FLORIDA COMMUNITY LOAN FUND[SM]

EXPERTISE AND CAPITAL TO HELP YOUR PROJECT SUCCEED.

March 30, 2020

Public Comment Letter

Re: Docket ID OCC-2018-0008 a proposed rule regarding Community Reinvestment Act regulation

Executive Summary:

This is Florida Community Loan Fund's second Letter of Public Comment to the OCC pursuant to proposed regulatory changes to the Community Reinvestment Act (CRA).

In this Letter of Public Comment we specifically:

1. *Oppose the use of a "one ratio" metric in evaluating bank CRA performance/ compliance. We recommend instead that CRA regulations continue to use approaches that measure performance based on assessments of local need; affirmative obligations to meet local credit needs in local communities in which a bank is chartered; and robust public comment engagement requirements.*
2. *Recommend that Community Development loans and investments count for a greater percentage share of a bank's Satisfactory or Outstanding Rating. We specifically recommend that the minimum thresholds for Community Development Loans and Investments should be 2.5% for a Satisfactory rating and 3.5% for Outstanding. And, that those banks be examined every 2-3 years and not every 5 years as proposed by the OCC.*
3. *Recommend that limits and robust monitoring should be placed on the quality and type of consumer retail loans that count for CRA credit to ensure that rates, terms and fees are not detrimental to LMI persons and places.*
4. *Recommend that the multiplier of 2 for investments in CDFIs should be qualified and awarded only, for example, when a bank has made an investment of a longer term or lower rate and in an amount of no less than their most recent or existing investment in a CDFI.*
5. *Recommend that the use of geographically specific assessment area tests be retained.*
6. *Oppose the awarding Satisfactory or Outstanding ratings to banks achieving these levels of performance in* **only 50% of their assessment areas.** *We propose instead that to be meaningful and consistent with the original intent of CRA, that a Satisfactory rating should require a bank to achieve this level of performance in 65% of all of its assessment areas and 75% in all of its assessment areas to receive an Outstanding rating.*
7. *Recommend that the list of eligible CRA activities not be "inexhaustible" and that the specific percentage requirement of a project's total cost that will* **directly** *benefit low-income persons and communities be more precisely defined rather than left to an interpretation of what is "partially or predominantly" beneficial to LMI persons and communities.*

Main Office: *800 N. Magnolia Ave. Suite 106 ■ Orlando, FL 32803*
407.246.0846 ■ f: 407.246.0856 ■ www.fclf.org
Orlando ■ Sarasota ■ Tampa ■ Fort Lauderdale ■ Miami

Letter of Public Comment:

Florida Community Loan Fund (FCLF) appreciates this second opportunity to comment on the Office of the Comptroller of the Currency's (OCC) Advance Notice of Proposed Rulemaking (ANPR) regarding the Community Reinvestment Act (CRA).

Since 1977, the CRA has incentivized bank loans and investments into low- and moderate-income communities. Today the role of CRA is no less important as it continues to ensure that critical financial services, loans and investments made by banks benefit people and places outside the economic mainstream.

FCLF is a statewide community development financial institution (CDFI), established in 1994 and certified by the U.S. Department of Treasury. As such, we have seen firsthand how CRA motivated bank loans, investments and financial services are vitally important in leading capital into low-income communities for the purposes of affordable housing, economic development and high social impact community facilities.

In this letter we seek to address our chief concerns and to offer constructive suggestions with regard to proposed new CRA regulations as they affect both the LMI people and places we serve and CDFIs directly.

Overall, we believe, given the significance of CRA in our state and region, the OCC should not rush to propose or implement changes that could make banks less accountable and responsive to genuine community development needs counter to the original intent of the CRA legislation. While we recognize that CRA effectiveness and efficiency reforms are desirable and appropriate in light of banking and technological change, and we support the stated goals of the reform effort, we share the widespread serious concerns that the proposed regulations are not likely to accomplish the stated goals consistent with the original intent of CRA. Specifically, we believe the proposed rules could present serious unintended consequences that could reduce, rather than increase, bank investment in underserved areas.

Any reform effort should increase the positive impact of CRA motivated investments and financial services in low-income communities rather than dilute them. And regulations across all three regulatory agencies (OCC, FDIC and Federal Reserve) should be consistent and uniform.

