SMALL BUSINESS ADMINISTRATION
WASHINGTON, DC 20416

April 7, 2020

VIA www.regulations.gov and Email

Chief Counsel's Office, Attn: Comment Processing
Office of the Comptroller of the Currency
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Re: Community Reinvestment Act Regulations – Joint Notice of Proposed Rulemaking and Request for Comment

OCC: Docket ID OCC-2018-0008
RIN 1557-AE34

FDIC: RIN 3064-AF22

Dear Agency Staff,

I am the Associate Administrator for the Office of Capital Access of the U.S. Small Business Administration ("SBA"). The Office of Capital Access is responsible for the policy, implementation, and oversight of the 7(a) guaranteed loan program ("7(a)"), the 504 Certified Development Company loan program ("504"), and the Microloan Program. The 7(a) and 504 loan programs are economic development programs that provide small businesses with access to capital by mitigating participating lenders' risk using the public-private partnership model. The Microloan Program assists small businesses that need small amounts of financial assistance through Microloan Intermediaries. I also write on behalf of the Office of Investment and Innovation, which is responsible for the policy, implementation, and oversight of the Small Business Investment Company ("SBIC") program. SBICs licensed by SBA stimulate and supplement the flow of private equity capital and long-term loan funds to small businesses nationwide when such capital is not available in adequate supply. These SBA programs create jobs, increase services in the community, and increase the local community tax base. They have been instrumental in post-recession recovery nationwide and provide vital support for community development at a grass-roots level.

SBA supports the efforts of the Office of the Comptroller of the Currency ("OCC") and the Federal Deposit Insurance Corporation ("FDIC") (collectively, the "Agencies") to modernize Community Reinvestment Act ("CRA") regulations to expand and clarify qualifying activities as reflected in the Notice of Proposed Rulemaking. The ability of banks to use SBA programs to help meet their CRA obligations encourages banks to expand credit access and support for small businesses. SBA appreciates the Agencies' commitment to ensuring small businesses have access to the resources they need to thrive and offers the following comments to the proposed rule.

I. 7(a) Loans and Third-Party/Interim Lender Loans Under the 504 Program Should Always Qualify for CRA Credit

SBA appreciates the Agencies' inclusion of loans under the 7(a) and 504 programs in the illustrative lists of qualifying retail loans under proposed 12 C.F.R. §§ 25.04(b)(1)(ii) and 345.04(b)(1)(ii). However, SBA believes that the proposed rule can go further in simplifying CRA-qualifying activity and expanding credit for small businesses. SBA requests that the Agencies revise the proposed rule so that all loans under the 7(a) and 504 programs (specifically, 7(a) loans, Interim Loans under the 504 program, and Third Party Loans under the 504 program) qualify for CRA credit without regard to the $2 million revenue limit for small businesses and the $2 million limit for the amount of retail loans.

Under the 7(a) program, a participating financial institution makes a loan to a small business, and SBA guarantees a portion of that loan in the event of default by the borrower. Under the 504 program, a lender makes an Interim Loan to a small business, funding up to 90% of a project's cost (with the remainder funded by the small business itself). Following completion of the project, a portion of the Interim Loan (usually representing approximately 40% of a project's cost) is refinanced with a 504 loan made by a Certified Development Company ("CDC"). The 504 loan is funded with proceeds from the issuance of a debenture by the CDC, 100% guaranteed by SBA and backed by the full faith and credit of the United States. The remainder of the Interim Loan (usually representing approximately 50% of a project's cost) is retained by the interim lender or refinanced by another lender as a Third Party Loan that is senior to the 504 loan.

The eligibility requirements for businesses under the 7(a) and 504 programs ensure that all loans made under those programs meet the needs of their communities and expand credit access within the spirit of the CRA. An eligible business must be "small" within the meaning of the programs' authorizing statutes and regulations. Under the "Credit Elsewhere Test," a borrower must not be able to receive conventional financing on reasonable terms. These provisions ensure that SBA programs expand credit by aiding only small businesses and businesses that cannot receive conventional financing. Making all loans under these SBA programs eligible for CRA credit would be consistent with the CRA's purposes.

