May 17, 2013

Re: Proposed Changes to Interagency Q&A

OCC: Docket ID OCC-2013-0003
Federal Reserve: Docket No. OP-1456
FDIC: Attention-Comments on CRA Interagency Q&A

The Greenlining Institute appreciates this timely review of the Community Reinvestment Act (CRA) initiated by the Federal Reserve, the FDIC and the OCC ("the agencies"). We also extend our thanks to the agencies for continuing to update and refine the CRA Questions and Answers (Q&A). That said, given the rapid changes in the banking industry, the proposed modifications simply do not keep pace.

The Greenlining Institute works to bring the American Dream within reach of all, regardless of race or the zip code one is born into. In a nation where people of color will make up the majority of our population by 2050, we believe that America will prosper only if communities of color prosper. Our coalition is comprised of over 40 organizations across California, including over a dozen community-based organizations dedicated to meeting the housing needs of communities of color in California.

As advocates for some of America's most vulnerable communities, and large supporters of the CRA, we are disappointed by the minor changes in language and frame. The CRA has traditionally been an effective tool to encourage financial institutions to adequately serve all communities and consumers. Unfortunately, the proposed changes do not address the root of the problem: the CRA is stuck in the twentieth century.

The modernization and enhancement of the CRA has the potential to address key shifts in financial markets, and persistent inequalities in the financial health of low-to-moderate income communities and communities of color. Clearly, as it is written today, the CRA lacks the power and reach to address the constant changes in our financial system. For example, the CRA does not encourage large internet banks that take deposits and lend across the nation to give back to those same communities. These banks benefit from unfortunate loopholes in regulation, and only invest in the communities where they have branches. Furthermore, as banks continue closing branches, especially in low-income communities, the CRA will continue to lose its influence.

As advocates for some of America's most vulnerable communities, we have urgent recommendations for the agencies regarding comprehensive revision to the CRA regulation. The CRA is a critical tool for preserving communities' right to access to fair lending. Minority communities were among the hardest hit by the foreclosure crisis and the slowdown in lending. The agencies must implement bold and aggressive changes to the CRA regulation in order to increase responsible lending, investing, and services in low- and moderate-income communities, who are disproportionately minorities.

Below please find Greenlining's direct response to the Interagency Q&A proposed revisions.

Response to Revisions Proposed by the Agencies

Lending Beyond Assessment Areas

The first two revisions proposed by the agencies, which encourage lending beyond institutions' assessment areas (AAs, or geographical areas containing bank branches that are scrutinized by CRA exams) are a step in the right direction.

The agencies are correct to emphasize that financial institutions will receive favorable CRA consideration for activity outside their immediate AAs. Banks currently receive CRA consideration for lending in broader regions that encompass their AAs. Under the proposed changes, this lending need not encompass banks' AAs so long as it is not "in lieu of or to the detriment of" financing in the assessment area(s).

These changes will help increase community development lending and investing in smaller cities and rural areas by giving banks consideration for lending outside of their AAs. Many underserved communities, especially rural ones, lack deposit-taking entities within their borders. For example, the San Joaquin Valley area of California is one of the most populated and impoverished regions in the United States with a population of 3.9 million and a poverty rate of 20.8%. Despite its population, the presence of banks is sparse. In Southeast Fresno, for example, there are only three banks with one branch each to serve the entire community.

Greenlining would like to see the agencies modernize AAs a step further. These localities were defined decades ago, and do not reflect the realities of our time. Households used to save by depositing money with their neighborhood financial institution, which also served as their lender. Clearly, the financial industry has transformed since the days of these local brick-and-mortar depository institutions.

Today's AAs are still limited to geographical areas where banks have physical branches. This system has not kept pace with the evolving financial sector, in which banks make many loans beyond their branch networks online and through entities like subsidiaries and affiliates. As NCRC suggested in a 2001 comment, AAs should be determined by where an institution has a significant market presence, whether there is a physical branch or not. If 0.5% of all of an institution's loans originate from a particular locality, that locality should become an AA. This model of AA would thus be proportional to a bank's overall operations.

Capital One's recent purchase provides a good example of how our proposal would help more communities achieve CRA protection. In June 2011, Capital One purchased ING Direct USA (now "Capital One 360"). Although a significant portion of ING's business is California-generated, it does not have physical branch locations here. Capital One thus evades CRA scrutiny in precisely the California neighborhoods where it is most needed.

