful investments in distressed communities. CRA should reward banks that provide concessionary pricing, longer-term support, or other favorable terms on deposits and investments in and loans to CDFIs.

While current regulations state that “innovative or complex” activities receive consideration, implementation of this recognition has been inconsistent from region to region and between the various regulators. For the most part, regulators focus on measuring the number and dollar amount of CRA transactions with significantly less attention given to the “innovative or complex” nature of a bank’s products or services. This focus has the unintended consequence of creating disincentives for mainstream banks to: (1) provide longer-term financing, which would reduce liquidity risk and asset-liability management challenges for CDFIs with demand for long-term loans, but only short-term money

⁹ **ANPR Q10:** In a metric-based framework, additional weight could be given to certain categories of CRA-qualifying activities, such as activities in certain geographies, including LMI areas near bank branches; activities targeted to LMI borrowers; or activities that are particularly innovative, complex, or impactful on the bank’s community. How could a metric-based framework most effectively apply different weighting to such categories of activities?

to lend; or (2) engage in transactions that are high impact, but may take years to put together and involve multiple financing sources.

In measuring long-term loans and investments in CDFIs, banks should get credit for the principal outstanding on loans during the entire loan period. Loan originations should be valued more highly than loan purchases.¹⁰

Recommendation: Take care not to disrupt the market for community development tax credits.¹¹

Many CDFIs and their affiliates use the New Markets Tax Credit (NMTC), the Low-Income Housing Tax Credit (LIHTC), and other community development incentives to finance important housing and community development projects. Through the investment test, banks receive CRA consideration for tax credit equity investments, and CRA compliance often serves as their primary or secondary motivator for making tax credit investments. CRA modernization should take care not to disrupt these highly efficient markets.

Regulatory uncertainty created by the 2017 tax overhaul roiled the market for LIHTCs, and, to a lesser extent, NMTCs. While both markets recovered, the experience demonstrated how large-scale policy changes could create unintended, real-world consequences. Lower LIHTC pricing means fewer units of affordable housing. A drop in NMTC pricing means less subsidy to community development projects.

Changes in the assessment area definition could improve LIHTC equity pricing in underserved areas, but an expanded range of CRA-eligible investments could decrease the demand for the LIHTC and NMTC. We urge OCC to be sensitive to the health of community development tax credit markets when modernizing CRA.

Recommendation: Regarding the monetization of bank community service and service on boards.¹²

Bank community service is a valuable contribution to LMI communities. CRA evaluators should continue to take community service – such as serving on boards, financial education seminars, and other community events – into account. But the Coalition is concerned that volunteer hours could be monetized and then placed in the same bucket as loans and investments in a simplified, quantitative, ratio-driven CRA rating system. Monetizing volunteer hours may overinflate CRA grades and undermine the purpose of a quantitatively driven system, which is a demonstration of investments in underserved communities.

¹⁰ **ANPR Q18:** Should consideration for certain activities that might otherwise qualify as CD be limited or excluded? For example, how should investments in loan-backed securities be considered? **ANPR Q25:** Should a bank's loan purchases and loan originations receive equal consideration when evaluating that bank's lending performance?

¹¹ **ANPR Q5:** With the statutory purpose of the CRA in mind, what aspects of the current regulatory framework are most successful in achieving that purpose? **ANPR Q6:** If the current regulatory framework is changed, what features and aspects of the current framework should be retained?

¹² **ANPR Q11:** How can community involvement be included in an evaluation process that uses a metric-based framework? **ANPR Q12:** For purposes of evaluating performance, CD services are not currently quantified in a standard way, such as by dollar value. Under a metric-based framework, how should CD services be quantified? For example, a bank could calculate the value of 1,000 hours of volunteer work by multiplying it by an average labor rate and then include that number in the aggregate total value of its CRA activity?

Redefining Assessment Areas and Geographic Coverage

Recommendation: Treat loans and investments in CDFIs the same as loans and deposits in minority- and women-owned banks and thrifts.¹³

Investments and deposits in Minority Depository Institutions (MDIs) and Low-Income Credit Unions are eligible CRA activities without regard to the geography of the investing institutions. We ask that CDFIs be treated the same under the CRA.

