capital for healthy
families & communities

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

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

To Whom It May Concern:

The Low Income Investment Fund (LIIF) is pleased to respond to the joint notice of proposed rulemaking on Community Reinvestment Act (CRA) Regulations.

LIIF is a certified Community Development Financial Institution (CDFI) that invests capital to support healthy families and communities. Since 1984, LIIF has provided $2.7 billion in financing and technical assistance in 31 states, leveraging over $13.6 billion in additional private capital and serving more than 2.2 million people. LIIF's investments have created and preserved 82,000 units of affordable housing; 273,000 childcare spaces; 98,000 spaces in schools; and 37 million square feet of community facilities and commercial space. LIIF estimates that our work has created or maintained 182,000 jobs, and generated $70 billion in family income and societal benefits. LIIF is a national organization with offices in San Francisco, Los Angeles, New York City, Washington, D.C. and Atlanta.

CRA has motivated a substantial majority of the private sector capital that banks have made available to LIIF over our 36-year history. With support from banks, LIIF and our CDFI partners combine loans, grants and technical assistance to make possible high-impact projects in low-income communities that lack access to traditional bank financing because the transactions are perceived as too risky, costly or small. CRA has been transformational to the community development industry, encouraging successful public-private partnerships and elevating best practices in the delivery of critical community assets like affordable housing, community health centers, affordable grocery options, and much more.

The importance of CRA to the community development industry cannot be overstated, especially as we submit these comments in the midst of a global pandemic that has caused unprecedented disruptions to the economy and our collective way of life. As we have seen time and again, low- and moderate-income (LMI) people and communities will inevitably be the hardest hit by this current

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public health crisis. CRA has an important role to play in ensuring the resilience of LMI communities throughout this crisis and beyond.

In fact, we are already seeing the benefits that CRA-motivated investments can have in communities facing unprecedented challenges from COVID-19. The Lafayette Family YMCA in Lafayette, Indiana has transitioned to operate as a Critical Care Center during the COVID-19 crisis and is using their child care capacity for employees of local health care providers. They are also considering additional support efforts, including potentially converting their gymnasium to a dorm for doctors and nurses working round the clock or a second-tier hospital as an alternative to tents outside existing hospital facilities. This incredible example is possible because LIIF and our bank partners financed the renovation and expansion of this facility in 2017. LIIF provided a $4.25 million loan and a $7 million New Markets Tax Credit allocation as part of the $28.7 million project.

The benefits of community development projects have always been clear, but this example illustrates the extent to which *all* of society benefits from the work that CDFIs and our bank partners can achieve through our community development investments. CRA played a critical role in supporting the entire ecosystem that made the Lafayette Family YMCA possible, including the strength of the New Markets Tax Credit program and the capacity of CDFIs to support this work. As we consider changes to CRA regulations offered in the proposed rule, LIIF remains strongly committed to one principle above all others: any changes to this vital community development tool should, at a minimum, seek to do no harm.

Unfortunately, the proposed rule presents serious threats to the future of community development finance.

- The agencies have signaled their desire to increase investment levels in LMI communities, yet banks will now be eligible to receive CRA credit for activities that they may have already completed in the normal course of business, such as funding a general obligation bond for a road.
- The agencies would remove any obligation for a bank to engage in community development equity investments.
- The agencies would provide double credit for certain community development activities, including support for CDFIs, but it is unclear if the multiplier is sufficient to incent continued participation in these activities. And given that the 2 percent threshold of community development essentially creates a cap on community development activity, banks that do participate in these activities may ultimately reduce the volume of investments undertaken by half.
- The agencies would provide full CRA credit for activities that do not have a primary benefit to LMI people and places.
- The agencies have suggested that a bank would be eligible to pass it's CRA exam even it had not adequately served half of its assessment areas.

These changes are a dangerous dilution of the law's intent. **LIIF does not support the direction proposed in the agencies' notice of proposed rulemaking**. We have serious concerns that the proposed changes could not only reduce the overall amount of community development activity completed by CRA-motivated banks, but also dilute the *impact* of the community development efforts that banks may continue to support. At a time when fewer Americans can afford to rent or own a home and disinvested communities fall further behind on measures of education, health and employment, any changes to CRA that intentionally or unintentionally reduce impactful community development activities should be immediately halted.