Our chief concerns fall into three categories:

1) CRA Performance Evaluation Metrics

2) Assessment Areas Criteria

3) CRA Eligible Activities.

1) CRA Performance Evaluation Metrics: Questions 14-19

As we expressed in our 2018 letter of public comment, we do not support the use of a "one ratio" approach in evaluating bank CRA performance/compliance.

> *This use of a "one ratio" approach as proposed would consist of the dollar amount of a bank's CRA activities (loans, investments and services to low- and*

moderate-income borrowers and communities) divided by the bank's assets. A metric such as this is likely to significantly weaken the banking industry's requirements to serve low wealth markets. It would also tend to incentivize dollar goals over responsiveness to genuine community needs and local economic conditions in order to achieve a mathematical quantitative metric rather than qualitative community development. We fear in particular, that this single overriding flaw or unintended consequence in the proposed regulations may outweigh any other proposed positive changes.

Moreover, we respectfully point out that a metric relying on a dollar volume ratio obscures the intent of the original CRA statute that requires banks to: 1) respond to <u>local</u> needs; 2) report on "<u>continuing and affirmative obligations to help meet the credit needs of the local communities in which they are chartered</u>", and; 3) <u>engage in local public comment</u> on their CRA performance.

In addition, we fear that under the proposed dollar volume ratio framework, banks will likely be incented to make the largest, easiest investments in communities rather than smaller, more impactful loans to people and places where incomes and home values are the very lowest and loans the most challenging to make.

For example, if banks are allowed to predominantly or solely use Low-Income Housing Tax Credit (LIHTC), Opportunity Zone Funds, or major infrastructure investments to satisfy CRA requirements this could potentially lead to seeing access to other essential forms of capital traditionally provided by banks under other existing CRA service test measures reduced.

Similar increases in the thresholds for small business and small farm lending from $1 million to $2 million for both the size of the business and the size of the loan would appear to have similar effects. The Federal Reserve's 2019 Small Business Credit Survey found that 92 percent of business owners seeking capital sought financing of less than $1 million, with 57 percent seeking less than $100,000 in financing. Doubling the dollar thresholds for size of business and loan size would only appear to give banks CRA credit for making larger loans likely to have been made in the normal course of business.

We recommend that Community Development loans and investments count for a greater percentage share of a Bank's Satisfactory or Outstanding rating.

The proposed framework requires a 6% minimum ratio to obtain a Satisfactory rating and 11% minimum ratio to obtain an Outstanding rating. Two percent of the ratio must be in the form of community development loans and investments. The remaining 4% (Satisfactory) or 9% (Outstanding) could be met alternatively through a bank's retail lending. Because community development loans and investments are significantly more valuable to LMI people and places, we believe they should be afforded more weight in any performance evaluation. As proposed community development loans and investments account for only 2% of either a Satisfactory or Outstanding rating. We also believe that the threshold for Community Development Loans and

Investments for banks seeking an Outstanding rating should be higher than that for banks seeking a Satisfactory rating. We suggest that the thresholds for Community Development Loans and Investments should be 2.5% for a Satisfactory rating and 3.5% for an Outstanding rating.

We also object to banks with Outstanding ratings being examined only every five years instead of every 2-3 years.

Currently proposed regulations also do not address persistent racial disparities in lending nor do they strengthen fair lending reviews in conjunction with CRA exams. Demographics are changing in many traditionally red-lined geographic areas. To ensure local responsiveness the impacts of population out-migration, gentrification and changing concentrations of different ethnicities should be understood and taken into account.

CRA credit for retail lending should continue to be measured by the number of qualifying retail loans to LMI people and places in assessment areas. But limits and monitoring should be placed on the quality and type of consumer retail loans that count for CRA purposes.

Specifically, the proposed framework includes a retail lending distribution test similar to the current practice of measuring the number of qualified retail loans to LMI people and places in assessment areas. Measuring the number of loans, rather than only the dollar value of a bank's retail lending is preferable as it will give greater weight and insight into the geographic distribution of CRA activity. This also recognizes that a relatively small loan can have a very positive impact on the LMI individual or community.

