

April 7, 2020

Chief Counsel's Office
Attention: Comment Processing
Office of the Comptroller of the Currency
400 7th Street SW, Suite 3E-218
Washington, DC 20219

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

RE: Notice of Proposed Rulemaking, Community Reinvestment Act Regulations

OCC: Docket ID OCC-2018-008

FDIC: RIN 3064-AF22

Chicago Community Loan Fund (CCLF) is a community development financial institution (CDFI) offering the following comments on the proposed regulations to modernize the Community Reinvestment Act (CRA). Chicago is the birthplace of the CRA. Chicagoan Gale Cincotta received the honorary title of "Mother of CRA" because she was a key witness in hearings providing research on the history and pattern of mortgage discrimination in Chicago to the Senate Banking Committee in 1975 and /Senate hearings in 1976. CCLF works every day to ensure the ground-breaking work of Cincotta and many other community activists leads to access to capital for projects that are credit worthy in low- to moderate-income (LMI) neighborhoods.

CCLF agrees that the CRA is due for modernization to account for the way banking has changed since the last time the regulations were updated twenty-five years ago. CCLF also supports the stated goal of the proposed rule in the summary of Federal Register to "strengthen the CRA regulations by clarifying which activities qualify for CRA credit, updating where activities count for CRA credit, creating a more transparent and objective method for measuring CRA performance, and providing for more transparent, consistent, and timely CRA-related data collection, recordkeeping, and reporting."¹ CCLF's comments will be based on its experience address a few areas in the rule where the stated goal may not be achieved without further clarification or by taking a different approach.

CCLF was founded in 1991 to provide flexible, affordable and responsible financing and technical assistance for community stabilization and development efforts and initiatives that benefit low- to moderate-income neighborhoods, families and individuals throughout metropolitan Chicago. CCLF started with \$200,000 largely provided by individuals and religious institutions interested in making social investments to address the devastation caused by redlining and racial discrimination in poor neighborhoods that could not access credit to help uplift their communities. In 2019, CCLF reached \$100 million in total assets with much of that growth resulting from strong banking partnerships that were motivated by the CRA. In fact, 54% of the organization's 2019 total investments were from banks and an additional 26% of all grants were from banking institutions making them a key partner with CCLF in providing capital for risky projects that take longer to develop but result in affordable housing, jobs and access to quality goods and services in LMI neighborhoods. Since its founding, CCLF has made 497 loans providing \$229 million in financing that benefit LMI neighborhoods, families and individuals throughout the Chicagoland area. Largely because of CRA, CCLF's financing has been able to leverage an additional \$1.4 billion, turning areas of abandonment and crime into communities where people thrive.

¹ Federal Register / Vol. 85, No. 6 / Thursday, January 9, 2020 / Proposed Rules, p. 1204

Clarifying and Expanding What Qualifies for CRA Credit

CCLF fully supports having CDFIs qualify for the same status as current law provides for minority and women-owned depository institutions and low-income credit unions and adding a multiplier as an incentive for banks to engage with CDFIs.

CCLF submitted a comment letter to the OCC in 2018 stating, “CDFIs should qualify for the same status as current law provides for minority and women-owned depository institutions and low-income credit unions. Banks providing grants and investments to CDFIs should be given automatic CRA consideration as long as the CDFIs are meeting legitimate community development needs.”² The proposed rule does just that, “adding CDFIs to the criterion for ventures undertaken by a bank in cooperation with a minority depository institution, women’s depository institution, or low-income credit union. The proposal would include CDFIs in this criterion to recognize that the goal of these institutions is to expand economic opportunities in low-income communities by providing access to financial products and services for local residents and businesses.”³ “The quantified value of qualifying activities to CDFIs would be adjusted upward by a multiple of two to provide an incentive for banks to engage in these activities.”⁴

CCLF has heard concern that the multiplier will cause banks to do less because they can do half as much in the future and receive the same amount of CRA credit. The expected outcome of any modernization of the CRA would be to increase CRA activity. This is why using past performance as a benchmark is important for examiners during the implementation of any new regulations. CCLF believes the partnerships we have with our banking partners would not result in less activities as a result of the multiplier for CDFIs. CDFIs have a long history of leveraging their capital with other public and private sources. That pattern will require banks to be strong partners in large financial deals that would not be possible in the future if banks start doing less CRA activities in LMI neighborhoods.

The type of activities a bank engages in with a CDFI is important to note. Banks and their affiliates can make an investment, provide a grant, purchase loans or join in a participation. Currently, CCLF is limited in the amount of debt it can take without having enough equity to ensure its net asset ratio remains at 25% or above. If our current banking partners wanted to increase their current debt investments and earn two times the points, CCLF would not be able to take on more investment without also increasing its permanent capital.