We would not have to reinvent the wheel to do this. The former Office of Thrift Supervision (OTS) assessed performance in geographical areas with high numbers of loans beyond bank branch networks. Expanding AAs would increase much-needed community development financing, as well as home and small business lending.

Additional Suggestions for Improving CRA Regulation

Improve Data Reporting to Include Racial Demographics and Greater Geographic Detail

The agencies are missing an opportunity to assess the effectiveness of their proposed changes by not requiring additional data disclosure of CD lending and investing. For the past several years, Greenlining and other advocacy organizations have advocated for the agencies to publicly provide more detailed data on CD lending and investing on a census tract level or at least on a county level. Race/ethnicity data, in particular, would give a clearer picture of whether the financial needs of the entire community are being met. For example, African-Americans and Latinos are more likely to receive subprime loans. But without race-specific CRA data, we're less able to begin remedying these disparities.

The Home Mortgage Disclosure Act (HMDA) provides a model for loan-level data collection. Unlike other sources of data, HMDA provides information about borrower income, loan pricing, and race/ethnicity, in addition to the location of the property at the census tract level. This has allowed community organizations and the public to track changing patterns of mortgage lending for historically disadvantaged groups and low-income neighborhoods.

If more detailed county level data was available for CD financing, the agencies and the public at large could assess the effectiveness of any proposed changes to the regulation or Q&As. It is important to be able to determine whether the changes would stimulate more CD financing in rural counties and smaller cities, while ensuring that the current assessment areas do not experience significant declines in community development financing. Without this detailed data, it is difficult to quantify the success of the CRA and the agencies' enforcement.

Fix the Lending and Service Tests

The proposed Q&As do not address glaring deficiencies of the service test. While bank branches are closing, some large banks are now engaged in predatory lending. A more rigorous service test which assesses data on bank deposits in addition to bank branches in low- and moderate-income communities is urgently needed.

In addition, the existing Q&As regarding foreclosure prevention and loan modifications are not effectively stimulating large-scale foreclosure prevention activities. Reforms to the CRA regulation boosting the importance of foreclosure prevention and servicing must be undertaken.

Finally, the lending test provides consideration of loans without regard to whether the lending activities are appropriate. Therefore, a CRA examination also should include consideration of whether certain loans contain harmful or abusive terms and, therefore, do not help to meet community credit needs.

Loan Purchase Should not be Counted the Same as Loan Origination

Greenlining agrees with the NCRC's disapproval of CRA exams in which banks make few loans to low- and moderate-income borrowers but purchase several loans made to these borrowers from other banks. These loans are thus "recycled" instead of introducing new capital into communities that need it.

Making loans represents a more concerted effort to serve community needs than purchasing high volumes of loans. Existing Q&As warn banks against purchasing loans to "artificially inflate CRA performance." But since this behavior continues, we strongly recommend that the agencies strengthen the Q&A by stating that CRA examiners will separately evaluate originations and purchases, and will accordingly downgrade banks if the purchasing is conducted in a manner to inflate the CRA rating.

Strengthen Enforcement Mechanisms

One of the biggest risks to banks who receive poor CRA ratings is the reputational risk that is associated with not serving the needs of their communities. This risk is most often realized when banks with poor CRA ratings attempt mergers that would not serve the public interest. But today, the banking industry is extremely consolidated, and merger opportunities are proportionately scarcer. There are fewer opportunities for community organizations and the public to take banks to task for performing poorly on their CRA obligation.

Consequently, we suggest grading banks on a curve to increase competition for "Outstanding" ratings and decrease grade inflation. Regulators should limit outstanding ratings to no more than 20% of financial institutions above and below $5 billion in assets. In addition, a new category of "Outstanding plus" can be awarded to the 5% top performing institutions with $5 billion or more in assets.

Finally, to really put teeth on these regulations, the agencies should simply bar any mergers or acquisitions by any financial institution with a Low Satisfactory or lesser CRA rating, and give accelerated consideration in mergers to financial institutions that secure an Outstanding-plus rating. These measures would revitalize the CRA by helping enforce banks' affirmative legal obligation to serve the needs of their communities.

Conclusion

Three years after the summer 2010 hearings, during which the agencies received hundreds of comments, Greenlining is deeply disappointed that the agencies are proposing half measures in the form of Q&As. What low- to moderate-income communities actually needed is comprehensive reform of how the CRA is regulated. The banking industry has evolved rapidly over the decades; so should the CRA.

cc. National Community Reinvestment Coalition