In addition, the proposed regulation includes adding consumer loans to the retail lending test for banks where that product line accounts for more than 15% of a bank's total lending. When evaluating a bank's consumer lending for CRA purposes, the quality of the consumer product is extremely relevant. High-cost credit cards, car and student loans which may be detrimental to the financial well being of a borrower should not receive CRA credit. Any reform to CRA that includes retail lending credit must include a robust methodology to ensure that the quality of the retail products (rates, terms and fees) are not placing low-income people in more precarious financial situations.

The CRA multiplier of 2 for investments in CDFIs should be qualified and awarded only when a bank has made an investment of a longer term and of an amount of no less than their most recent existing investment in a CDFI.

We welcome that the new revised regulations support new and expanded treatment of CRA investments in CDFIs. This is a positive new reform.

However, when looked at within the context of the proposed dollar volume ratio metric, we are concerned that the multiplier effect will not necessarily incent banks to choose a CDFI investment transaction over investing in other higher dollar volume and higher rate of return projects.

Specifically, an unintended consequence may be an overall reduction in the dollar value of investments in CDFIs when a bank will get the same credit value for investing half as much in a CDFI. Consequently, we strongly recommend that the regulation defining the multiplier be qualified as a benefit available to banks for making a new or increased investment in a CDFI of longer term and in an amount of no less than the bank's most recent prior investment.

Finally, a 2018 national analysis, by the Opportunity Finance Network (OFN), of CRA motivated investments in its member CDFIs showed combined bank investments of over $550 million into CDFIs operating in Florida. Notably while we believe Florida CDFI relationships with banks may remain strong, we are concerned that an unintended consequence of the proposed regulations could result in a decrease in bank investments into CDFIs generally for the reason cited above.

2) Assessment Area Criteria: Questions 11-13

The use of geographically specific assessment area tests should be preserved.

Proposed regulations recommend creating a new type of assessment area to complement the existing "facility-based" assessment areas already in effect under current CRA regulations. Under new proposed regulations, markets where a bank collects 5% of its deposits would become "deposit based" assessment areas. This could likely result in significantly expanding the number of assessment areas in which a bank would potentially claim credit. Based on a larger number of qualified assessment areas, a bank might easily elect to reduce or dilute its presence in "facility based" areas where the amount of LMI deposits would be typically lower.

While this reform is aimed at addressing how the banking industry has evolved to include banks with no or limited "bricks & mortar" presence, the unintended consequence may well be to divert CRA services investments to areas of higher income. Advocates believe that it is unlikely that this creation of "deposit-based" assessment areas will do much to address the "CRA deserts" problem facing rural, Native and other low-wealth market areas. For in fact, communities with high concentrations of low-income residents are unlikely to generate the level of bank deposits to result in a designation as a deposit-based assessment area. Similarly, other low population communities are also likely to be missed. Therefore it is clearly possible that deposit-based assessment areas may actually shift CRA attention away from the people and places where it is needed most.

A bank should not receive a Satisfactory or Outstanding Rating for achieving this level of performance in only 50% of its assessment areas.

Further, under new proposed regulations, a Satisfactory or Outstanding bank rating will require the bank to receive that rating in a "significant portion" of all of its assessment areas. The proposed regulations suggest that the threshold for a *"significant portion" be defined as 50% of the bank's assessment areas. However, we question whether achieving performance __in only half__ of a bank's assessment areas is meaningfully consistent with the original intent of CRA.*

We further suggest that there should logically be a differentiation between a Satisfactory rating and an Outstanding rating. Therefore, we respectfully propose that a Satisfactory Rating should require achieving this standing in 65% of all of a bank's assessment areas and that the threshold for an Outstanding rating should be based on achieving 75%.

3) CRA Eligible Activities: Questions 1-10

The regulatory proposal to make all CRA compliance data transparent and publically accessible is welcome.

> *A uniform set of data points shared by all three regulators will provide added tools and accuracy in tracking outcomes and compliance. The collection of data, however, to the extent possible should be both qualitative and quantitative allowing for both narratives on the "transformation impact" of CRA in communities and the volume or units of service rendered.*

Proposed changes to retail lending eligible activities concerning increased business size, increased loan amounts and expanded consumer lending product lines are likely to dilute the impact of CRA. The inclusion of certain bank consumer lending lines as qualified activity may also be of potential detrimental impact on LMI households and individuals.

