HOUSING POLICY COUNCIL

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Legislative and Regulatory Activities Division
Office of the Comptroller of the Currency
400 7th Street SW, Suite 3E-218
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Re: Docket ID OCC-2018-0008: Reforming the Community Reinvestment Act Regulatory Framework

To Whom It May Concern:

The Housing Policy Council[1] (HPC) appreciates the opportunity to provide comments on the Office of the Comptroller of the Currency's (OCC) advanced notice of proposed rulemaking (ANPR) regarding the modernization of the regulatory framework implementing the Community Reinvestment Act (CRA). HPC's members include large mortgage lenders, services, and other mortgage market participants. Therefore, our comments focus on the application of CRA to residential mortgage products. Our comments are divided into two parts: (1) general comments on CRA modernization and (2) answers to specific questions posed in the ANPR.

General Comments

HPC is supportive of the effort to modernize the CRA regulatory framework.

HPC supports, and is encouraged by, the OCC's interest in providing greater clarity and consistency in the CRA regulatory framework. We agree that the regulatory framework implementing the CRA is in need of modernization to account for the changes in how banking is conducted today compared to 1977, when CRA was enacted. Additionally, we agree that there should be more clarity regarding what

[1] The Housing Policy Council (HPC) is a trade association comprised of 30 of the leading national mortgage lenders, servicers, mortgage insurers, and title and data companies. HPC advocates for the mortgage and housing marketplace interests of its members in legislative, regulatory, and judicial forums. Our interest is in the safety and soundness of the housing finance system, the equitable and consistent regulatory treatment of all market participants, and the promotion of lending practices that create sustainable home ownership opportunities leading to long-term wealth-building and community-building for families.

activities will receive CRA credit and consistency in the application of the CRA regulations and performance tests across the industry.

This effort requires interagency collaboration and should produce a consistent interagency framework of rules.

As the OCC undertakes this review, we urge the agency to continue to collaborate with the other federal prudential banking agencies. The prudential banking agencies have consistently implemented CRA through joint rulemakings, guidance statements, and frequently asked questions (Interagency Q&As). Continued collaboration is necessary to ensure a uniform application of the CRA regulations by all the federal banking agencies – as executed by the types of interpretive guidance mentioned above as well as supervisory engagement and enforcement activities. Consistent treatment not only serves as the underpinning for objective and fair regulatory consideration for all market participants, but also discourages regulatory arbitrage based upon an institution's charter. Therefore, any change to the CRA regulatory framework should be made jointly by all three prudential banking agencies.

The CRA regulatory framework must balance meeting the credit needs of the communities and the safety and soundness of the depository institutions.

As the OCC considers revisions to the CRA regulatory framework, we ask the agency to focus on the purpose of the CRA – to encourage depository institutions "to help meet the credit needs of the local communities in which they are chartered <u>consistent with the safe and sound operations</u> of such institutions."[2] HPC members are fully supportive of the purpose of the CRA and strive to meet and exceed the goals of the Act. At the same time, institutions must be cognizant of the safety and soundness of their operations when conducting CRA activities. For example, for safety and soundness reasons, many banks have stopped participating or significantly reduced their participation in the Federal Housing Administration (FHA) program. HUD Secretary Ben Carson and FHA Commissioner Brian Montgomery are working diligently to improve the FHA infrastructure, monitoring, and enforcement regime. HPC is supportive of that work and is actively engaged with FHA on these improvements. However, that work is ongoing and not yet complete, and until it is complete, many banks are reluctant to participate in the program. There have been reports of at least one instance in which an institution's CRA rating was downgraded in part due to the bank not participating in the FHA program.[3] If accurate, such a conclusion suggests that the CRA examiners disregarded the bank's legitimate safety and soundness considerations. We ask the OCC to ensure that the CRA regulatory framework and examinations balance an

[2] 12 U.S.C. § 2901(b) (emphasis added).
[3] https://www.americanbanker.com/news/third-federals-cra-rating-cut-on-shortage-of-low-income-mortgages.

institution's safety and soundness with its duty to meet the credit needs of its communities.

Comments on Specific Questions

Q7. How could an alternative method for evaluating CRA performance be applied, taking into account the following factors: bank business model, asset size, delivery channels, and branch structure; measures or criteria used to evaluate performance, including appropriate metrics; and consideration for qualifying activities that serve areas outside a bank's delineated assessment areas?

The HPC appreciates the OCC consideration of a more predictive and transparent method for evaluating an institution under the CRA. A metric-based approach may be a more efficient and effective way to perform CRA considerations. However, such an approach raises a number of complex questions that must be addressed. For example, how activities, such as community service hours, should be counted; the appropriate denominator for these metrics, which activities and products should be weighted, and whether and how activities within an assessment area are weighed differently from activities outside an assessment area. We urge the OCC to undertake a careful analysis of these and other complex questions. Additionally, the OCC should release the specifics of a metric-based framework to provide institutions adequate information to conduct their own internal analyses.

A metric-based framework should not create an additional layer in the CRA evaluation, but instead replace existing evaluation methods. If adopted, the metrics-based framework should retain the exiting five categories of CRA assessment (Large Bank Test, Intermediate Small Bank Test, Small Bank Test, Wholesale or Limited-Purpose Test, and CRA Strategic Plan) with goals tailored for each category.

