Opportunity Fund

April 3, 2020

Department of the Treasury, Office of the Comptroller of the Currency
Federal Deposit Insurance Corporation

RE: Community Reinvestment Act Regulations
Docket ID OCC-2018-0008
RIN 3064-AF22

Comptroller Joseph Otting and Chairwoman Jelena McWilliams:

Opportunity Fund appreciates the opportunity to comment on the joint Notice of Proposed Rulemaking (NPR) by the Office of the Comptroller of the Currency ("OCC") and the Federal Deposit Insurance Corporation (“FDIC”) Docket ID OCC–2018-0008/RIN 3064-AF22, the “Community Reinvestment Act Regulations.” The Community Reinvestment Act (CRA) was a landmark response to redlining, a persistent pattern of discrimination in bank lending that particularly harmed communities of color. The CRA also insured that banks provide appropriate access to capital and credit to low- and moderate-income (LMI) people and communities. Our organization, Opportunity Fund, strongly supports the original intent of the CRA, while acknowledging that there are aspects of the law and its administration that could be improved.

Opportunity Fund understands the OCC and FDIC’s desire to modernize the CRA and we believe that thoughtful consideration must be given to the changing banking landscape in order to account for the closing of bank branches and the rise of digital banking. However, Opportunity Fund believes that modernizing the CRA must be undertaken in conjunction with the Federal Reserve and Congress in order to be truly effective.

While this NPR offers some thoughtful notes on modernization, it also makes several proposals that, if implemented, would fundamentally undermine the intent and effectiveness of the CRA in uplifting underserved communities. Additionally, **given the current COVID-19 pandemic, it is crucial that we not distract banks with new regulatory changes at this time. They should be focusing on investing and engaging in activities that truly help LMI communities and the economy recover from this health and economic crisis**. LMI communities are at a higher risk than wealthier communities of losing their jobs, homes, and businesses and depend on banks to engage responsibly to deliver capital to communities across the country.

Opportunity Fund: Our Track Record

Opportunity Fund is a community development financial institution (CDFI) and the nation’s leading nonprofit small business microlender. Since 1994, Opportunity Fund has received over **$84 million** in CRA motivated investments from banks which has allowed us to originate nearly **$500 million** in small business loans as of February, 2020 -- with more being originated every day and a dollar-for-dollar leverage ratio of about $3:$1 (three dollars lent for every dollar invested). Our research has shown that every dollar Opportunity Fund lends out to a small business generates approximately two dollars in additional annual economic activity in the form of downstream spending, tax revenues, and job creation. This means that, through Opportunity Fund alone, our CRA-funded lending activity has generated almost $1 billion in new, annual economic activity.

These impacts demonstrate the community development power of the CRA. We believe key aspects of the proposed rules would fundamentally undermine the intent and effectiveness of the CRA in uplifting underserved communities and small businesses. The CRA was created to combat the negative effects of redlining and must continue in its congressionally-mandated purpose of supporting LMI communities, which is needed more than ever due to both widening income inequality and our current health and economic crisis.

Small businesses should be prioritized, not redefined

Our first concern relates to how the NPR redefines a small business and a small business loan, in a manner that is out of touch with the needs of underserved entrepreneurs. Seventy-six percent of small business owners in America who seek financing are searching for loans of $250,000 or less,[1] yet the proposal would give banks CRA credit for business loans up to $2 million (versus the current $1 million). The proposed changes would also redefine a small business as one with $2 million in revenue, versus the current standard of $1 million. The proposal would further disincentivize the making of smaller loans by making total dollars lent the primary measure for CRA credit.

A Consumer Financial Protection Bureau report was published recently examining banking trends in small business lending from pre-Great Recession (2004-2007), through the Great Recession (2008-2009), and then through the post-Great Recession (2010-2017) period. The study revealed that, by 2017, small business lending from banks had not returned to pre-Great Recession levels and, in fact, <u>had only recovered to just half of the lending levels of 2004</u>.[2]

There is a lack of affordable, small dollar capital in the marketplace, and this NPR would give banks even less incentive to make the smaller loans that a majority of small business owners truly need. Fewer underserved small business owners would receive affordable loans -- loans that would propel economic opportunity in their communities.

The NPR is not considering local needs, which are often best addressed with smaller dollar financing for small businesses. For definitional purposes, we propose that a small business remain defined as one with less than $1 million in revenue. Additionally, small business loans should stay defined as loans of $1 million or less and should be the only small business loans to count for CRA credit. While an adjustment for inflation may be appropriate, doubling what counts as a small business or a small business loan is not.

Day-to-day bank operations should not be rewarded at the expense of LMI communities

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

[2] "Data Point: Small Business Lending and the Great Recession," Consumer Financial Protection Bureau. https://files.consumerfinance.gov/f/documents/cfpb_data-point_small-business-lending-great-recession.pdf

Our second concern relates to what counts towards CRA credit. The NPR provides banks with a newly expanded list of qualifying activities and definitions that are eligible anywhere in the country. The proposed "non-exhaustive list" of eligible activities now includes investments in infrastructure, transportation, Opportunity Zone investments, and even sports stadiums. Adopting these new qualifying activities would allow banks to meet their CRA obligations in many cases without actually engaging in impactful investments that directly benefit LMI communities and expand economic opportunities.