> *Increased thresholds for making larger loans to larger enterprises (farms & small businesses) will detract from the original intent of CRA and are inconsistent with the record of market need/demand as noted earlier. As also highlighted previously, high cost credit cards, auto and student consumer loans can be fraught with detrimental effects and predatory practices affecting LMI individuals and households. Expanding CRA credit ratings to incorporate these business lines may have questionable merit and outcomes compared to incentivizing banks to invest in other eligible activities.*

The list of eligible CRA activities should not be inexhaustible.

> *The OCC provided a list of eligible activities for public review. This list contained references to athletic stadiums and other forms of infrastructure not typically considered to be leading edge community development activities. The full list of eligible activities should be qualified to include only those activities that can show both quantitative and qualitative benefits resulting from high priority locally determined projects.*
>
> *Along the same lines, of grave concern to us and to many practitioners is the vague language that would allow infrastructure projects and major development for projects that "partially" or "predominantly" serve low-income persons. The regulations should be revised to include robust delineations of*

what specific percentage of a project's total cost will benefit low-income persons and communities. We are deeply concerned that allowing qualification for large infrastructure projects with only marginal benefit to LMI communities would create an unintended incentive for banks to seek out these projects, and ignore other much more impactful and needed projects in LMI communities. This concern is amplified when considering the effects of the one ratio approach.

Community development loans and investments to locally determined high priority projects for economic development, revitalization and stabilization should remain the hallmark of CRA eligible activities and related CRA credit.

The new proposed regulations define community development to include affordable housing but remove references to economic development, revitalization and stabilization. The regulations also weaken the emphasis on meeting needs of specific communities by permitting larger scale projects or activities of more diffuse or unclear benefit to LMI people and places. In doing so, certain eligible activities such as affordable housing and the financing of essential community facilities will offer banks a pro-rata share of CRA credit based on <u>the direct benefit to LMI persons</u>, but this is not consistently applied throughout. And it should be. Other anomalies include, for example, awarding credit for investments/loans in naturally occurring affordable housing projects based upon market rent price point regardless of whether the property is occupied by a LMI household. New regulations also propose relaxing the definition of affordable housing to include middle income housing in high cost areas.

Significance of CRA Qualified Lending in Florida

In conclusion, since its inception, FCLF has directly benefited from CRA motivated bank investments that have grown our capacity to provide financing as a mission-driven intermediary lender into low-income communities. As of year-end 2019, more than 35 banks have invested in FCLF since its inception and have provided over $80 million in CRA loans as well as equity investments in FCLF. CRA motivated bank investment currently represent 47% of our total assets. In addition, banks have invested a total of $295 million in the 27 New Markets Tax Credit projects financed by FCLF in highly distressed census tracts.

In turn, FCLF has loaned $407 million in financing into $1.12 billion worth of community development projects statewide. (See attached FCLF Impact Report.) Moreover, when investments are made in CDFIs like FCLF, the initial dollar impact of these investments recycles in loans made time and again into numerous LMI community projects

The positive historical impact of CRA motivated direct bank investment in communities and in CDFIs like FCLF cannot be underestimated.

In Florida, based on data from 2015, the Federal Reserve Bank of Atlanta estimated that a weakening of CRA could lead to an annual loss of between $2.473 and $4.947 *billion dollars in small business and mortgage lending,* **resulting in a total estimate of $7.7 billion in community development loans and investments annually across Florida, Georgia, Alabama, Mississippi, Louisiana, and Tennessee.** *Notably a more recent analysis done by the National Community Reinvestment Coalition reports $108.6 Billion in CRA/LMI qualified lending done by banks over the period of 2009-2018 in just 6 of the state's largest metropolitan areas. (See attached table.)*

The power of CRA is immense and immensely important to communities of people and places outside the economic mainstream.

Reforms to the regulatory framework of the Community Reinvestment Act (CRA) must continue to advance the primary purpose of the statue assuring that banks continue to provide appropriate access to capital and credit to LMI people and places. Over the past 40 years, CRA has helped bring about affordable housing, small businesses, jobs and banking services to poor and underserved areas. Any modernization must build on this track record.

Thank you for this opportunity to provide further public comments on how best to modernize CRA in a new era. As the third largest state in the nation, Florida warrants a robust CRA regulatory environment in order to ensure high levels of bank participation in our shared obligation and responsibility to build a better future.