When CRA regulations were last updated significantly in 1995, the maximum amount of $1 million for a retail loan qualifying for CRA credit would have included all 7(a) loans, most Third Party Loans, and many Interim Loans. However, as SBA loan limits have grown faster than inflation in recognition of the costs and competition facing small businesses, fewer loans under SBA programs qualify for CRA credit today. Therefore, the proposed rule should be revised so that all loans under the 7(a) and 504 programs are eligible for CRA credit as they were historically.

Given that SBA's eligibility requirements for loans under the 7(a) and 504 programs ensure that credit goes to small businesses that need it, and that historically all 7(a) loans and most loans under the 504 program were eligible for CRA credit, SBA believes that CRA-qualifying retail loans under these programs should not be limited to businesses with $2 million or less in annual revenue and in amounts of $2 million or less. When made by banks, all 7(a) loans and all

Interim Loans and Third Party Loans under the 504 program accomplish the goals of the CRA in expanding credit to certain small businesses. Revising the proposed rule as suggested would simplify CRA-qualifying activity, expand participation in the 7(a) and 504 programs, and support small businesses within the spirit of the CRA.

II. Addition of Support to Microloan Intermediaries as Qualifying Activity

SBA appreciates the Agencies' clarification that community development ("CD") activities that provide financing for or support of CDCs or SBICs are activities that qualify for CRA credit. The certainty that these activities qualify for CRA credit will incentivize banks to invest in their communities through SBA programs. To that same end, SBA requests that the Agencies add "a Microloan Intermediary, as that term is defined in 13 CFR 120.701" to the lists of qualifying CD activities at proposed 12 C.F.R. §§ 25.04(c)(12) and 345.04(c)(12).

The SBA Microloan Program, authorized by Section 7(m) of the Small Business Act (15 U.S.C. § 636(m)) and 13 C.F.R. Part 120, Subpart G, assists women, low income individuals, minority entrepreneurs, and other small businesses that need small amounts of financial assistance. SBA makes direct loans to not-for-profit Microloan Intermediaries that use the proceeds to make loans to eligible borrowers in amounts no greater than $50,000. SBA also makes grants to Intermediaries for marketing, management, and technical assistance to the program's target populations. As explained in greater detail below, financial institutions may avoid small-dollar business loans because of the low return, high cost, and potentially higher risk to the institution. The Microloan Program and Intermediaries help fill that gap.

While providing financing or support for Microloan Intermediaries likely qualifies as CD under other proposed criteria, SBA requests that the Agencies make this explicit. All Microloan Intermediaries are not-for-profit organizations and almost half are also Community Development Financial Institutions ("CDFIs"). The proposed rule would consider a capital investment, loan participation, or other venture undertaken with such an institution eligible for CRA credit at 12 C.F.R. §§ 25.04(c)(13) and 345.04(c)(13). Additionally, the Microloan Program is a federal program that partially or primarily benefits LMI individuals' small businesses, and other targeted areas of need that would qualify as CD. Thus, providing support to Intermediaries would be a qualifying activity under the proposed criteria in many cases. It would be within the spirit of the proposed rule to clearly state that financing or support for Microloan Intermediaries is a qualifying CD activity to clarify that the activity meets the established criteria.

III. Clarify that Investments in SBICs Automatically Qualify for CRA Credit

SBA appreciates the Agencies' continued inclusion of financing or support for SBICs as a CRA-qualifying CD activity in the proposed rule. SBA requests that, to avoid any uncertainty, the Agencies clarify that under proposed 12 C.F.R. §§ 25.04(c)(12) and 345.04(c)(12), financing of or support for SBICs, including investments in SBICs, qualifies for CRA credit regardless of the location of the SBIC or the SBIC's investments.

We understand that banks have sometimes had issues receiving CRA credit for their financing and support of SBICs when the SBIC's investments were not within the bank's assessment area.

Regardless of the location of an SBIC or its underlying investments, however, businesses supported by SBICs must meet certain eligibility requirements that are consistent with the CRA's purpose. Businesses supported by SBICs are required to be small businesses under SBA's size standards and are in need of private equity capital and long-term loan funds for the sound financing of their business operations and for their growth, expansion, and modernization, for which such funds are not available in adequate supply. SBA requests that the Agencies clarify that financing of or support for SBICs, including investments in SBICs, automatically qualifies for CRA credit regardless of the location of the SBIC or the investments made by the SBIC.

