REINVESTMENT PARTNERS
"ADVOCATING FOR ECONOMIC JUSTICE AND OPPORTUNITY"

November 10th, 2014

Legislative and Regulatory Activities Division
Office of the Comptroller of the Currency
Mail Stop 9W-11
400 7th St. SW
Washington, DC 20219
OCC Docket ID OCC-2014-0021

Robert deV. Frierson
Secretary
Board of Governors of the Federal Reserve System
20th St. and Constitution Ave., NW
Washington, DC 20551
Federal Reserve Docket No. OP-1497

Robert E. Feldman
Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th St. NW
Washington, DC 20429

Re: Proposed Revisions to CRA Q&A

Dear Sirs:

Thank you for providing the opportunity to comment on this important question. As a consumer advocacy group with more than two decades of involvement in policy surrounding the Community Reinvestment Act, we appreciate the chance to weigh in on the question of how modifications to CRA exams might enable regulators to accommodate changes in banking practices with the goals of the Community Reinvestment Act.

Reinvestment Partners is a non-profit 501 c 3 agency, located in Durham, North Carolina, that works to help low-income households gain access to safe and sound financial products. We achieve our mission by combining system policy advocacy with direct services to low-income populations along with extensive community economic development work.

Effective CRA exams have helped to increase the amount of lending, investment, and provision of services in low-income neighborhoods and to low-income households. The Community Reinvestment Act is an effective instrument for revitalizing communities and advancing the economic interests of American households. We hope that this Q&A will give examiners the tools they need to continue to hold banks accountable for participating in activities across the entirety of the communities where they are located.

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Agencies propose to revise existing Q&A § _.24 (d)-1 to clarify how examiners should evaluate and consider alternative systems for delivering retail banking services in an institution's assessment area(s). The Agencies propose deleting language that states "performance standards place primary emphasis on full service branches" and further deleting the statement that provides that alternative systems are considered "only to the extent" that they are effective alternatives in providing needed services to low- and moderate-income geographies and individuals. Changes in technology and the financial market increasingly provide opportunities for financial institutions to use alternative delivery systems effectively to provide needed services in low- and moderate-income geographies and to low- and moderate-income individuals. The Agencies encourage the use of all types of delivery systems to help meet the needs of low- and moderate-income geographies and individuals and, therefore, believe that this language should be removed to provide certainty among financial institutions that such activities should be considered during a CRA evaluation.

In our opinion, there is reason to be cautious about a decision to delete "performance standards place primary emphasis on full-service branches." CRA exams should not de-sensitize their ratings to the closure of branches. We strongly believe that banks should continue to be held accountable to keep branches in low-and-moderate income neighborhoods.

We are concerned that this change could undermine the impetus in the CRA to compel banks to continue to deliver retail services through branches in low-income areas.

We are in a period of rapid expansion in payments technology. We acknowledge that a number of new technologies do provide substantial benefit to consumers. An app with a remote deposit function, a fee-free ATM, and additional payment modes are all useful and valuable to consumers from any demographic or geographic cluster.

But we are also living through a period where the faith in bank branches is receding. Compared to just four years ago, there are almost five thousand fewer bank branches in the United States. North Carolina is home to some of the largest banks in the country. Our population is growing by more than 100,000 per year. In the last five years, however, our sum of bank branches has declined 8.1 percent.

The loss of branches is a problem. The solution for communities is not to encourage banks to create more apps. Rather we believe that banks should build more branches. At the very least, they should maintain the ones they have already. The CRA exists to hold banks accountable to the needs of their communities. Bank branches will remain a part of those needs regardless of what direction is taken in payments technology.

But we will acknowledge that technology can do a lot to enhance access to the banking system. We applaud banks that look at new technology as a way to build value on top of its existing traditional retail delivery footprint.

Our expectation is that the use of online and mobile technologies will vary greatly from customer to customer. Certainly, some will be rapid and willing adopters of new online and mobile offerings. But that utilization is likely to be highly predicated by how the relationship began. They should not be able to substitute online offerings for branch closures. We do think that new channels are becoming an expectation of doing business. But there are many households that will never want to bank over the phone or apply for a mortgage on line.