CCLF fully supports having CDFIs qualify for the same status as current law provides for minority and women-owned depository institutions and low-income credit unions. This way banks will not have to question if a partnership with a CDFI will count for CRA credit. CCLF suggests a three times multiplier be applied to grants made to CDFIs that help grow CDFIs’ permanent capital or strengthen their programs and operations to better serve the needs of LMI neighborhoods, families and individuals. CCLF would also support a multiplier for investments made to CDFIs at 1% or less for ten years. This way CDFIs would be able to offer below market rates for projects benefitting LMI communities. The proposed rules provide incentives for longer-term investments by giving credit for the duration loans remain on balance sheet. This will allow CDFIs to provide longer-term capital to borrowers.

² CCLF comment letter regarding “Reforming the Community Reinvestment Act Regulatory Framework” RE: Docket ID OCC-2018-0008, Oct. 2018

³ *Federal Register* / Vol. 85, No. 6 / Thursday, January 9, 2020 / Proposed Rules, p. 1212

⁴ *Ibid.*, p. 1214

CRA credit should be applied if the activity primarily benefits LMI individuals, families or neighborhoods

CCLF believes any activities that count should primarily - not partially - serve LMI communities, rural areas, Indian country, a small business or a small farm and where it does not, the pro-rate formula should be implemented. "CRA was one of several laws enacted in the 1960s and 1970s to address fairness and access to housing and credit."⁵ Activities that do not directly work to provide equal access to credit, housing, jobs, goods and services and economic opportunity for those that have historically been neglected should not count. A multimillion dollar sports stadium in an Opportunity Zone would have to primarily benefit LMI communities and not season ticket holders to count. The same holds for essential infrastructure. CCLF supports the proposal where partial benefit is provided at a pro-rata credit equal to the partial benefit provided.

Equally, CRA credit should be provided for financial literacy primarily provided to LMI individuals and financial literacy provided to upper income individuals should not count for CRA credit.

Regulatory agencies posting a list of CRA qualifying activities should be tested with input from the community.

Finally, providing a publically available non-exhaustive list of qualifying activities will provide clarity and will be subject to public comment every three years. These are both good things. However, CCLF is concerned how the agencies will mitigate the risk for delays in responding to inquiries from banks seeking validation of new activities. Delays can prevent a project from aligning all the financial partners in a timely manner to allow a project to move forward. Developers can lose access to a limited window to secure low-income housing tax credits or other needed financing, resulting in continued abandonment and disinvestment in LMI communities. CCLF believes the mechanics of a non-exhaustive list of example CRA qualifying activities should be worked out to ensure it does not prevent innovative CRA activities from securing the capital needed to improve LMI neighborhoods. Community input will be critical to ensuring the list does not limit the potential of LMI neighborhoods in need of economic development.

Expanding Where CRA Activity Counts

CRA credit for activities outside of a bank's assessment area should be given when a bank has an outstanding rating within its assessment area.

The proposed rule allows banks to get credit for qualified activities outside of their assessment areas. This needs further clarification and causes some concern. "In addition, the agencies recognize that there are certain communities of need where banks have a limited physical or deposit-taking presence. To help ensure that these areas are served, the proposed rule would allow banks to receive credit for qualifying activities conducted outside of their assessment areas in determining their bank-level ratings."⁶ This appears to be an open invitation to legally not serve the community in which a bank is doing business. Is this regulation to allow banks to get credit for supporting natural disasters outside of their assessment areas? Is this to incentivize urban banks to begin lending and investing in Indian country? Allowing credit outside of an assessment area seems to address "hot spots" where a lot of CRA activity is taking place, but who is the authority deciding a community is over-saturated with economic and community development?

⁵ Federal Register / Vol. 85, No. 6 / Thursday, January 9, 2020 / Proposed Rules, p. 1205

⁶ Federal Register / Vol. 85, No. 6 / Thursday, January 9, 2020 / Proposed Rules, p. 1216

Nearly 200 banks and 200 credit unions are headquartered in Chicago.⁷ Additionally, 14 CDFIs serve the area as listed in the 2019 National Directory of Community Development Financial Institutions. CCLF will challenge anyone stating our market is over-saturated with CRA activities and local banks should look outside of metropolitan Chicago to meet the needs of LMI census tracts, families or individuals. Much work remains to stabilize LMI neighborhoods in the region and even more-so in areas that are experiencing high volume of development causing property values to skyrocket and the strategic removal of long-term residents. The Institute for Housing Studies at DePaul University indicated about 182,000 people need low-cost housing than there are affordable apartments in Cook County.⁸

CCLF is seeking further clarification in the proposed rules for under what circumstances CRA credit will be given for activities outside of an assessment area. CCLF would like CRA credit given outside of its assessment area when a bank has already received an outstanding CRA within its assessment area.

Providing an Objective Method to Measure CRA Activity

CRA performance metrics should be uniformed among all three regulatory agencies and no new formula should be applied unless there is agreement among the Office of the Comptroller of Currency, Federal Deposit Insurance Corporation and Federal Reserve Bank.