Sincerely,

[redacted]

Ignacio Esteban
CEO

[redacted]

Susan Leigh
Board Chair

[redacted]

Joy Beaton
Director of Government Relations

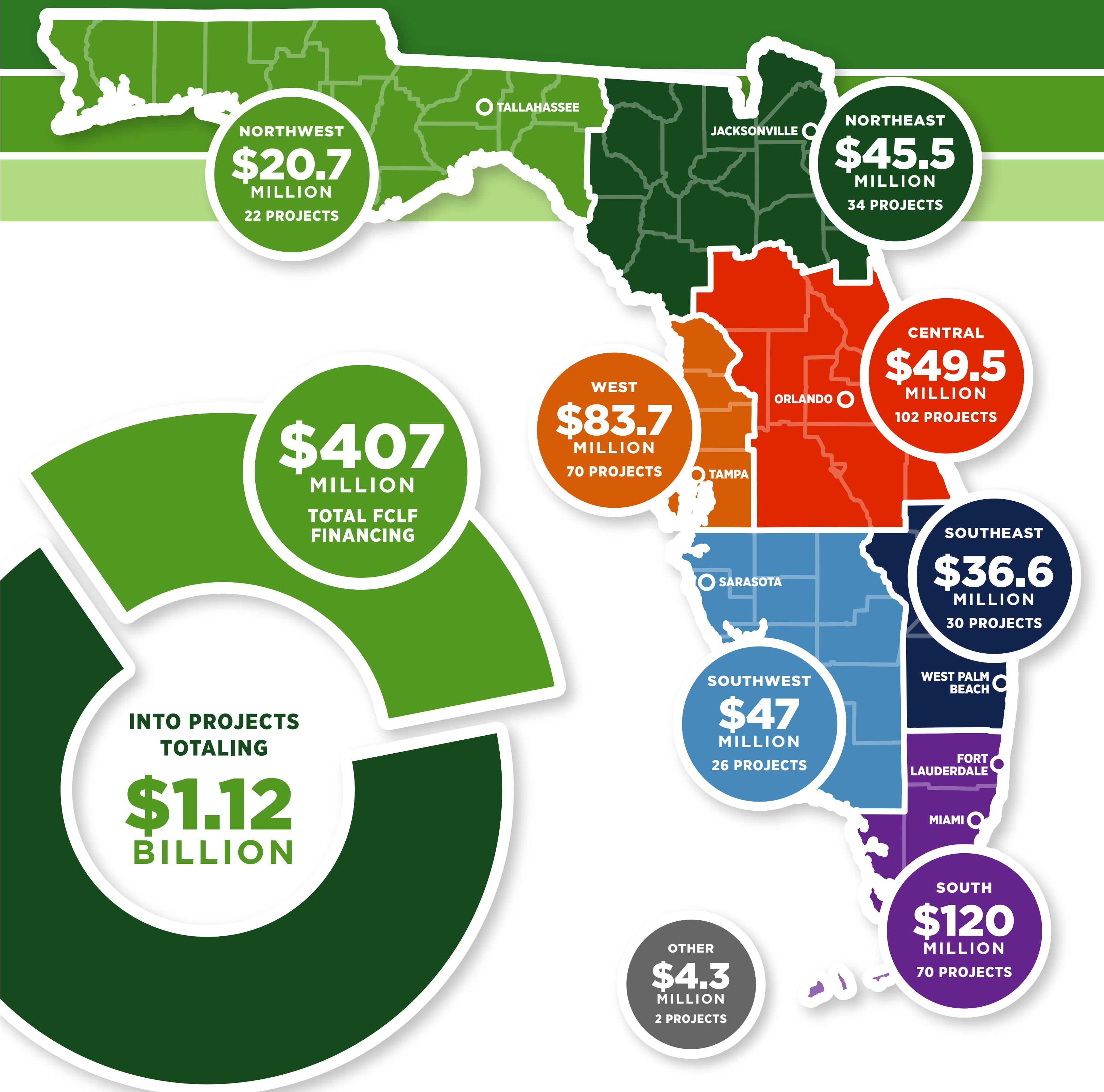
Analysis of CRA Qualified Lending in Florida
2009 - 2018

