

Community

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Re: Comments to proposed implementing regulations for the Community Reinvestment Act (CRA)

*OCC Docket ID OCC-2022-0002;
FDIC RIN 3064-AF81;
Federal Reserve Docket No. R-1769 and RIN 7100-AG29*

To Whom It May Concern:

Community Legal Aid Services, Inc. thanks the agencies for soliciting comments on the proposed Community Reinvestment Act (CRA) regulations. Community Legal Aid Services, Inc. is a non-profit law firm that provides civil legal services to low-income residents in eight counties in Northeast Ohio. Our clients typically fall at or below two hundred percent of the federal poverty level and include persons of various ages, ethnicities, races, religions, and cultures, among other qualities.

A large portion of our civil legal work involves housing and community reinvestment initiatives. Our foreclosure and tenant assistance teams provide foreclosure defense, eviction defense, assistance to tenants to address unsafe housing conditions, and education to our communities regarding housing law matters. Our firm's neighborhood law project is embedded in historically disadvantaged neighborhoods within our service area. Project staff provide legal advocacy, expertise, and support to expand social justice programs and to strengthen racial equity. The project staff actively participate in several coalitions and activities (some of which are financially supported by banks) to provide financial empowerment education and services to community residents and community-oriented small businesses. Collectively, our firm represents hundreds of individuals and small businesses every year in matters across Northeast Ohio, including matters relating to CRA.

We are pleased that the regulators are seeking public input to revise and modernize aspects of the CRA where industry practices have outpaced the rules. This opportunity is critical to strengthen the ability of the CRA to stabilize and revitalize communities.

Below please find our comments on the proposed regulations.



*Columbiana · Mahoning · Medina · Portage
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Regulators should incorporate race, ethnicity, and other identifiers in CRA exams to a greater extent than they presently do.

CRA has certainly had a positive impact. It has encouraged banks to lend or invest trillions of dollars over time toward small business loans in LMI tracts, community development loans toward affordable housing and development projects, and other initiatives. While its impact has been positive overall, the public's ability to gauge its impact on combatting redlining and racialized patterns of disinvestment is limited because CRA exams do not incorporate race, ethnicity, and other critical identifiers into CRA examination metrics.

In significant respects, Congress enacted CRA in 1977 as a meaningful response to the adverse effects of redlining and other forms of racial and ethnic discrimination in lending and investment. The CRA's examination framework asks regulators to assess an institution's record of meeting the credit needs of its entire community. Underserved communities are dominated by persons who have experienced historical oppression or discrimination in some way – perhaps because of their age, disability, ethnicity, origin, race, religion, sex or gender, sexual orientation, language, culture, or other factors. These characteristics are data points that should properly be assessed as part of the CRA examination process in order to align that process with the CRA's purpose.

The CRA specifically states that the appropriate Federal financial supervisory agency “shall assess the institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods” 12 USC § 2903 [Financial institutions; evaluation]. More specifically, the CRA requires “a written evaluation of the institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods” which includes the need to “discuss the facts and data supporting such conclusions” and “contain the institution's rating and a statement describing the basis for the rating.” 12 USC § 2906 [Written evaluations].

If the assessment system does not focus on those who are historically marginalized, then the system cannot be said to properly determine whether or not the financial institution is meeting the needs of the community – particularly the low and moderate-income community (i.e., the portion of the community most likely to have members of marginalized groups). If the assessment system does not require both the collection and the application of key facts and information (e.g. lending by race and ethnicity) when determining performance ratings, then it cannot be said that these goals have been properly met. It is contrary to the statute to collect the relevant information but not apply it when making a performance evaluation – the CRA requires “a written evaluation of the institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods” which includes the need to “discuss the facts and data supporting such conclusions”. 12 USC § 2906 [Written evaluations].

This cannot be a system where information is collected but not applied in a manner that allows for an honest, good faith determination concerning the performance of a financial institution – whether it has an “[institutional] record” (as specifically required by statute) for “meeting the credit needs of its entire community, including low- and moderate-income neighborhoods”. Facts related to “lending by race and ethnicity” is a critical part of that record and, as such, it is a “fact” that is specifically required by statute -- “a written evaluation of the institution’s record” where there is a “[discussion of] the facts and data supporting such conclusions”. 12 USC § 2906 [Written evaluations].

CRA exams and ratings should be more rigorous and revealing.