Nonetheless, there are some instances where the CRA would be well-served to add mobile and online functionality to its survey. Agencies should consider when and where an alternative standard might be most applicable. For a full-service bank that attracts customers through its branch locations, the substitution of mobile services for delivery through branches is likely to be a step backward. But for those whose most common mode of customer interaction takes place online, via mobile, or in any branchless context, the CRA should pay attention to what services the bank offers through e-channels.

24(d) (3)-1: Regulator Comment: As innovation means a constant re-constitution of retail banking, it seems important to focus on empirical achievement of goals rather than execution of plans for pre-ordained activities. The important questions are all about the extent that banks serve LMI constituencies. Less important, in our opinion, is how they do it. We only want to see results. Certainly, the CRA has always been a system that examined banks for its results. But that approach needs to be specifically re-affirmed in the light of so much change.

This issue holds relevance to our ongoing concern about how prepaid debit card issuers are treated in a CRA exam. An empirical approach helps to keep the CRA fresh in this rapidly changing field.

For example, we think that issuers should be rewarded when they can demonstrate that LMI consumers are building up reserves in savings accounts or purses. They should get credit for offering this functionality. They should get more credit when they can show that their accounts are working. In our opinion, the list of factors mentioned above could easily serve as a framework for gauging the quality of a savings program. There are other possible ways to deliver services to LMI households. We believe that a financial literacy program, a credit-building program, remote deposit, or examples of greater functionality could be other areas of interest to examiners.

We could not agree more - both in terms of how an evaluation might assess this question as well as why it is needed.

Millions of LMI households now utilize a prepaid debit card as the main banking instrument. Some of these cards are issued by traditional full-service banks, but most are not. Most maintain one or perhaps a handful of branches even though they serve consumers in every part of the country.

Increasingly, consumers are using these cards as the main transaction account. NetSpend (issued through MetaBank and Bancorp Bank) had 3.7 million active accounts at the end of their last quarter. Of those, 2.1 million were receiving deposits through direct deposit. This would infer that those consumers are putting their paychecks on to their cards. Green Dot Bank has 4.72 million cards. Consumers are spending $1.3 billion per month on Green Dot accounts, and withdrawing another $430 million through ATMs. This represents a “spend” and ATM withdrawal sum of $972 per active card. Most likely, direct depositors are spending more than two thousand dollars per month.

But regulators are correct to see that the CRA’s design cannot accommodate the prepaid card. The problem starts with how the CRA defines assessment areas. The geographic footprint relevant to the CRA obligation of most of the dominant prepaid issuing banks covers only a small portion of their service area. Even though they tend to serve the LMI populations for which the CRA was conceived, they have no responsibility to reach them.

The CRA wants to examine them based on their lending, service, and investments. But most of these banks fail to match with those criteria. Neither of the two largest issuers of prepaid cards, Bancorp Bank and Green Dot Bank, reported any mortgage activity in the 2013 Home Mortgage Disclosure Act database. MetaBank offers retail mortgages in two Midwestern metropolitan areas, but they only issued 9 home purchase loans to LMI households. Most of its loans were made to real estate investors. Similarly, while they may make investments and offer services to LMI households, it is only done in the MSAs surrounding their scant branch networks.

For these institutions, their CRA plan is largely separate from their main line of business. In fact, one executive of a large prepaid card issuer told me that he has to staff additional FTEs in order to meet his CRA plan, because the work done for the exam is largely outside of their core function. The purpose of the CRA is not to force banks to find an affirmative obligation of their regulator’s choosing, yet that is what the current language in the CRA requires them to do.

Lending data suggests that fewer and fewer LMI households can participate in mainstream lending markets. Since 2008, the share of home purchase loans originated to low-or-moderate income borrowers has declined every year. Even though home purchase loan originations increased in total, the count of such loans made to low-and-moderate income borrowers dropped in 2013.

