April 8, 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 RIN 3064-AF22
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

OCC Docket ID OCC-2018-0008

FDIC Docket ID RIN 3064-AF22

To Whom It May Concern:
I am Mark A. Willis, Senior Policy Fellow at the New York University Furman Center. My comments are my own and not those of any institution. They are, though, informed by my multiple careers/experiences including serving as a government official working on economic development, housing, and tax policy for the City of New York (6 ½ years), head of community development for JPMorgan Chase (19 years), and an urban economist with the Federal Reserve Bank of New York and currently at the New York University Furman Center.

I appreciate the opportunity to comment and support the intention of the OCC and FDIC to "modernize" regulations under the Community Reinvestment Act (CRA).

However, this does not mean that the current CRA regulatory structure for evaluating the CRA performance of banks is irrevocably broken as the NPR seems to imply. It is not. What is needed is an update that addresses changes in the banking industry since the last major reform in the mid "90s and furthers efforts, based on years of experience with the current system, to minimize areas of unnecessary uncertainty as to what qualifies for CRA credit. By the way, it is worth noting that, despite the protestations about lack of clarity, nearly 100 percent of the banks manage to achieve a Satisfactory or Outstanding CRA rating.

In particular the updating of CRA needs to address more directly the development of the internet as a vehicle for serving customers beyond the areas surrounding traditional, publicly available, physical, deposit-taking facilities which are no longer the exclusive vehicles for providing banking services. (For some thoughts on how existing tools for evaluating CRA performance could be adapted to this challenge, see my paper on Updating CRA Geography: It's Not Just About Assessment Areas.)

Fundamentally Flawed

The NPR's unwavering focus on just dollars (or units) is fundamentally flawed. Over time this focus is likely to dampen any CRA-motivated concern that the banks have as to their impact on LMI communities; their only concern will than rest on normal business considerations that emerge as a matter of course in serving any of their communities/customers. While it is unclear if the NPR will result in more or less CRA activity measured purely in dollar terms, it is inevitable that, as banks manage what is measured, they will simply focus on the dollars alone and not on the incremental impact they may be having on the wellbeing of LMI communities. The result will be the dilution, if not total loss, of the important nudge that CRA gives to banks to undertake more complicated and sometimes less profitable (but not more risky or unprofitable) programs and investments in LMI communities.

The rest of this comment letter elaborates on this point. It does not comment on more specific aspects of the NPR—a task which I leave for others. I will simply note that there are many details in the NPR that would benefit from more thought to avoid being unnecessarily administratively costly/ burdensome, counterproductive (e.g., compound problems with so called CRA hotspots), fail to encourage banks to target so-called CRA credit deserts, etc.

The basis for my concern over the NPR's likely impact of CRA rests on a clear sense (informed by years of experience) that banks will be able to find ways to meet the thresholds for a Satisfactory or Outstanding rating (depending on their preference) without having any incremental impact in LMI communities beyond what would happen without CRA. For those assessment areas where achieving the dollar or unit goals may be difficult, banks are offered the added relief valve of only needing to achieve those ratings in a substantial share, but not all, of their assessment areas and deposit base.

While we do not have enough data to assess if the proposed rules will result in a higher or lower total dollar amount of qualified CRA activity, the expanded definition of what qualifies for CRA credit will make that task much easier. (I would note that the OCC has in essence admitted in their request for more data in the concurrent RFI that they lack sufficient hard data to set the thresholds with full confidence.) Banks, like other well-run institutions, are very good at finding ways to manage to goals in the most efficient and least costly/disruptive way. Given the wide range of choices allowed under the NPR to meet these goals, it is easy to imagine that banks will be able to meet the thresholds through the kinds of activities they would normally do or, at most, not require much of a stretch.

<u>Two of the Thresholds are Just Pass/Fail</u>
Looking in more detail at the specific thresholds, we see there are two types of tests that are just pass-fail. The first are the distributional tests for retail loans. For these a bank needs to show that for each of the different types of retail loans that a bank offers (judged separately for each assessment area), that, for each retail product, the share of its loans that are LMI or small business/farm loans must meet at least 65 percent of share of such loans overall in the local market. While 65 percent seems like a strikingly low threshold, it makes some sense to set such a low bar to prevent the test from flunking a bank's CRA rating in too many AAs.