The four-category rating scale is not effective, as the scale does not sufficiently explain distinctions in performance. 98% of banks pass their CRA exams, with 90% of those banks receiving a satisfactory rating, while 10% of these banks receive an outstanding rating. It is implausible that 90% of banks are performing in the same manner. Regulators should revise the current rating system such that it more readily identifies variations in loans, investments, and services for low- and moderate-income communities.

For example, it is difficult to understand an institution’s community outreach, community reputation, and engagement because regulators do not require institutions to publicize comments on their websites, nor do regulators publicize any reviewed comments on their agency websites. Making all comments publicly available would be valuable to the CRA examination process, but also for any future merger or acquisition application.

If regulators offer banks an illustrative list of the types of community facilities and activities that resulted in CRA credit, the list should provide the kind and the level of detail that will allow banks to readily understand the scope of the activity and why it received credit.

Community Legal Aid Services, Inc. is pleased that regulators propose to maintain a publicly available, illustrative list of non-exhaustive examples of community development activities that qualify for CRA consideration. We believe such a list will provide banks with some confidence that the same types of activities are likely to receive consideration in the future. Regulators should craft the list in such a way that banks can readily understand the scope of each activity and why it received CRA credit. For example, Community Legal Aid is pleased to see that regulators propose to add “disaster preparedness and climate resiliency” activities as a new category of community development eligible for CRA credit. However, when regulators include examples of these activities on the illustrative list, Community Legal Aid hopes to see substantive information about each activity, including: the parties/participants, location, the bank’s resource allocation, the CRA activity type (loan, grant, etc.), and why the activity received credit. To that end, it may be helpful if regulators contrast the CRA credit-approved activity to comparable activities that did not receive credit on the list. A sufficiently detailed list could spur a bank or community to attempt activities it had not

thought about prior to seeing the publicly available list.

Community Legal Aid Services, Inc. encourages regulators to include numerous examples on the list of activities that relate to childcare, education, workforce development and job training programs, health services and housing services programs.

Further, regulators should consider expanding its categories of community development activities eligible for CRA credit to include projects and programs which are critical to LMI communities, including but not limited to:

- *Food access and sustainability projects.* Banks should receive CRA credit for investing in programs that provide health, wellness and nutrition programming, and which create and expand garden spaces that grow food for children and youth. Such sustainability and wellness initiatives have been proven to improve health outcomes and address food deserts, among other things.

- *Anti-displacement programs.* CRA should further incentivize institutions to invest in programs which combat housing displacement. For example, CRA should not allow community development credit unless institutions can demonstrate landlord borrowers are complying with tenant protections, habitability standards (health and safety codes), civil rights, and other laws. Institutions should receive credit only when they have conducted meaningful due diligence on the property owners (inclusive of community outreach) to determine if there are any concerns relating to health department violations, court rent deposits based on condition problems, unlawful evictions, retaliation, unsupported rent increases, etc.

After publishing its illustrative list of facilities and activities that resulted in CRA credit, regulators must scrutinize in future CRA exams whether banks inappropriately attempted to engage in the easiest (and potentially least impactful) activities or programs from the list in light of community priorities.

Regulators should emphasize that institutions cannot simply engage in the easiest (and potentially least impactful) activities or programs from the illustrative list and expect to receive full CRA credit. A financial institution cannot meet its statutory "affirmative obligation to help meet the credit needs of the local communities in which they are chartered" by simply picking from the list "the lowest hanging fruit" while ignoring the priority needs of the community. 12 USC § 2901(a)(3).

The purpose of the CRA is to spur investment and meaningful and/or innovative programming. In order to comply with the statutory mandate of 12 USC § 2901(a), the activities must be tied to local community needs as identified in community-negotiated and community-driven analysis, either as a condition for receiving CRA credit or by enhancing scoring based on LMI community impact. Community input from LMI


individuals and programs which service LMI communities should be required as part of each institution's activity planning and activity-selection process in order to prevent community needs from being determined absent consultation with those most connected with the LMI members of the community. To that end, institutions should be required to document by way of a directory and log their efforts to engage and collaborate with LMI stakeholders. Regulators should also evaluate whether each institution consulted contacts they have not consulted in the past, and whether each institution engaged organizations led by people of color or women.

Community Legal Aid Services, Inc. thanks the regulators for this opportunity to provide comments. We look forward to monitoring how the proposed regulations impact our community and work to close wealth gaps for underserved groups.

Sincerely,



Gregory R. Sain
Attorney/Litigation Coordinator



Clinton Householder
Attorney/Neighborhood Law Project