Major Metro Area	Mortgages to LMI Individuals & Neighborhoods	Business Loans to Neighborhoods	Small Business Loans	CRA Metro Total
	$	$	$	$
Tallahassee	2,709,389,020	352,339,010	601,004,000	3,662,732,030
TPA/St. Petersburg	12,200,834,040	5,541,644,350	5,031,943,000	22,774,421,390
Orlando/Kissimmee	10,893,727,090	3,646,389,740	3,391,149,000	17,931,265,830
Miami/Fort Lauderdale/West Palm	24,206,092,220	14,033,107,150	11,613,306,000	49,852,505,370
Jacksonville	7,427,293,960	2,379,347,250	2,249,202,000	12,055,843,210
Gainesville	1,636,974,200	391,553,520	326,304,000	2,354,831,720
TOTAL	**59,074,310,530**	**26,344,381,020**	**23,212,908,000**	**108,631,599,550**

Source: NCRC.ORG 2020 #Treasurer CRA

OUR IMPACT 2019

FLORIDA COMMUNITY LOAN FUND



HOW WE IMPACT LIVES

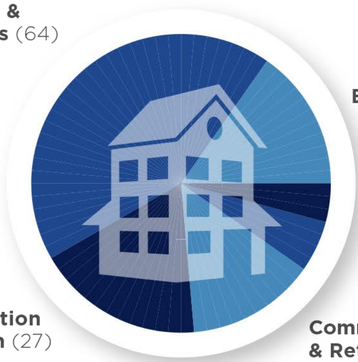
5,966 Housing units

Housing Types

Own vs Rent

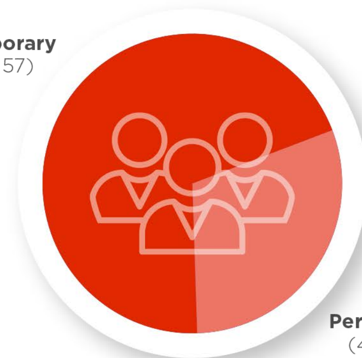
New vs Rehab

151 Facilities

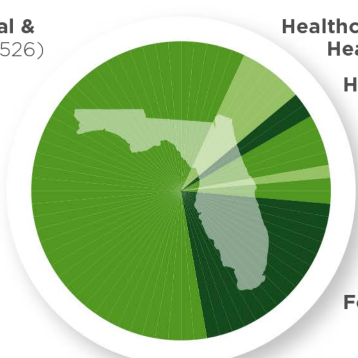


2.2 Million Square Feet of Facilities

15,181 Jobs



492,158 Floridians receive essential services every year



OUR BORROWERS

Includes FCLF borrowers since July 1, 2004

NORTHWEST

$8.8 Million CDFI Lending
$11.9 Million NMTC Financing
685 Housing Units
24,000 Facilities Square Feet
504 Jobs Created

Community Enterprise Investments, Inc.
Community Housing Partners Corp.
Good News Outreach
Griffin Heights
Palafox Landing, Ltd.

NORTHEAST

$10.2 Million CDFI Lending
$35.3 Million NMTC Financing
245 Housing Units
400,593 Facilities Square Feet
2,107 Jobs Created

Cade Museum
Florida School of Traditional Midwifery
Fresh Ministries
Grace and Truth CDC
Hitchcock's Market
Jacksonville KIPP School
Jessie Ball duPont Center
Northwest Jacksonville CDC
Operation New Hope
Pleasant Place
Starting Point Behavioral Healthcare
St. Johns Housing Partnership / Community Healthy Homes
Wealth Watchers
Wm. R. Cesery Co.

WEST

$32.8 Million CDFI Lending
$50.9 Million NMTC Financing
970 Housing Units
408,643 Facilities Square Feet
3,393 Jobs Created

Agency for Community Treatment Services
Armature Works
CAPC, Community Asset Preservation Corp.
CASA
Catholic Charities, Diocese of St. Petersburg
CDC of Tampa
CDCT Gardens
C.H.O.I.C.E.
Circus & Traveling Shows Retirement Project
Community Svc Foundation
Cornerstone Family Ministries
Florida Home Partnership
House of Israel
Livingstone Academy
Metropolitan Ministries
Miracles Outreach CDC
No Limits CDC
NVC Haley Park
Pasco County Housing Authority
Pathways 2 Success
P.E.R.C.
Pinellas Affordable Living, Inc.
Sail Future
Summerset Apartments
Tampa Bay CDC
Tampa Heights Jr. Civic Association
Tampa Family Health Centers
The Isaiah Project
Wholesome Community Ministries
Woodlawn Community Academy
Wright's Natural Market