IV. Clarify that All Community Development Investments in CDCs, SBICs, and Microloan Intermediaries Qualify for a Multiplier

The proposed rule states that the dollar value of certain qualifying activities will be multiplied by a certain value for purposes of calculating CRA credit. Specifically, proposed 12 C.F.R. §§ 25.07(b)(2) and 345.07(b)(2) state that the dollar value of "other community development investments" will be adjusted by "multiplying the actual or quantified dollar value by 2." SBA suggests that the Agencies clarify and confirm that community development investments in CDCs, SBICs, and Microloan Intermediaries will receive this multiplier.

As explained above, these SBA programs and entities have community and economic development at their core. Investments in CDCs, SBICs, and Microloan Intermediaries directly support small businesses, create jobs, and increase services in communities. These investments appear to be qualifying activities for CRA credit under proposed 12 C.F.R. §§ 25.04(c) and 345.04(c) and the illustrative list. Explicitly clarifying and confirming that investments in CDCs, SBICs, and Microloan Intermediaries will also qualify for the credit multiplier will provide certainty to banks and increase such community development investments.

V. Size Standards and Eligibility

The proposed rule uses two size standards for small businesses for CRA-qualifying activities: 1) for retail loans, businesses must have a revenue threshold no greater than $2 million annually; and 2) for CD, activity that provides financing for or supports businesses or farms meeting the size-eligibility standards of Certified Development Companies or Small Business Investment Companies.[1] The proposed rule also removes the current framework's option to use the revenue threshold for CD activity and leaves only CDC and SBIC size standards. For the reasons set forth below, SBA requests that the Agencies revise the size-eligibility standards for CD activity to only reference the SBIC program's size standards.

The CDC and SBIC programs have different size-eligibility standards for small businesses, and referencing both could confuse banks and examiners as to eligible financing or support. For the CDC program, under Section 1116 of the JOBS Act of 2010, a business (together with its affiliates) is considered small if it has a tangible net worth not in excess of $15 million, and an

[1] Note that, as discussed below, proposed definitions of small business concerns that differ from certain size standards set forth by SBA require approval by the SBA Administrator per 15 U.S.C. § 632(a)(2). Size standards that refer to and incorporate the SBIC standards set forth by SBA do not require such approval.

average net income after Federal income taxes for the preceding two completed fiscal years not in excess of $5 million. For the SBIC program, under 13 C.F.R. § 121.301(c)(2), the thresholds are $19.5 million net worth and $6.5 million average net income.[2]

SBA suggests revising the standard for qualifying CD financing or support to businesses or farms that meet the size-eligibility standards for the SBIC program only. Given the difference in size standards, a business may be considered small under the SBIC program, but not the CDC program; therefore, the SBIC standards will always control. As banks often invest in SBICs to support small businesses, banks will likely already be familiar with SBICs' size standards. By eliminating the reference to the CDC program in favor of the more inclusive size standards of the SBIC program, the Agencies will simplify what CD activity qualifies for CRA credit.

VI. Responses to Requests for Information 7 and 8: Small-Dollar Loans are More Valuable to LMI Individuals and No Floor Should Be Established for CRA Credit

The Agencies asked whether certain types of retail loans are more valuable to low- and moderate-income ("LMI") individuals and areas than other types of loans. Regarding small businesses, small-dollar loans are among the most valuable to LMI individuals and areas, and SBA suggests that the Agencies use multipliers or other methods to encourage such small-dollar lending.

SBA generally considers loans of $350,000 or less to be small loans. This is the maximum for the SBA 7(a) Small Loan program, which streamlines the application process for 7(a) loans, reducing underwriting time and expanding small-dollar credit. According to the Federal Reserve Bank's most recent Small Business Credit Survey, approximately 57% of small employer firms sought financing below $100,000 during the survey period, and 20% sought financing below $25,000.[3]

Small-dollar loans make up a significant portion of small business loans and are particularly valuable to LMI individuals and areas, but there are barriers to accessing credit at smaller amounts. Lenders may avoid making such small-dollar loans because underwriting costs for a small loan are generally the same as larger loans, there is less profit associated with small loans, and there can be higher risk lending to small businesses. LMI individuals and areas face additional challenges in accessing affordable small-dollar business loans.[4] LMI individuals and areas have the fewest bank branches and the greatest number of costly alternative financial services providers (such as payday lenders) available to them among income groups.