We remain committed to working with all three regulators to reach consensus on a productive and effective CRA regulatory framework. We offer comments below on our main concerns with the proposed changes and we share our recommendation for the creation of a separate, fully-rated community development test that more appropriately reflects the challenges and opportunities of providing these investments for communities.

COMMENTS

Evaluation Measure

LIIF recognizes the desire to make CRA evaluations more objective, but we do not believe the proposed evaluation measure is an appropriate way to accomplish this goal. First and most immediate is the concern that stakeholders do not have adequate data to determine whether the proposed thresholds – 11 percent and 6 percent for Outstanding and Satisfactory ratings – are appropriately calibrated. Further, the agencies' acknowledgement that the thresholds will need to be periodically updated to reflect changes in the economic cycle raises concerns about the stability and practicality of this approach. Any modifications to the thresholds will lag real-time economic changes, presenting both a regulatory burden for the agencies and safety and soundness implications for financial institutions and communities.

This concern is similarly true for the 2 percent community development threshold, which creates a pass-fail metric for a critical component of community reinvestment. It is difficult for the industry to adequately evaluate how the proposed 2 percent threshold would compare to current investment levels. Basing our feedback on a full analysis of the data is important to ensure community development activities continue to receive investment commensurate with existing investor demand, as well as to determine how additional proposed changes might interact with the 2 percent threshold. For instance, the proposal to provide a double credit multiplier for community development activities is well-intentioned but could have the unintended consequence of reducing community development activity if considered in conjunction with the 2 percent threshold. Evaluating these complex but critical implications of the proposed changes requires full data.

Our second but equally important concern is that the structure of the evaluation measure could have negative impacts on the community development programs and services that communities rely on. Considering community development activities alongside retail activities in the numerator of the CRA evaluation measure threatens to skew incentives for banks to engage in the largest, quickest community development activities without regard for the impact of the activity on the ground. Retail and community development activities have varying levels of impact in communities and unique financing challenges that make it infeasible to directly compare the two. For instance, many community development transactions are deeply challenged by any number of factors, including scale, capacity of the borrower, complexity of aligning different financing sources, or local real estate market conditions. LIIF and other CDFIs seek to fill these inefficient gaps in the market and facilitate critical community development services that would not move forward 'but for' the financial and technical assistance we provide.

Proposing to evaluate retail and community development activities together in the numerator of the evaluation measure undermines community development activities at a time when these resources could not be more essential for communities across the country. Particularly vulnerable within a CRA evaluation framework centered on deal size and velocity are the growing edges of the community development movement – which remain in an early time and subsidy-intensive phase. Disrupting the pipeline of innovative projects closes off emerging frontiers in community development, undermining CDFIs' successful function as a bridge between communities and the financial markets.

Examples

- LIIF was a pioneer and remains and industry leader in the early childhood education (ECE) facilities financing space, having supported nearly 300,000 slots. Today, as the co-chair of the National Children's Facilities Network, LIIF has joined other CDFIs and broader coalitions of early childhood advocates and policy thought leaders to focus on reaching scale in this space given the evidence that early childhood interventions generate life-long benefits. But the substantial organizational capacity and operating revenue challenges faced by childcare providers is requiring LIIF and other CDFIs to dedicate heavily subsidized financial support and significant technical assistance to expand the sector. We are deploying every resource at our disposal simply to ensure that existing family and center-based childcare facilities can stay afloat and reopen in the wake of the COVID-19 pandemic. Without the prospect of receiving CRA credit beyond dollar volume, banks are less likely to invest in these early-stage ventures that are smaller-scale and require more intensive capacity-building and flexible funding streams.

- Two decades ago, permanent supportive housing and charter schools were relatively new interventions. Even established CDFIs like LIIF were deeply challenged by the complexity of underwriting:

    - housing projects whose financial viability hinged on reliable, effective supportive services funded by unfamiliar public sector systems with different timelines and incentives; or
    - loans secured by a potentially illiquid asset (a school) to borrowers – individual charter school operators and management organizations (CMOs) – with far less real estate experience than our typical partners and short-term charters subject to renewal based on performance.