CENTRAL

$35.5 Million CDFI Lending
$14.1 Million NMTC Financing
1,153 Housing Units
191,692 Facilities Square Feet
1,989 Jobs Created

Ability Housing Wayne Densch Center
Abounding in Faith
Aida Palms
BBIF Florida
Brixton Landing
Cajarow, Inc.
Center for Multicultural Wellness & Prevention
Central Florida CDC
Central Florida Healthcare
Coalition for the Hungry & Homeless of Brevard
Community of Hope
Debbie Turner Cancer Care & Resource Center
Emma Jewel Charter Academy
Evans Center
Fresh Choice Market Place
Habitat for Humanity of Lake-Sumter
HANDS of Central Florida
Hannibal Square CLT
H.E.L.P. CDC
Homes of Davenport
Housing Authority Brevard County
Maitland Oaks, LLC
Melbourne Housing Authority
Mid-Florida Housing Partnership
Neighbor Up Brevard
Ocala Housing Authority
Orange Blossom Family Health
Pirouette Group
The Center for Affordable Housing
The Transition House, Inc.
Warley Park, Ltd

SOUTHWEST

$16.0 Million CDFI Lending
$31.0 Million NMTC Financing
911 Housing Units
110,493 Facilities Square Feet
1,647 Jobs Created

Bishop Museum of Science & Nature
Boys & Girls Clubs of Manatee County
Casa San Juan Bosco, Inc.
Community Assisted & Supported Living
Dunbar Improvement Association
Habitat for Humanity of Lee & Hendry Counties
Habitat for Humanity Sarasota
Lee County Housing Development Corporation
Sunshine Meadows
SW Florida Collaboratory
Timber Ridge of Immokalee

SOUTHEAST

$13.4 Million CDFI Lending
$23.2 Million NMTC Financing
289 Housing Units
128,959 Facilities Square Feet
1,242 Jobs Created

Boys & Girls Clubs of Palm Beach County
Common Ground
Delray Beach Community Development Corp.
Habitat for Humanity of Martin County
Habitat for Humanity South Palm Beach County
Housing Authority, City of Stuart
Ignite Your World
Neighborhood Renaissance
New Urban CDC / Urban League of PBC
Okeechobee Non-Profit Housing, Inc.
Treasure Coast Food Bank
West Palm Beach Housing Authority

SOUTH

$43.4 Million CDFI Lending
$76.6 Million NMTC Financing
1,713 Housing Units
857,277 Facilities Square Feet
4,079 Jobs Created

ASPIRA of Florida Charter Schools
Boynton Beach CDC
Broward Alliance for Neighborhood Development (BAND)
Broward Housing Solutions
Camillus House at the NCL Campus
CAPC, Community Asset Preservation Corp.
Carrfour Supportive Housing
City View Apartments
David B. Optekar
Donaldson-West
DuPuis Pointe, LLC
Emerald Villas
Fort Lauderdale CDC
Haitian American CDC
Henderson Behavioral Health
HOMES, Inc.
Housing Programs
L.B.W. Homeowners Foundation of Coral Gables
Little Haiti Gateway
Lotus Village
Miami Beach CDC
MTZ Carver, LLC
Nehemiah Project of Homestead, Inc.
Neighborhood Housing Services of S. Fla.
New Hope C.O.R.P.S.
Oasis of Hope
R.E.A.C.H.
Silver Creek
Spinal Cord Living Assistance Development
The Commons / Urgent, Inc.
Turnstone / 1123 NE 4th Ave
Victory Living Programs
Wexford Science & Technology

TOTAL IMPACT

$160,108,638	CDFI Lending
$247,258,181	New Markets Tax Credit Financing
$407,366,819	**Total Cumulative FCLF**
$712,628,124	Other Funding Sources
$1,119,994,943	**FCLF Total Impact**

Cumulative through June 30, 2019

Healthcare Services · Food Access · Green Project · Hurricane · NMTC Project · Multiple Loans