Housing Policy Council
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April 6, 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

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

Re: Community Reinvestment Act Regulations
Docket ID OCC-2018-0008; RIN 3065-AF22

Ladies and Gentlemen:

The Housing Policy Council[1] appreciates the opportunity to respond to the Office of the Comptroller of the Currency (OCC) and Federal Deposit Insurance Corporation's (FDIC) (together, the Agencies) proposed rule revising the Community Reinvestment Act (CRA) regulations (Proposed Rule or Proposal). HPC's members include mortgage lenders, servicers, and other mortgage market participants. Therefore, our comments focus on the application of CRA to residential mortgage products.

As discussed in detail below, while HPC supports the goals of the Agencies in modernizing the CRA regulations, we have concerns with the proposed uniform measures and calculations. Before finalizing these metrics, we ask the Agencies to conduct further analysis based on the collection and evaluation of additional data. We also have concerns regarding the recordkeeping requirements that would be imposed on depository institutions associated with these quantification measures and metrics.

HPC Supports the Goals of the Agencies in Modernizing the CRA

HPC applauds the goals of the Agencies to "strengthen the CRA regulatory framework to better achieve the underlying statutory purposes of encouraging banks to help serve their communities by making the framework more objective, transparent, consistent, and easy to understand."[2] HPC member companies strive to satisfy not only the letter, but also the spirit of CRA in meeting the needs of the communities in which they are chartered. As the Agencies recognize, the outdated nature of the CRA regulations, opacity in performance measurement, and inconsistent application of the rules across regulatory agencies creates a set of challenges that impede fulfillment of the CRA's intended purpose.

Given these challenges, HPC appreciates that the Agencies are reexamining the CRA regulations and exploring ways to update and improve the effectiveness and efficiency of these rules that have not been modified since 1995. In terms of increasing clarity, transparency, and consistency, we commend the Agencies' proposal to expand the types of activities that qualify for CRA credit and to establish a

[1] The Housing Policy Council (HPC) is a trade association comprised of the leading national mortgage lenders and servicers, mortgage and title insurers, and technology and data companies.
[2] *Community Reinvestment Act Regulations*, 85 Fed. Reg. 1204, 1206 (Jan. 9, 2020).

public process to manage and maintain this list. The ability to confirm whether an activity is eligible for CRA credit, before a bank commences such activity, and the illustrative list that will be regularly updated are significant improvements to the existing CRA framework.

While we are supportive and in agreement with the Agencies' goals in this rulemaking, we have concerns with elements of the proposal that we believe are worthy of additional consideration.

Specifically, the concept of an objective set of uniformly applied measures and calculations is appealing and yet, should be subjected to more extensive analysis, based on the collection and evaluation of additional data. This type of assessment would certainly be consistent with the core requirements of the Administrative Procedure Act (APA). Before finalizing certain provisions of this rulemaking, including, in particular, the CRA evaluation measure and the retail lending distribution tests, for reasons further discussed below, we request that the Agencies engage in additional fact-finding and analysis to ensure that the impact and consequences of any final rulemaking are fully understood.

As proposed, the impact of these measures is uncertain and, therefore, it is not clear that the new measure will fulfill the purpose of CRA in a manner that is more effective than the existing approach. In addition, as proposed, the uniform metrics may unintentionally favor or unduly punish a bank based on the unique business model of the institution, the particular geographies and communities served, and the distinct set of products and services offered. For example, a wholesale bank would be disadvantaged in its assessment simply because this type of institution does not offer mortgage loans and other types of consumer loans, but it would be subject to the metrics. Any revision to CRA must acknowledge and accommodate the various business models and profiles of banks.

The Proposed Rule Marginalizes Mortgage Loans to the Detriment of LMI Communities and Borrowers

The Focus on Dollar Amounts Discounts the Importance of Mortgage Loans

As constructed, the CRA evaluation measure and the underlying quantification methods marginalize home mortgages under CRA. The theory behind the proposed measure, to rely on a methodology that is objective and transparent, is sensible, but the focus on dollar amounts may create a disincentive for banks to produce consumer loans, including mortgage loans, for which they receive minimal credit.