Historically, regulators have not recognized CDFIs as equivalent to MDIs and Low-Income Credit Unions, because they were not explicitly cited in the 1977 CRA statute, which predated the 1994 CDFI Fund authorizing statute. The statute should be reinterpreted to include CDFIs since the CDFI standard for targeting service to low-income communities is far more stringent than the requirements for MDIs and Low-Income Credit Unions. Through robust reporting and certification requirements, Treasury ensures CDFIs meet their obligations to their target markets and populations. A modernized CRA should recognize and reward banks for working with lending partners with a strong stake in LMI communities, and CDFIs fit the bill.

Recommendation: Adopt reforms to drive more investment to less-populated regions, including rural and Native communities.¹⁴

Under the current Assessment Area structure, 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 elevated levels of poverty and a lack of credit and financial services. In 2016, according to data from Opportunity Finance Network, OFN-member CDFIs with an urban focus sourced 53 percent of borrowed funds from banks while CDFIs focused on rural areas sourced only 30 percent of their borrowed funds from banks. Reforms to Assessment Areas are needed to drive more bank investment to less populous areas to address this imbalance.

To incent bank activity in non-metropolitan areas, bank regulators should consider consolidating the non-metro portions within a state into a single Assessment Area. This reform could result in more investment in rural and Native communities and streamline the evaluation process for banks and examiners.

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, based on its most recent exam. Branchless banks that conduct business nationwide should be evaluated on their activities

¹³ **ANPR Q28.** The CRA states that the agencies may take into consideration in the CRA evaluation of a non-minority-owned and non-women-owned financial institution (majority-owned institution) any capital investment, loan participation, and other venture undertaken in cooperation with MWLIs, even if these activities do not benefit the majority-owned institution’s community, provided that these activities help meet the credit needs of local communities in which the MWLIs are chartered. What types of ventures should be eligible for such consideration, and how should such ventures be considered?

¹⁴ **ANPR 13:** How could the current approach to delineating assessment areas be updated to consider a bank’s business operations, in addition to branches and deposit-taking ATMs, as well as more of the communities that banks serve, including where the bank has a concentration of deposits, lending, employees, depositors, or borrowers?

nationwide and not have local assessment areas. Weight should be given to activities in high-poverty markets and other communities with documented levels of distress.

Recommendation: Provide CRA consideration to LMI census tracts where banks have a concentration of online deposits, loans, and investments.¹⁵

Under the current CRA policy, consideration for activity beyond a bank's assessment area is both limited and uncertain, making it difficult for banks to participate in national financing pools. For example, community development financing may be considered in a broader regional area if a bank has been responsive to its assessment area, but there is no clear standard for measuring that responsiveness and no clear definition of a regional area.

The Coalition recognizes that lack of access to bricks and mortar financial services serves as a significant impediment to community development in underserved areas. However, limiting CRA assessment areas to areas in close proximity to bank branches can further exacerbate disinvestment in communities with limited access to physical bank branches. Giving consideration to LMI tracts where a bank has a concentration of online deposits, loans, and investments would dramatically increase the scope of areas that can receive the benefits of CRA and would also incentivize fintech lenders applying for bank charters, who are mostly clustered metropolitan areas, to expand the scope of their proposed CRA activities to non-metropolitan communities

Recommendation: Continue to offer favorable consideration to bank investments made to CDFIs even if the CDFI is located in or serves a different assessment area as the investing bank's assessment area.¹⁶

Currently, banks receive CRA consideration for investments in CDFIs outside of their designated assessment area, but only after meeting the needs of their assessment area communities. This treatment allows banks to receive credit for lending to CDFIs that are not located in the market the bank principally serves – benefiting entire communities that would otherwise lose access to affordable business loans, housing financing, and community development activity.

At a baseline, a bank should satisfactorily serve the credit needs within its designated assessment areas. Once it does, any activity with a certified CDFI outside its assessment area should receive CRA credit.