A better alternative would be recognize that some banks have developed business models that are wholly separate from the type of retail banking contemplated in the Community Reinvestment Act. While these institutions are focused on retail services, they do not use branches as their means of interfacing with customers. For simplicity sake, we propose to call them "Virtual Banks." Some examples:

- Green Dot Bank (Provo, Utah), MetaBank (Sioux Falls, South Dakota), Inter National Bank (McAllen, Texas): The great majority of their deposits come from prepaid cards. They only have branches in one or two MSAs.
- B of I Federal Bank attracts deposits by paying above-market interest rates on checking accounts. In June 2014, they had $3.04 billion in deposits. They have no physical branches. They have a portfolio of real estate loans throughout the Western United States, issue prepaid cards to consumers wherever possible, lend to people buying cars and RVs, and finance structured settlement loans. Consumer use remote deposit to deposit checks and can access ATMs from 3rd-party ATM networks.
- E*TRADE Bank: While E*TRADE once offered mortgages; it is now focuses on holding savings deposits in accounts that are connected to non-FDIC insured brokerage accounts.

We would like to be clear that a Virtual Bank classification would not be an alternative for banks that use a branched model. Any examiner would easily be able to deduce that these banks are not fits for the traditional assumptions of the CRA.

Currently, examiners can attempt to rationalize the inclusion of out-of-assessment area performance. But they do so with clear authority. Moreover, as each decision is made on an ad-hoc basis, there is no systematic standard in place to provide a level playing field.

Currently, the CRA has a carve-out for special-purpose banks who take deposits but which do not grant credit to the public. Generally, though, these institutions fall within a narrow range. They include trust companies, correspondent banks, and foreign banks. But all of the bank types listed earlier are in the business of serving consumers. They take deposits from consumers, provide transaction accounts and/or loans to consumers, and use the guaranty of FDIC insurance.

<u>We propose that regulators create a new category of virtual bank and create a systematic standard of evaluation for their examinations.</u>

…it seems important to focus on empirical achievement of goals rather than execution of plans for pre-ordained activities. The important questions are all about the extent that banks serve LMI constituencies. Less important, in our opinion, is how they do it. We only want to see results.

<u>We support the use of an empirical framework in evaluations</u>. In general, we support empiricism across all lines of business. The treatment of a prepaid card issuer is no different. In our opinion, inserting empirical data as an input to a CRA exam would be of significant value. It hardly matters if a program is created but then not utilized by consumers. We have seen this shortcoming in the publication of financial literacy curricula. All too often, banks have committed resources to producing content, only to fail to find an effective means of dissemination. Putting a brochure in a bank branch is hardly engaging. Training tellers on a program doesn't work if the point is to reach people outside of the banking system.

<u>A meaningful standard for prepaid issuers would focus on how they can help consumers save money, build credit, and advance in their financial literacy.</u>

Savings is a place where we believe an evidence-based examination could be more meaningful. We also contend that a financial literacy program could and should be offered on the web sites and mobile apps associated with prepaid cards. Regulators should see this as a relevant substitute for community development lending, investments, or mortgage lending. In fact, it seems to us that services should probably be the only relevant category for mono-line card issuers. Finally, any kind of ability to demonstrate that a card has developed a successful means for improving the credit scores deserves to receive significant credit.

We expect that issuers will question the application of an empirical standard to an evaluation of savings. This reflects the known history of savings on prepaid card accounts. Many issuers have offered savings accounts or savings purses, but few have produced results. Green Dot Bank reports that the average annual sum of savings by consumers with sub-accounts was only $78. NetSpend offered a high-yield interest-bearing account, but it too was a failure. Only about one in one hundred account holders ever opened a savings sub-account. Those that did were not swayed by the high rates of interest paid (4 to 6 percent), and subsequently, very few ever amassed a savings of any size.

We think that issuers should be challenged to find better answers. It is not satisfactory to assert that a failed program infers that it is impossible to foster savings.

Currently, there are a number of new designs meant to stimulate savings. There are several cards that have made it easy to set up automatic transfers. We think that the lessons of behavioral economics infer that this could be a winning strategy. As well, some groups have experimented with gamification. The D2D Fund's exploration of lottery-style savings is equally promising. But as of the moment, no prepaid card has put this program on its platform.