  It seemed unlikely at the time, when small deals moved forward fitfully and with much effort, that CRA-driven bank financing for these projects would ever become commonplace. Yet LIIF alone has now invested over $255 million to support over 11,000 permanent supportive housing units, generating an estimated $7.7 billion in healthcare savings to the crisis-driven systems that would otherwise have served the formerly homeless. LIIF also now chairs the Charter School Lenders Coalition, a network of CDFIs that have collectively invested over $3.29 billion to support over 800 schools with 335,000 seats.[1]

Finally, LIIF is greatly opposed to the treatment of performance context in the proposed changes. Properly assessing a bank's community development activities requires a prior understanding of community needs and opportunities, as well as how the bank uses its capacities to respond to them within its competitive context. Many banks make the effort to understand and effectively address community needs and deserve additional recognition for fulfilling the true spirit of CRA. Performance context is a critical evaluation tool, but the proposed rule suggests that it will only be used to justify a bank's inadequate results.

In the interest of evidence-based policymaking, LIIF strongly urges the agencies to publish the full data and analysis that justified the development of the proposed thresholds. This should coincide with another public

[1] Annie Donovan, 2008. "Charter school facilities finance: How CDFIs created the market, and how to stimulate future growth," Community Development Investment Center Working Paper 2008-02, Federal Reserve Bank of San Francisco.

comment period prior to implementing any such thresholds. We also urge the agencies to rethink the CRA evaluation measure, specifically the treatment of community development under the proposal. We have provided a robust outline of our recommendations for community development in the Recommendations section of the letter.

Eligible Activities

LIIF supports the agencies providing a public list of CRA eligible activities to increase the clarity and certainty for banks and other stakeholders to make informed investment decisions. We recommend that the agencies include neighborhood stabilization and revitalization on the list of eligible community development activities since neighborhood stabilization and revitalization – including grocery stores – are among the most basic community development activities and should remain eligible for CRA credit. LIIF also recommends that the agencies provide only partial credit for activities where LMI people and places receive the minority of the benefit, and we oppose any credit for activities where LMI people and places receive less than 20 percent of the benefit. We would, however, support CRA credit for rental housing undertaken in conjunction with an explicit government policy for LMI benefit, provided that LMI residents occupy at least 20 percent of the units.

Although we support the creation of a list of qualifying activities, it is also important to acknowledge that just because an activity is on a list does not mean it will be seen as an attractive investment option. This is particularly relevant given the proposal's expansion of what is considered an eligible community development activity. We are especially concerned that including mortgage-backed securities (MBS) as an eligible community development activity could crowd out more impactful community development activities. MBS are a relatively simple and liquid investment that banks can complete in large quantities. Considering that the proposed changes would essentially cap community development activities at the 2 percent threshold, it is possible that MBS could count for a significant portion of a bank's 2 percent community development requirement. This would come at the expense of more impactful community activities, like the Low Income Housing Tax Credit, New Markets Tax Credit, and support for CDFIs, which all require more time and resources than MBS but have significantly higher impact on the ground. While MBS may have been an appropriate activity under the investment test, we feel strongly that MBS should not be considered a community development activity.

The proposed list also fails to distinguish between debt and equity community development products, which are distinct and should be evaluated separately. The current investment test has been a significant motivating force for investments in some of the nation's most successful and impactful community development equity products, like the Low Income Housing Tax Credit and New Markets Tax Credit. CRA modernization should only seek to strengthen these programs, yet the proposed changes would allow a bank to pass its CRA exam without completing any equity investments. Even the proposed multiplier for certain activities, including community development equity investments, is unlikely to sufficiently incent banks to engage in these more complex, illiquid activities. And as noted above, the 2 percent threshold creates a cap on community development activity, so to the extent that banks do participate in equity investments the multiplier may ultimately reduce the volume of investments undertaken.

LIIF is also concerned that the new evaluation system would consider the number of months a loan is held on a bank's balance sheet rather than the origination of new loans. Once a bank attains its targeted amount of balance sheet holdings, it can reduce its new lending and investment activity to what is needed to replace run-off. This approach will have serious consequences on many critical parts of the community development industry, including construction lending, Low Income Housing Tax Credits, New Markets Tax Credits, and more financing tools that could see a lull in demand for new originations as banks hold these products on their balance sheets. The balance sheet measure also has immediate threats for CDFIs because it could disqualify lending commitments from receiving CRA credit, which could lead lenders to reduce their commitments to CDFIs. And as existing commitments mature, they are at risk of not being replaced or renewed, which could curtail CDFIs' ability to lend. More broadly, the result will be less new access to new capital for LMI people and places.