Unfortunately, though, such a low standard sets up an inevitable race to the bottom as more and more banks aim only to exceed the 65 percent benchmark, setting in motion a downward spiral.

As more and more banks relax their internal goals, the benchmarks against which the 65 percent is applied could well slip further and further, allowing the banks to lower their internal goals further and further, and so on.

The other pass-fail test is for community development (CD) lending and investment. Again, it is not clear whether the 2 percent threshold for each assessment area and for the bank as a whole is set too high or too low. What is clear is that meeting the threshold has been made easier by the expansion of the types of loans and investments that can qualify. Examples include giving partial credit for infrastructure loans, and raising the maximize loan size for qualifying as small business/farm loans. Meeting this threshold is also made easier by doubling the dollar value attributed to most types of CD loans and investments. Perhaps most damaging to meeting the on-going credit needs of LMI communities is that, under the proposed NPR, banks may not even have to originate any new CD loans and investments from one exam to the next if their balance sheet exposure to these loans and investments does not fall below the 2 percent threshold. Ironically, as currently proposed in the NPR, merely holding qualifying mortgage backed securities that have an average life of 7-10 years could be sufficient to meet this test for at least two exams in a row without originating one more CD loan or investment.

Even if these two pass-fail tests were binding, they are not subject to any review as to their incremental beneficial impact on the community. As a result banks would have no need to offer the types of specialized products, staffing, or services that they do now and as was intended as reflected in the original CRA legislation to encourage banks to be more responsive to the credit needs of LMI communities. While it might be true that, for example, an investment in a sports stadium in a LMI community might always have counted, the proposed regulations do not allow for any consideration of how much it should count in determining a bank’s CRA rating.

Rating Thresholds Determined by the Dollar-Based CRA Evaluation Measure

Once having passed the above thresholds, the CRA Evaluation Measure provides a yardstick for determining which of the four CRA ratings to assign to a bank. This approach contrasts with the current three-part test for large retail banks where loans, investments, and services are separately evaluated and then weighted respectively at 50/25/25 percent to determine a bank’s overall CRA rating. Moreover, within each of these tests bank examiners currently can, and are expected to, weigh the different activities based on their responsiveness to the needs of a bank’s LMI community(ies) and how much effort went into it, e.g., how complex was the deal, how creative/innovative was the bank in making it work, and how much did the bank stretch to get it done.

While such criteria as these are mentioned in the NPR under Performance Context, their use is limited to testing a bank’s capacity and opportunity to meet the performance standards, not the quality of what they do do. Furthermore, other activities which can be critical for LMI communities to thrive no longer have much CRA value when applying the dollar-denominated CRA Evaluation Measure. Much diminished are, for example, the importance for large retail banks of the distribution of branches in each of their LMI communities, the provision of CD services, and the impact of grants.

While a stripped down, dollar-denominated check list does lend itself to certainty and predictability, the message it sends to bank management is that quality is not important. And without qualitative measures, a check list of dollar-denominated goals is just that. To preserve the beneficial impact of the CRA, it essential to retain in the evaluation process the ability to assess programs, loans, and investments according to such criteria as complexity, flexibility, responsiveness, innovativeness.

Conclusion

In conclusion, this proposed swing of the pendulum implicit in the NPR is too extreme; instead reform should look for the optimal balance between certainty/predictability (for both the banks and the community stakeholders) and assessment of impact. Preserving the latter does not requires a sacrifice of progress on the former. Without maintaining any ability to assess impact, the danger is that CRA will become a zombie regulation: there will still be a CRA law, banks will be evaluated under it, banks will be rated on that performance, but LMI communities will receive little to no incremental benefit. The result will defeat the whole purpose of the CRA: putting a thumb on the scale to encourage banks to help meet the credit needs of LMI communities, subject of course to safety and soundness.

Sincerely,

[redacted]

Mark A. Willis