cdcb
come dream. come build.

July 22, 2022

To Whom it May Concern:

cdcb| come dream. come build. is the leading provider of affordable housing in the state of Texas. We serve largely Latino low-and moderate-income (LMI) communities in the Rio Grande Valley, and together with partners across the United States, cdcb strives to tackle systemic inequality in areas of persistent poverty. We appreciate the opportunity to comment on the Notice of Proposed Rulemaking (NPR) issued regarding updating the Community Reinvestment Act (CRA).

While the CRA in its current format has been instrumental in ensuring the injection of vital capital into LMI communities, it is long overdue for modernization. The potential changes communicated in the NPR represent the most significant alterations to CRA regulation and exams in 27 years.

While the agencies proposed many crucial improvements in the CRA regulation they did not sufficiently address the structural inequities that exist in rural areas and places with persistent poverty.

To do so, we recommend the following:

1. **CRA must explicitly consider bank activity by race and ethnicity to address long-existing disparities in lending**
2. **Address loopholes in assessment that allows banks to overlook rural areas**
3. **Increase accountability by doing more to reduce CRA ratings inflation**
4. **Bolster Reviews of Lending Quality to prevent financial exploitation**

5. **Reconsider the reclassification of bank sizes which, if implemented, would reduce community reinvestment activity, particularly in rural areas.**

Each of these recommendations are discussed in detail below:

Consider Race in CRA Exams

The CRA requires banks to serve all communities; given the perpetual underserving of BIPOC communities by financial institutions, federal bank agencies should incorporate race in CRA exams. A recent national level analysis showed continuing disparities in loan denials by race and when people of color receive home loans, their equity accumulation was less.

The agencies proposed to use the Home Mortgage Disclosure Act (HMDA) data to produce exam tables describing lending by race, but not to use the results of these analyses to influence a bank's rating. NCRC had asserted in a paper co-authored by Relman Colfax PLLC that changes to CRA would comply with legal standards if CRA examined lending by race and ethnicity in geographical areas experiencing ongoing discrimination or exhibiting significant racial disparities in lending. NCRC had also proposed including analyses of lending in underserved neighborhoods with low levels of lending, which are disproportionately communities of color.

While we believe the agencies can examine banks' record of lending to race, the agencies should at least bolster fair lending reviews accompanying CRA exams for banks that perform poorly in the HMDA data analysis of lending by race. In addition, the agencies proposed using Section 1071 data on small business lending by race and gender of the business owner, and this data should be used as a screen for fair lending reviews. By including race and ethnicity, CRA can identify and address persistent racial disparities that have direct impacts on quality of life and health outcomes.

Prevent Assessment Criteria that Overlooks Rural Areas

For several years, advocates have urged the agencies to examine lending that occurs online. The agencies proposed to create retail assessment areas where a large bank does not have branches when a bank has issued 100 home loans or 250 small business loans This proposal would result in the great majority of total lending being incorporated on exams and would therefore hold non-traditional banks more accountable for serving LMI communities.

We ask the agencies to expand upon their proposal to include partnerships with banks and non-banks for retail lending. When a bank partners with more than one non-bank, the lending of all the non-banks needs to be totaled together for calculating if the threshold is exceeded for purposes of creating assessment areas.

Ino ensure that banks serve smaller metropolitan areas and rural counties, the agencies proposed requiring that banks with 10 or more assessment areas must receive at least a Low Satisfactory rating in 60% of the assessment areas in order to pass overall. This still may not be an adequate solution since the smaller areas could represent a minority of areas, allowing a bank to pass the 60% threshold by focusing on the larger areas. One possible fix is to require banks to achieve at least a Low Satisfactory rating of 60% in each of its large metropolitan, small metropolitan and rural assessment areas.

Reducing CRA Ratings Inflation
Currently, about 98% of banks pass their CRA exams on an annual basis with just less than 10% receiving an Outstanding rating and almost 90% of them receiving a rating of Satisfactory. The CRA would be more effective in leveraging loans for LMI communities if the ratings system more accurately revealed distinctions in performance. More banks would be identified as significantly lagging their peers, which would motivate them to improve their ratings and increase their reinvestment activity.

The agencies bolstered the rigor on the large bank retail lending test by introducing performance ranges for comparisons among a bank's lending and demographic and market benchmarks. Unfortunately, they did not establish as many guidelines for the performance measures on the underlying subtests, which could contribute to inflation on the subtests. The community development finance test, for example, will consist of a quantitative measure of a bank's ratio of community development finance divided by deposits. The bank's ratio will be compared to a local and national ratio. The agencies, however, did not provide enough guidelines to examiners for comparing the bank's ratio to either the local or national ratio, making it possible for an examiner to inflate a rating by choosing the lowest comparator ratio.

We believe that is it possible for the agencies to further develop guidelines for how to use the performance measures on the community development and services subtests of the large bank exam in order to produce a uniformly rigorous CRA exam and guard against ratings inflation.

Bolster Reviews of Lending Quality

The agencies proposed to include all activities and products including deposit accounts in addition to credit in anti-discrimination and consumer protection legal reviews. This is an important advance but we urge the agencies to expand their reviews to include the quality of lending. Massachusetts CRA exams include analysis of delinquency and defaults rates in home lending. Federal CRA exams should do likewise in all major product lines. Moreover, reviews of lending must include an affordability analysis and impose penalties when banks offer on their own or in partnerships with non-banks abusive, high-cost loans that exceed state usury caps and that exceed borrowers' abilities to repay. Finally, we are pleased that the agencies added the Military Lending Act in the list of laws to be included in the fair lending review but we urge them to also add the Americans with Disability Act.

Reconsider Reclassifying Bank Sizes

By adjusting asset thresholds for qualifying for various CRA exams, the agencies proposed to reclassify 779 ISB banks as small banks, which would involve no longer holding these banks accountable for community development finance. In addition, the agencies proposed to reclassify 217 large banks as ISB banks, eliminating their service test and accountability for placing branches in LMI communities. These changes lack justification since these banks have been successfully performing these activities for several years. We urge the agencies to eliminate this aspect of the NPR since it would reduce reinvestment activity.

Conclusion

The NPR is a good start and promises to make parts of CRA exams more rigorous, but it is imperative that race be considered and that there be a more robust commitment to ensuring rural areas are not overlooked. We also ask that more be done to prevent ratings inflation, to better assess the quality of lending banks perform, and that the currently proposed reclassification of bank-size definitions be reconsidered to prevent the creation of new gaps in CRA performance. If CRA is improved while maintaining public input and accountability, we believe the proposed rule could help reduce inequalities, disinvestment, and other disadvantages in America's overlooked communities.

Sincerely,

[redacted]

Daniel Elkin, PhD
Director of Policy, Impact, and Innovation
cdcb come dream. come build.
(956) 541-4955
www.cdcb.org
901 E. Levee Street Brownsville, Tx 78520
Subscribe to our e-newsletter