The quantification method places emphasis on dollar volume over loan count, as it measures the dollar amount of any activity on a bank's balance sheet in comparison to the bank's retail domestic deposits. Given that small dollar loans are more likely for LMI borrowers, the measure gives less credit than an approach that also considers the number of loans. Additionally, as proposed, the CRA evaluation measure does not account for differences in high cost and low cost areas, as the prices for houses can differ greatly. Serving the LMI population in a safe and sound manner often requires a higher level of attention to consumers with nontraditional financial resources and more challenging credit profiles, which means that generating more small balance loans requires commitment to this business that a dollar volume measure could skew in favor of larger balance loans. Therefore, we are concerned that the focus on dollar amount could run counter to the intent of CRA.

While the distribution tests focus on the number of loans and other CRA activities (not dollar amount), those tests are performed for each assessment area; it is only the CRA evaluation measure that gauges the bank-level activities (and it also is performed for each assessment area). In other words, the significance of the CRA evaluation measure, and in turn dollar amounts of loans, may be disproportionate and skew the results in manner that would not accurately reflect a bank's efforts to meet the needs of its communities.

The Quantification Methods Dismiss or Discount Meaningful Activities

As proposed, the quantification method for the CRA evaluation measure is more limited than the existing methodology and may not provide appropriate credit for both mortgage origination and purchase, and the critical aggregation function provided by larger institutions, which enables banks as well as non-depository institutions the means to generate new funds to make more loans.

The quantification method is based on the length of time that a loan remains on a bank's balance sheet. Generally, the quantified amount of a loan for purposes of the proposed CRA evaluation measure is the average of the outstanding balance of the loan, as of the close of business on the last day of the month, for each month the loan is on-balance sheet. For loans sold within 90 days of origination, the quantified amount of the loan is 25 percent of the dollar value of the loan at origination. The Agencies state that the "CRA evaluation measures' focus on the value of on-balance sheet loans and investments would encourage stable commitments to communities and disincentivize churning of activities that may not provide long-term stability."[3]

We assume that the Agencies were not considering the implication of this approach as it applies to mortgage loans; whether a mortgage loan remains on the balance sheet of a bank has no impact on the extension of credit to nor long-term stability of a community. In fact, the ability of a bank, particularly smaller community banks, to sell loans to aggregators or directly to the government-sponsored enterprises provides important liquidity that provides additional credit to communities in need. Further, loan aggregation offers additional risk management across the financial system, as aggregators perform quality checks on loans and due diligence to assess the operational and financial capacity of their counterparties. In other words, aggregation enhances the soundness of the system and ensures critical cash flow. As such, aggregation is a necessary element of mortgage lending that supports the availability of credit to make CRA eligible loans.

The proposal does not provide evidence that would suggest that the aggregation and resale of mortgage loans is a problem that negatively affects communities. That said, to address a concern with this practice, HPC members stand ready to work with the Agencies to discuss and resolve issues in a meaningful manner. If the Agencies move forward with the CRA evaluation measure or any other measure that includes a quantification of CRA activity, HPC members encourage additional data gathering and analysis. The request for information (RFI) that the OCC issued concurrently with the Proposal suggests that the Agencies recognize the need for additional relevant data to evaluate the impact of the proposed changes to finalize the rulemaking.[4] For example, the Agencies could analyze HMDA data using the universal loan identifier to track the selling and purchasing of mortgage loans. Using this data, the Agencies can identify both positive and negative impacts on communities. Such analysis and evaluation should be subject to public input. With this analysis, the Agencies could reevaluate appropriate quantification metrics for mortgage loans.

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[3] 85 Fed. Reg. 1204, 1224.

[4] *Community Reinvestment Act Regulations; Request for Public Input*, 85 Fed. Reg. 1285 (Jan. 10, 2020).