We would advise regulators to be weary of savings that come from a tax refund. Many prepaid accounts receive a large refund in the spring. Most accounts are steadily drawn down, however. While some accounts may show a sizable savings balance through the spring, this is not the product of savings. The evidence is that many will be drawn down by the end of summer. Rather than focus on savings balances, it would be better to reward for steady, month-by-month increases in savings balances.

We foresee a second challenge for examiners when they review the performance of an issuer who works with many different program managers. The same issuer may have a relationship with a card that uses incentives to achieve a high rate of savings. It may also have other relationships with cards that show little savings or even with ones that offer no savings purses at all.

We think that banks should be encouraged to develop creative ways to expose their customers to financial literacy content. But our belief is that issuers should be in the business of distribution and not of content creation. The truth is that the "financial literacy wheel" has already been created too many times. Issuers should be able to use existing content and still get credit. Again, the ideal framework is empiricism. We suspect that one ideal way would be to put modules on to web sites. We like modules because they are easy to track for participation and cognition. Another alternative would be to support grants to non-profits that deliver financial literacy programming.

What types of information are financial institutions likely to routinely maintain that may be used to demonstrate that an institution's alternative delivery systems are available to, and used by, low- and moderate-income individuals?

While it is difficult to glean information from a card purchased in a retail store, lenders can ascertain more if a card is subsequently registered online. In practice, consumers who want to have a real card – one with their name- have to complete additional forms through an online portal. In that venue, they supply their relevant personal information. True, banks cannot know with certainty the income or credit score of applicants. Nonetheless, they can make an estimate of income among those that make a direct deposit of who regularly remote deposit a check from an employer. As a permanent card has to be mailed, the issuers will have location data with which to make judgments about the income level of the neighborhoods where their cardholders live.

A regulator could narrow their focus to only fully-registered cardholders and still have plenty of data to analyze. A company like NetSpend (issued by Metabank and Bancorp) will still have 2.1 million cardholders who have established a recurring direct deposit. As advocates for low-income borrowers and communities, we would feel comfortable in accepting that population as a suitable sample. We think the data from the direct deposit population would be a suitable proxy for all cardholders.

With knowledge of the relationship between imputed income and cardholder account, lenders will be able to extract the rate and depth of usage of various alternative technologies. At this point in time, such research would be valuable for the entire policy field to understand. To what extent to LMI prepaid cardholders utilize free ATM networks? Do they use online bill pay? Do they download "apps?" Do they make remote deposits? All of this information would be valuable to understand. If it can be shown that these technologies are utilized (empirically), it could be the basis for suggesting that the alternative delivery modes might garner CRA credit. For example, if a prepaid issuer can show that its customers use remote deposit in lieu of using a check casher, then there is support for a belief that the service is helping CRA-relevant consumers.

The second example of an innovative or flexible lending practice that the Agencies propose to add to existing Q&A § _.22(b)(5)-1 describes mortgage or consumer lending programs that utilize alternative credit histories in a manner that would benefit low- or moderate-income individuals. The Agencies understand that low- or moderate-income individuals with limited conventional credit histories face challenges in obtaining access to credit. Alternative credit histories supplement conventional trade line information with additional information about the borrower, such as rent and utility payments. For individuals who do not qualify for credit based on the use of conventional credit reports, but who have a positive payment history with regard to obligations such as a rental agreement or utility account, such additional information may supplement an assessment of a borrower's risk profile, consistent with safe and sound underwriting practices. The Agencies believe that considering alternative credit histories to supplement conventional underwriting practices may provide an opportunity for some additional creditworthy low- or moderate-income individuals to gain access to credit.

We hope that lenders will seize upon the possibilities presented by data mining to find ways to extend credit to previously under-served borrowers. "Big data" promises to inform relationships between banks and consumers who have otherwise been outside of the credit scoring universe. "Thin-file," "no-file," and other demographic groups have never been able to produce information to populate the independent variables need for FICO scoring.