"To achieve the goal of providing a method of assessing CRA performance that would be more objective, clear, and consistent and facilitate banks' ability to engage in qualifying activities in communities that need it the most, the proposed rule would establish new general performance standards used to evaluate banks that are not small banks."⁹ Based on the proposed rule this goal was not accomplished. The calculations were presented to provide a simplified method for rating the strength of the depository institution's CRA compliance. Instead, it rejects local nuances and is based on formulas where data sets have yet to be established. Disagreement exists on how to calculate performance among the regulators. This disagreement is a strong indication that a lot more needs to be done to create a fully transparent and objective method for measuring CRA performance.

In fact, Martin J. Gruenberg stated, "The problem with this approach is that adding up the dollar value of qualifying activities -- lending, community development investments, and community development services -- into a single metric undermines the evaluation of the bank's performance in each of these areas. It is a 'count the widgets' approach that does not take into account the quality and character of the bank's activities and its responsiveness to local needs."¹⁰ CCLF believes that taking into consideration a bank's responsiveness to local needs is critical, and this cannot be done solely by looking at one numerical figure.

Lael Brainard, Member of the Board of Governors of the Federal Reserve System, offered an alternative to the OCC/FDIC calculation for measuring CRA performance grounded on empirical data analyzed by the Federal Reserve. "It starts by creating two tests: a retail test and community development test. Broadly speaking, all retail banks would be evaluated under a retail test, which would assess a bank's record of providing retail loans and retail banking services in its assessment areas. Large banks, as well as wholesale and limited-purpose banks, would also be evaluated under a separate community development test that

⁷ <https://www.depositaccounts.com/local/chicago/> accessed 2/7/2020

⁸ Chicago's Affordable Housing Shortage Needs Neighborhood Solution, April 5, 2018

⁹ Federal Register / Vol. 85, No. 6 / Thursday, January 9, 2020 / Proposed Rules, p. 1217

¹⁰ Statement by Martin J. Gruenberg Member, FDIC Board of Directors, Notice of Proposed Rulemaking: Community Reinvestment Act Regulations, December 12, 2019

would evaluate a bank's record of providing community development loans, qualified investments, and services. Using bank and other publicly available data, we would be able to provide a bank with a dashboard indicating how its retail lending activity compares to thresholds for presumptive satisfactory performance that reflect the activity of other lenders and credit demand in the local area. Separate metrics reflecting a bank's assessment area can be provided related to the evaluation of its community development performance."¹¹

CCLF strongly believes all three regulatory agencies should be aligned in any modernization of the CRA and that the Office of the Comptroller of Currency and Federal Deposit Insurance Corporation should work with the Federal Reserve System to develop a performance measure all three regulatory agencies can implement.

Elimination of the service test will undermine LMI area and the Pass-Fail threshold will neglect hard-to-serve areas.

Furthermore, the proposal would eliminate the service test that scrutinizes bank branching and provision of deposit accounts to LMI customers. Replacing this test is a measure that would result in branches in LMI areas counting for very little in the one ratio and would encourage banks to close them. CCLF does not support the elimination of the service test.

A bank should not receive a satisfactory or outstanding rating if it fails in nearly 50% of its assessment areas. Because this is a pass-fail threshold, a bank would have no incentive to have satisfactory or outstanding performance in all its assessment areas. This system would likely favor assessment areas that are easier to serve, such as more populous areas with high employment and income and a well-established infrastructure to facilitate CRA activity. CCLF recommends that the rating be an average of all the bank's assessment areas. This would better ensure that hard-to-serve assessment areas are not neglected.

Conclusion

Chicago Community Loan Fund appreciates this opportunity to comment on the proposed rules to modernize the Community Reinvestment Act. CCLF recognizes many other regulations in the proposed rules were not mentioned in this comment letter. This does not constitute a complete acceptance nor rejection of those proposals. This simply indicates that CCLF prefers to let other subject matter experts address those proposed rules (such as should a small bank be defined as having assets of \$500 million or less).

CCLF fully supports having CDFIs qualify for the same status as current law provides for minority and women-owned depository institutions and low-income credit unions. CCLF suggests a three times multiplier be applied to grants made to CDFIs that help grow CDFIs' permanent capital or strengthen their programs and operations to better serve the needs of LMI neighborhoods, families and individuals. CCLF would also support a multiplier for investments made to CDFIs at 1% or less. CCLF is seeking further clarification in the proposed rules for under what circumstances CRA credit will be given for activities outside of an assessment area or the elimination of this regulation from the proposal. CCLF also strongly believes all three regulatory agencies should be aligned in any modernization of the CRA and that the

¹¹ Remarks by Lael Brainard, Member Board of Governors of the Federal Reserve System, "Strengthening the Community Reinvestment Act by Staying True to Its Core Purpose" at the Urban Institute, Washington, D.C., January 8, 2020

Office of the Comptroller of Currency and Federal Deposit Insurance Corporation should work with the Federal Reserve System to develop a performance measure all three regulatory agencies can implement. CCLF also does not support the elimination of the service test nor the pass-fail threshold that will lead to the neglect of hard-to-serve areas.

Yours truly,

Calvin L. Holmes
President