HPC also believes that a one-size-fits-all approach for a metric framework may not be appropriate and encourages the OCC to consider tailoring metrics based on an institution's size and business model. Additionally, while we are encouraged and supportive of a quantitative approach to CRA consideration and evaluation, some aspects of CRA, including the Services Test, may not be conducive to such a quantitative approach. For activities that may best be evaluated under a qualitative framework, we ask the OCC, as well as the other agencies, to enhance and increase the clarity, consistency, and certainty on whether those activities will receive CRA credit.

Q13. How could the current approach to delineating assessment areas be updated to consider a bank's business operations, in addition to branches and deposit-taking ATMs, as well as more of the communities that banks serve, including where the bank has a concentration of deposits, lending, employees, depositors, or borrowers?

Residential mortgage lending reflects the evolution of consumer lending and the business of banking since the CRA was enacted. Today, most consumers choose not to visit a bank branch, but shop for and select a lender online and conduct most, if not all, of the transaction online and/or on the telephone. Additionally, nonbanks now originate half of all mortgages.[4] Given these shifts in borrower behavior, delivery channels and the market, many larger ?? banks have a nationwide digital footprint for mortgage lending, as well as other loan products. The CRA regulatory framework should account for this by providing CRA credit for loans to low- and moderate-income (LMI) consumers regardless of the location of the consumer. We believe this objective can be achieved without creating additional assessment areas for institutions. Recognizing these activities that help and support LMI consumers and geographies would support the spirit of the CRA, while modernizing its application to reflect the current mortgage market.

Q15. How should "community and economic development" be defined to better address community needs and to incentivize banks to lend, invest, and provide services that further the purposes of the CRA? For example, should certain categories of loans and investments be presumed to receive consideration, such as those that support projects, programs, or organizations with a mission, purpose, or intent of community or economic development; or, within such categories, only those that are defined as community or economic development by federal, state, local, or tribal governments?

We believe the CRA regulatory framework should be adjusted to explicitly provide appropriate credit for banks that devote resources to assisting individuals and businesses in designated disaster areas, opportunity zones, underserved areas, persistent poverty counties, and tribal lands, both when those areas are inside and outside of the bank's own assessment areas.

Under the current CRA regulatory framework, the definition of "community development" includes activities that revitalize or stabilize low- or moderate-income geographies, designated disaster areas, or distressed or underserved nonmetropolitan middle-income geographies. The Interagency Q&A states that if an institution has been responsive to the needs of its assessment area(s), then it will receive consideration for a community development activity in the broader statewide or regional area that includes the bank's assessment area(s) regardless of whether the activity benefits the assessment area.

In certain circumstances, the prudential banking agencies have allowed credit for activities in designated disaster areas. For example, in January 2018, the agencies issued guidance regarding CRA credit for community development activities in the U.S. Virgin Islands and Puerto Rico that were affected by Hurricane Maria. According to that

[4] https://www.brookings.edu/bpea-articles/liquidity-crises-in-the-mortgage-market/.

guidance, the agencies would give favorable consideration to community development activities that help to revitalize or stabilize the impact from the hurricane by financial institutions located anywhere in the nation, provided that they have been responsive to the community development needs and opportunities of their own assessment area(s). While it is clear that the agencies were being responsive to calls from the banking industry to expand CRA credit to better assist these areas, the limitation of an institution first being responsive to its own assessment area created an implausible path forward. A bank will only know if it is deemed to be responsive to its assessment areas' community development needs at the conclusion of its CRA examination. Therefore, at the time a bank is deciding how best to use its resources to assist in community development needs, the bank is unlikely to provide those resources to regions outside its assessment area(s).

A better approach that recognizes the underlying purpose of CRA and provides opportunities for depository institutions to help communities in need would be for a depository institution to receive CRA credit for any community development activities in designated disaster areas, without regard to the institution's assessment area(s). If the CRA activities in the abovementioned areas (designated disaster areas, opportunity zones, underserved areas, persistent poverty counties, and tribal lands) are not within a bank's assessment area, the bank should be given the option to choose the geographic location within its assessment area to receive CRA credit for the activity. The bank should be given the flexibility to allocate the credit at the assessment area, state, or multistate Metropolitan Statistical Area (MSA) level.

Q21. The current regulatory framework provides for CRA performance evaluations to consider home mortgage, small business, and small farm lending, and consumer lending in certain circumstances. Should these categories of lending continue to be considered as CRA-qualifying activities or should consideration in any or all of these categories be limited to loans to LMI borrowers and loans in LMI or other identified areas?

The Bureau of Consumer Financial Protection's (BCFP) changes to the scope of the types of loans subject to reporting under the Home Mortgage Disclosure Act (HMDA) have implications for CRA. Beginning January 1, 2018, an open-end line of credit secured by residential property (HELOC) is subject to HMDA. To conform to this change, the prudential banking agencies modified the definition of "home mortgage loan" in the CRA regulation to mean "a closed-end mortgage loan or an open-end line as these terms are defined [in HMDA Regulation C]." Prior to these changes, a depository institution had the option of reporting HELOCs for purposes of CRA consideration. The reporting of HELOCs for CRA is now mandatory. Given the nature of HELOCs, the result of this change is likely to reduce a bank's ratio of home mortgage loans to LMI borrowers and neighborhoods. HELOCS are not typically made to LMI borrowers, and therefore, the inclusion of HELOCs in the CRA analysis will distort the results. As a result of these concerns, the consideration of HELOCs should be optional, returning to the treatment they received prior to this year. If HELOCs are considered, they should be considered as a separate subcategory of home mortgage loans, and not combined together with closed-end mortgages for CRA purposes.

Yours truly,

Edward J. DeMarco

Edward J. DeMarco
President
Housing Policy Council