It seems evident lenders will make use of in-house analytics, and that many will derive algorithms that are more predictive than those created by FICO. But we hesitate to assert that merely by trying to develop these tools, banks should get positive CRA credit. Instead, we fall back on the earlier observation that credit should be tied to empirical proof. If banks can use new analytics to make sound loans to under-served borrowers, then they deserve credit. But they deserve credit regardless of the means. If their approach is built upon analytics, then they deserve praise. But if it is built upon face-to-face relationships, the same credit is due. The method is less important. The results are what matter.

But since we are on the topic of data and the underserved, we would like to mention that we have great concerns about the impact of these analytics to pricing. Our concern is that the use of big data will benefit financial institutions but not consumers. We believe that there should be a corresponding benefit to consumers when their data is utilized by banks. Big data can dramatically improve underwriting. But if the benefit is only realized in lowering loan-losses and not in reducing borrowing costs, the gains are one-sided. While this would seem to be impossible in an efficient market, the evidence on the ground today is that the benefits are one-side. Payday lenders are using data to improve underwriting, but they are not using the reduced risk to offer products at lower prices. Hopefully, the market will sort this out. But if it does not, this result should be relevant for a CRA examination.

Community Development Comments

A. Economic Development

Reinvestment Partners is in support of the proposed revised Q&A 12(g)(3)-1 and supporting examples.

We disagree with bank comments that loans only need pass the "size test" to qualify as economic development activities.

We support the purpose test to fulfill the economic development intent of the regulations.

We agree that the word "currently" should be removed in the description of job creation for persons who are low or moderate income.

We encourage regulatory recognition of bank's investments into CDFIs and other intermediaries that are making loans for small businesses or underserved areas as an economic development activity as a presumption. Data capture of each loan outcome per capital sourcing is over burdensome in supporting small agencies seeking to serve low-income borrowers.

We recommend that the agencies include community development corporations in the list of qualifying nonprofits (SBIC, CDFI CDE etc.) that are presumed to promote economic development.

In conversations with a large national bank, it believes that loans and investments into food hubs are not a qualifying community reinvestment activity because the Q&A does not specifically list it.

Reinvestment Partners is developing a food hub, which will promote neighborhood revitalization, assist local farmers to expand markets, and support anti-hunger activities. While we suggest that food hubs be used as an example, more importantly activities undertaken by nonprofit community development corporations whether they are food hubs or small business incubators should be considered a qualifying economic development activity.

B. Community Development Loans

Reinvestment Partners supports the proposed examples of community development loans that include energy efficiency as it benefits affordable housing and community facilities as well as the remediation of environmental hazards. Reinvestment Partners has run a healthy homes program and lead paint remediation program for fifteen years. These services are directly benefit low-income households and neighborhoods.

The proposed language allows for indirect benefits, which we support if it also requires specific relations to place and project and indirect becomes too generalized to show its relationship to the intended beneficiaries.

C. Revitalize or Stabilize Underserved Nonmetropolitan Middle-Income Geographies.

Reinvestment Partners supports the inclusion of communications infrastructure an activity that revitalizes or stabilizes a community and it should receive CRA consideration.

The examples are unclear as to what extent the activity must serve LMI areas and households to qualify. Is 1% of the LMI households served by the communications infrastructure sufficient? Or should it be 100% of LMI households so that no community is excluded? Language should be added that communications infrastructure should demonstrate a reasonable inclusion and no unreasonable exclusion of LMI households and neighborhoods. It should not be an unintended consequence that communications services are claimed as a community development activity without meaningful benefit to LMI communities.

Community Development Services

I A. Evaluating retail banking and community development services.

Lenders and regulators both need clear guidance on how to measure the responsiveness and innovativeness of community development services. What is measured is what is done. The lending, investment and retail services tests have measurable matrix. Community development services do not have a clear definition or measure.

Given the lack of clear measures and the qualitative nature of the evaluation for these elements, we support the guidelines and language used by the regulators. We would emphasize that both responsiveness and innovativeness to community needs requires soliciting input from the community. Our experience as practitioners and advocates is that neither regulators nor lenders actively solicit community opinion on credit needs to determine a context for evaluating responsiveness or innovation.

We appreciate the opportunity to offer our comments.

Sincerely,

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