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[2] Note that both the CDC and SBIC programs also allow use of an industry-based size standard based on NAICS codes, which is the same for both programs. Since the industry-based standard is the same for both programs, this has been and will be incorporated into the CRA regulations regardless of which program's net worth and net income is referenced.

[3] Small Business Credit Survey: 2019 Report on Employer Firms, Federal Reserve Banks at 10 (2019), https://www.fedsmallbusiness.org/medialibrary/fedsmallbusiness/files/2019/sbcs-employer-firms-report.pdf.

[4] *See* Claire Kramer Mills et al., *Growing Pains: Examining Small Business Access to Affordable Credit in Low-Income Areas*, Federal Reserve Bank of New York Outreach & Education (Dec. 18, 2019), https://www.federalreserve.gov/publications/2019-november-consumer-community-context.htm#xarticle3-subsection-17-8b7fbf14.

Additionally, LMI individuals who own businesses may have more limited personal financial resources, credit histories, and smaller firms.

Vital small-dollar business loans are often out of reach for LMI individuals and areas, but a scoring multiplier would encourage banks to fill the gap. Additional CRA credit would provide a return for banks that take on the cost and risk involved with small-dollar business loans for LMI individuals and areas and incentivize such lending.

The Agencies also asked whether there are ways to ensure that multipliers encourage activities that benefit LMI individuals and areas while limiting or preventing the potential for decreasing the dollar volume of activities, such as establishing a minimum floor for activities before applying a multiplier. SBA believes there is no need to establish a minimum floor or otherwise discourage banks from conducting smaller dollar values of impactful activities. Such a floor could be counterproductive and disincentivize certain small-dollar business loans. A multiplier would expand credit for certain small-dollar loans without taking away from or disincentivizing other impactful activities.

VII. Consistency of References to CDCs

SBA would like to clarify the difference between a Certified Development Company, or CDC, and a Small Business Development Center, or SBDC. In the proposed rule's preamble, as well as previously-issued Interagency Questions and Answers, 81 Fed. Reg. 48506 (July 25, 2016), the Agencies refer to CD activities financing or supporting a "Small Business Administration Certified Development Company (SBDC)." A Certified Development Company, or CDC, is defined by 13 C.F.R. § 120.10 as an entity authorized to deliver financing under the 504 loan program and is governed by 13 C.F.R. Part 120. A Small Business Development Center, or SBDC, is an entity that delivers broad-based assistance to the small business community by linking government resources with the resources of the educational community and private sector, and is governed by 13 C.F.R. Part 130. SBA suggests correcting any unintentional references to SBDCs so they refer to CDCs to ensure clarity and consistency.

VIII. Definition of Small Business Concerns

Congress has provided that the Small Business Administration is responsible for ensuring a consistent definition of small business across the Federal government. To that end, no Federal department or agency may prescribe a standard for categorizing small business concerns for their own purposes that differs from those set forth by SBA unless approved by the SBA Administrator. *See* 15 U.S.C. § 632(a)(2).

The Agencies propose to define a "small business" for the purposes of the CRA at proposed 12 C.F.R. §§ 25.03 and 345.03 as "a business that has gross annual revenues of no greater than $2 million" adjusted annually for inflation. This proposed definition of small business differs from SBA's standards and would generally require approval by the Administrator. Currently, however, the Agencies generally only define what business loans are eligible for CRA credit.[5] Because the Agencies did not previously define small business, they did not require the SBA

[5] *See* Interagency Questions and Answers Regarding Community Reinvestment, 81 Fed. Reg. 48506 (July 25, 2016).

Administrator's approval. The Agencies should determine which definitions and framework to pursue and request approval if necessary.

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SBA would welcome the opportunity to provide supplemental information to support SBA's requests and suggestions and to engage in further dialogue regarding measures that would increase the availability of capital to small businesses. If you have any questions, please feel free to contact us directly.

Sincerely,

[redacted]

William M. Manger
Associate Administrator
Office of Capital Access