If the Agencies proceed with the CRA evaluation measure, which we believe needs more analysis, we recommend that the Agencies adopt a different quantification method for loans, for example, the measurement could be the average loan size, or the dollar value of the loan at time of origination or purchase. While these alternatives need to be analyzed further, we believe they represent more appropriate measurements of the impact a bank's lending activity has on a community.

Retail Lending Distribution Tests Need Further Study and Refinement

We agree with the intent and purpose of the retail lending distribution tests set forth in the Proposal. We support the focus of the tests on the number of loans made to LMI borrowers (borrower distribution test) and in LMI areas (geographic distribution test), as such tests further the purposes of CRA. However, as detailed below, we suggest further study and refinement before such tests are finalized. We acknowledge that, in making any refinements to the distribution tests, consideration must be given to the impact on other aspects of the Proposal.

- First, these retail lending tests should be adjusted to include credit for loans purchased, not just loans originated. As discussed above, purchasing qualified loans is a vital activity to ensure sufficient capital is available for banks to engage in CRA lending. The retail distribution tests should acknowledge that activity, which would better align the proposed rule with the lending test under the existing CRA regulation.

- Second, we encourage the Agencies to retain the current practice of assessing the geographic distribution of mortgage loans. Providing mortgage credit in LMI communities provides a positive stable impact on communities. One key goal of CRA is to ensure adequate capital flows into LMI communities, and if mortgages are being made in LMI communities, wealth is being generated. CRA evaluations should recognize that and retain the measurement of geographic distribution of mortgage loans in measuring a bank's record of meeting the credit needs of its communities.

- Thirdly, we encourage the Agencies to conduct further analysis, with additional opportunity for public comment, before finalizing the thresholds for each retail lending distribution tests. At this point in time, it is difficult for any institution on its own to evaluate how the proposed thresholds compare with the existing methodology, nor whether such thresholds are reasonable and appropriate. The additional information collected under the OCC RFI for data may provide a good foundation for this type of evaluation. HPC would recommend that the collected data be "anonymized" and provided to the public for further evaluation.

- Finally, we recommend the Agencies consider whether a grading scale rather than a pass/fail assessment is more appropriate for the retail lending distribution tests. A grading scale likely would align well with the CRA evaluation metrics in the statute (outstanding, satisfactory, needs to improve, and substantial noncompliance).[5] Additional data and analysis would assist in this determination, and we ask the Agencies to conduct such research with an opportunity for public comment.

[5] 12 U.S.C. § 2906(b)(2).

The Recordkeeping Requirements under the Proposal Would Impose More Burdens than Benefits

The proposed recordkeeping associated with the metrics likely would create more burdens than benefits.

While the Proposal aligns CRA definitions with Call Report data fields, such alignment does not alleviate the recordkeeping burden that would be imposed.

Under the CRA evaluation test quantification methods, banks would have to separately track the monthly balance of every CRA qualifying loan, which does not align with the quarterly reporting timing of the Call Report. Using on-balance sheet data that must be collected at the end of each month and then averaged on an annual basis imposes unnecessary data collection and recordkeeping burdens on reporting institutions, As discussed above, if the Agencies move forward with the CRA evaluation measure, the on-balance sheet quantification method should be substantially revised (e.g., instead using the dollar amounts of loans at origination or purchase).

We ask the Agencies to maintain the existing definition of home mortgage loan that is tied to the definitions under the Home Mortgage Disclosure Act (HMDA)/Regulation C. Since loan level data is already required to be collected and reported under HMDA, such data should continue to be used for CRA evaluation purposes. This will help alleviate the recordkeeping burden by permitting banks to compile, maintain, and submit one set of data related to home mortgage loans that would comply with both HMDA and CRA.

The recordkeeping and data collection requirements that would be imposed as part of the metrics reinforce the fact that the Agencies must conduct further analysis prior to finalizing any metric-based system.

Thank you for considering these comments. HPC looks forward to working with the Agencies and the Federal Reserve Board on modernizing the CRA framework.

Yours Truly,

Edward J. DeMarco

Edward J. DeMarco
President
Housing Policy Council