Recommendation: Provide favorable CRA consideration to investments in CDFIs serving disaster-affected areas, regardless of their geographic location¹⁷

The definition of "community development" includes activities that revitalize or stabilize designated disaster areas. A financial institution will receive consideration for activities that help to revitalize or stabilize a designated disaster area that includes one or more of the bank's delineated assessment

¹⁵ **ANPR Q13:** How could the current approach to delineating assessment areas be updated to consider a bank's business operations, in addition to branches and deposit-taking ATMs, as well as more of the communities that banks serve, including where the bank has a concentration of deposits, lending, employees, depositors, or borrowers?

¹⁶ **ANPR Q5:** With the statutory purpose of the CRA in mind, what aspects of the current regulatory framework are most successful in achieving that purpose? **ANPR Q6:** If the current regulatory framework is changed, what features and aspects of the current framework should be retained?

¹⁷ **ANPR Section A, Part 3:** Redefining Communities and Assessment Areas

areas. When a disaster occurs outside of most banks' assessment areas, as was the case in 2018 with Super Typhoon Yutu in Northern Marinas Islands, and in 2017 with Hurricane Maria in Puerto Rico, OCC typically puts out an Interagency Statement providing a waiver for banks to invest in areas outside of their typical footprint¹⁸. OCC should consider instituting a permanent waiver for investments in CDFIs serving disaster-affected areas.

CDFIs are uniquely positioned to meet the lending needs of recovering communities. Disasters hit vulnerable communities the hardest, and many CDFIs have decades of experience providing economically disadvantaged individuals with the tools they need to become self-sufficient stakeholders in their future. Rebuilding dis-invested communities and making loans to people with limited or poor credit histories requires more than simply providing access to conventional loans. It requires the flexibility to adapt lending guidelines to the needs of borrowers; to accept unconventional collateral for loans; to help small businesses navigate government red tape; and to provide education, training, and assistance to potential borrowers. In providing CRA consideration for community development activities in disaster-affected areas, OCC should consider the track record of CDFIs, who have the infrastructure and relationships in place to offer immediate and prolonged help throughout the recovery effort.

Reporting Requirements

Recommendation: Increase policy coordination between bank regulatory agencies' Treasury's CDFI certification and reporting requirements.¹⁹

CDFI banks are unique within the banking industry because they have a primary mission of promoting community development and/or serving economically disenfranchised populations. CDFI banks are among the smallest regulated banks in the United States. The average asset size of a CDFI bank is \$341 million. The largest is \$2.7 billion, and the smallest is \$27 million.

CDFI banks are subject to all the same regulatory and reporting requirements as other banks. Banks with CDFI certification, however, have additional reporting requirements to the U.S. Department of the Treasury to maintain their CDFI status – regardless of whether they participate in the agency's programs.

CDFI Certification reporting requirements are important in ensuring CDFIs are serving LMI areas and families. Greater policy coordination between the bank regulatory agencies' implementation of CRA and the Treasury's CDFI certification and reporting requirements could reduce overlap and duplicative reporting, tailoring reporting requirements to fit the CDFI bank business models, and making CRA more effective for these organizations, ultimately benefiting the communities they serve.

The Coalition supports the Community Development Bankers Association's recommended framework for aligning CRA regulation enforcement and CDFI certification for CDFI Banks:

1. Maximize alignment of definitions used for CRA and CDFI certification, geographic service areas, program application, service tests, and reporting.

¹⁸ Interagency Statement on CRA Consideration for Community Development Activities in the U.S. Virgin Islands and Puerto Rico Following Hurricane Maria.

¹⁹ **ANPR Section C:** Recordkeeping and Reporting. Specifically, paperwork reduction.

2. Reduce reporting burden by streamlining and sharing data submitted by CDFI banks for Call Reports, CRA, HMDA, CDFI annual re-certification, and CDFI award compliance.
3. Give consideration for all activities performed by CDFI Banks within Assessment Areas, Investment Areas, and areas that benefit Low Income or Underserved Target Populations.
4. Give extra credit for collecting social impact data and actively participating in CDFI Fund Programs or other Federal, state or local programs that offer tools to enhance service to their Target Market or to reach deeper to serve low-income people and communities.²⁰

²⁰ **ANPR Q10** (weighing CD activities).