Geography

Regulations stipulating where banks have CRA obligations is particularly critical to 1) uphold the statutory obligation for banks to reinvest in the communities where they take deposits, and 2) ensure capital is not being artificially concentrated in a few geographies with favorable banking laws. Given the technological shifts in the financial services industry over the last couple of decades and the ensuing mismatch between where banks do business and where banks have assessment areas, LIIF is focused on ensuring that any changes to CRA regulations are flexible enough to account for continued shifts in technology and geography.

One of the main factors that needs to be carefully considered is the trend of bank branches closing. Both urban and rural counties experienced a 7 percent decline in bank branches between 2012 and 2017, representing approximately 7,000 closed bank branches.[2] While branch closures affect customers across geographies, rural areas are disproportionately impacted because they tend to have more remote populations that cover larger areas; when a branch closes in a rural area, residents are left with longer distances – and often insufficient or no public transportation – to reach the next available branch location. And according to analysis from S&P Global Market Intelligence, bank branches have closed in majority-black communities at a higher rate than other communities since 2010, raising additional concerns about access to credit and financial services across historically underserved populations.[3]

Given the obvious implications that continued bank branch closures will have on LMI communities, we urge the agencies to provide banks greater flexibility to receive credit for community development activities nationally. The need for community development products and services does not always align with readily identifiable or financeable opportunities in every assessment area, which creates inefficiencies for all stakeholders involved. For instance, we often experience geographic constraints when raising capital for our Loan Funds that limits our ability to meet the need on the ground. Providing more geographic flexibility to meet community development obligations would address a lot of the geographic misalignment in current CRA regulations.

We are pleased to see the OCC and FDIC attempt to alleviate the oversaturation of CRA-motivated investments in certain places with a large concentration of bank headquarters by creating new deposit-based assessment areas where banks receive more than five percent of their deposits. However, we are concerned about the potentially *new* concentration of capital these deposit-based assessment areas could create given that most banks will have deposits concentrated in large urban areas like New York City, Los Angeles, and the San Francisco Bay Area. While these communities have their own challenges and needs for investment, this proposal does not address the urgent need for capital in areas that have experienced serious disinvestment, like rural areas, persistent poverty counties and credit deserts. We are pleased that the OCC and FDIC have shared a stated goal of increasing investment in these communities, but we remain

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[2] Board of Governors of the Federal Reserve System, November 2019. "Perspectives from Main Street: Bank Branch Access in Rural Communities," https://www.federalreserve.gov/publications/files/bank-branch-access-in-rural-communities.pdf.
[3] S&P Global Market Intelligence, July 2019. "Bank branch closures take greatest toll on majority-black areas," https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/52872925.

concerned that the proposed changes may unintentionally heighten the existing inefficiencies in CRA that have already left many of these communities behind.

Finally, LIIF is greatly concerned by the potential for banks to receive a passing rating even if they only meet the credit needs in 50 percent of their assessment areas. While we understand that the intent of this proposal was not to condone banks ignoring the credit needs in half of their assessment areas, we do fear that this could be the practical outcome of such a proposal. LIIF strongly recommends that banks should be required to meet the credit needs in the vast majority of their assessment areas – at least 80 percent – in order to achieve a passing rating.

Data & Reporting

The proposed changes to a more quantitative evaluation system will have significant impacts across multiple industries and should be approached with considerable care. We reiterate our concern that the absence of sufficient data in the proposed rule limits stakeholders' ability to evaluate the numerous proposed thresholds and metrics. This should give the agencies' pause in their efforts to implement a new system.

LIIF is also concerned by the increase in compliance costs that will implicitly be involved in implementing the proposed changes. As compliance costs associated with CRA increase for banks, we worry that their overall investments will decline. This is contrary to the agencies' stated goal of reducing the burden on financial institutions and increasing investments in communities.

RECOMMENDATIONS

LIIF does not believe that the proposed approach will work for communities, banks, CDFIs, advocates, or any other CRA stakeholder. The CRA evaluation measure is a fraught proposal that does not appropriately account for the variations in communities, banks, financial products, and economic cycles. As indicated throughout our comments, we strongly urge the agencies to delay the rulemaking process until appropriate data is available for public evaluation and comment. However, recognizing that the agencies may be committed to moving forward with this approach, LIIF has worked with our partners to identify an approach that may mitigate some of the most devastating consequences on the community development sector.