The expanded list of CRA-eligible activities include some of what banks *already* do in the ordinary course of business, thereby further diluting the effectiveness of CRA and distracting and disincentivizing bank investment away from high impact projects as intended in the law. We encourage regulators to reexamine the list of qualifying activities and only allow projects that are truly serving the specific needs of LMI communities to be CRA eligible.

Overly simplistic metrics incentivize fewer, bigger projects

A related concern regards reforms that are likely to divert attention from LMI communities currently served by bank branches. The NPR would make it easier for banks to engage in CRA-qualified activities outside of these areas. Currently, banks can engage in community development activities beyond their assessment areas only after satisfactorily serving their current areas. Under the NPR, there would be no such restriction, allowing banks to find the lowest-cost places around the country to engage in community development without first responding to needs in the LMI communities in which they do business.

Furthermore, the NPR proposes a 'one ratio' measure that consists of a bank's CRA activities in dollars divided by deposits. This ratio measure would likely encourage banks to find the largest and easiest deals anywhere in the country as opposed to focusing on local LMI needs that can often involve smaller and more complex financial structures.

Quantitative metrics should be supplemented with clear, qualitative standards to ensure that small-scale, high-impact community development activities are rewarded, along with a bank's responsiveness to local needs and priorities. Overly simplistic metrics incentivize fewer, bigger projects. CRA reform must include strong performance standards mandating banks to meet the needs of their local LMI communities before engaging in community development activity elsewhere in the country.

Banks can fail to serve LMI communities in most of their Assessment Areas and still get a passing CRA grade

Under the proposal, a bank cannot receive a Satisfactory or an Outstanding rating unless it also receives that rating in a "significant portion" of its assessment areas. The NPR proposes that 50% be the threshold used to determine a "significant" portion of a bank's assessment area. We believe that a bank should not be able to obtain a Satisfactory or Outstanding rating in a CRA exam if CRA activities meet the performance evaluation measures in only half of the bank's assessment areas.

Banks should be required to meet their CRA obligations in *all* of their assessment areas, not just 50% of them. Setting a threshold that allows banks to receive a Satisfactory or Outstanding rating while failing to meet the credit needs in any portion of their assessment areas would encourage banks to target their CRA activities to areas that are easiest to serve while directing fewer dollars to struggling LMI communities. We oppose establishing any threshold that allows banks to collect deposits in a community while simultaneously failing to respond to the credit needs of that community.

New deposit-based assessment area categories won't bring resources to LMI communities

The NPR also recommends the creation of a new type of assessment area to complement the existing "facility-based" assessment areas under current CRA regulations. Under the proposal, markets where a bank collects 5% of its deposits would become "deposit-based" assessment areas. This reform is aimed at addressing how the banking industry has evolved to include banks with no or limited brick and mortar presence. It is unlikely that the creation of "deposit-based" assessment areas will do enough to address the "CRA desert" problem facing rural and low income communities today, because communities with high concentrations of low income residents are unlikely to generate the level of bank deposits to trigger the creation of a new deposit-based assessment area. We encourage regulators to modernize assessment areas to meet the true needs of CRA deserts while rewarding banks for expanding brick and mortar financial services in LMI communities.

Double credit for CDFI activities reduces investments while still rewarding banks

The NPR acknowledges the valuable role of CDFIs by providing "double credit" for activities undertaken with CDFIs. However, when considering the context of the dollar volume ratio framework, the double credit is unlikely to incentivize a bank to choose a CDFI transaction over the many other options for higher dollar volume CRA-eligible activities. This may actually incentivize banks to significantly reduce the real dollar amounts invested in LMI communities while receiving the same amount of credit for the purposes of their CRA exam. We encourage regulators to not provide double credit for CDFI investments as the inverse consequences could well result in banks investing fewer actual dollars in CDFIs.

CRA reform needs to be grounded in data and built on consensus

Our final concern relates to the NPR process itself, both in terms of lack of evidence as well as lack of consensus between federal regulators. Any new policy proposal, and particularly a proposal of this magnitude, should be grounded in data and evidence. To our knowledge, the OCC and FDIC have not shared any evidence demonstrating the likely impact of these reforms on the type and scale of CRA activities. The Federal Reserve, on the other hand, conducted a detailed analysis of how their proposed CRA reform framework would impact CRA lending before and after.[3] The OCC and FDIC failed to do the same.

While the reforms seek to increase transparency and standardization across banks' CRA exams, this cannot be achieved without consensus with the Federal Reserve. Therefore, we urge you to place the proposed CRA rulemaking on hold until the OCC, FDIC, and the Federal Reserve come

[3] "Strengthening the Community Reinvestment Act by Staying True to Its Core Purpose," Governor Lael Brainard, The Federal Reserve.
https://www.federalreserve.gov/newsevents/speech/brainard20200108a.htm

together and present a common interagency proposal that is grounded in data, serves the original intent of the CRA, and demonstrates positive impact for underserved communities. This coordination is crucial to helping vulnerable communities grow and recover from times of crisis, like the COVID-19 pandemic.

If we can be of any assistance, please contact Gwendy Brown, Vice President of Research and Policy at gbrown@opportunityfund.org or Gilberto Soria Mendoza, Senior Policy Advocate, at gmendoza@opportunityfund.org.

Sincerely,

Luz Urrutia

Chief Executive Officer, Opportunity Fund