LIIF recommends that the agencies create a separate, fully rated community development test that a bank would need to pass in each of its assessment areas and at the bank-level. The community development test would be a third test in addition to the proposed CRA evaluation measure and the retail lending distribution test. The community development test would:

- **Include all rating categories (outstanding, high satisfactory, satisfactory, low satisfactory, needs to improve, substantial noncompliance) rather than a pass-fail test.** This would provide incentives for more than minimally acceptable performance. (For a bank's final rating, we recognize that the statute does not permit distinguishing between high and low satisfactory performance).
- **Include a strong emphasis on performance context in addition to qualitative and quantitative evaluations.** This should include existing language on responsiveness to local needs, innovativeness, complexity and leadership. It may be possible to quantify some of these elements – for example, a transaction with more than three or four sources of financing might be deemed "complex" – but some judgment should remain integral to evaluating community development properly.

- **Evaluate new loans and investments, as well as activity retained from prior exam periods.** This approach would recognize the value of longer-term community development lending and investing while still prioritizing new activity.
- **Require both debt and equity community development activities in order to receive a passing rating.** This is in place of the proposed multiplier, which is not sufficient to incent investment in critical community development programs. Recognizing that opportunities for community development equity investments are not always readily available or easy to identify, we recommend a smaller equity requirement at the assessment area level – such as 20 percent – and a larger percentage at the bank level – such as 50 percent.

Eligible Activities

Only impactful activities that meet CRA's primary purpose should be eligible community development activities.

- Community development equity investments, affordable housing loans, and activities supporting CDFIs should automatically count for CRA credit on the community development test.
- Activities that only partially benefit LMI people or geographies should receive pro-rata credit and not full credit.
- Mortgage-backed securities should not count as an eligible community development activity but should remain an option on the retail lending test.
- Qualified opportunity funds should only receive CRA credit if the activity financed is an eligible community development activity. The amount of CRA credit should count only to the extent there is an LMI benefit.
- Letters of credit should count for eligible activities based on the financing amount covered.
- Neighborhood stabilization and revitalization should qualify as eligible community development activities.
- Only partial credit should be provided for activities where LMI people and places receive the minority of the benefit, and no credit should be provided for activities where LMI people and places receive less than 20 percent of the benefit. However, CRA credit for rental housing undertaken in conjunction with an explicit government policy for LMI benefit should count, provided that LMI residents occupy at least 20 percent of the units.

Geography

Given the unique community development financing opportunities and challenges across markets, as well as the disperse need for community development resources, banks should receive additional geographic flexibility to meet their community development obligations.

- **Assessment Areas**: Banks should receive CRA credit for eligible community development activities conducted in any state where a bank has at least one assessment area. This would create state-wide assessment areas that would allow banks greater flexibility to identify impactful community development opportunities in areas of a state where they otherwise might not have considered.
- **Bank-Level**: Banks should receive CRA credit counting towards their bank-level rating for eligible community development activities conducted nationally. This would provide significantly more flexibility for CDFIs like LIIF to raise capital that can be deployed based on need rather than geography.

Evaluation

The proposed community development test provides increased motivation to perform as well as possible because excellent performance on one test could compensate for weak performance on another test. This is in contrast to the proposed structure of the CRA evaluation measure and retail lending test, which would create unnecessary cliff effects by requiring banks to pass each of several measures. These rigid performance thresholds do not align with the variation in conditions, opportunities and circumstances among assessment areas.

CONCLUDING COMMENTS

CRA is foundational to the entire community development ecosystem. Any changes to this critical tool should at a minimum seek to do no harm, and ideally seek to strengthen our collective ability to deliver impactful products and services to communities in need. The proposed changes instead offer a system that would fundamentally harm the entire community development ecosystem. LIIF opposes the rule as proposed and urges the agencies to re-publish a proposed rule for further public comment prior to proceeding with a final rule.

Thank you for your consideration of our comments. Please contact me at dnissenbaum@liifund.org with any questions or comments.

Sincerely,

Daniel A. Nissenbaum
CEO
Low Income Investment Fund