MORTGAGE BANKERS ASSOCIATION

November 16, 2018

Joseph M. Otting
Comptroller of the Currency
Office of the Comptroller of the Currency
400 7th Street, SW
Washington, DC 20219

RE: Reforming the Community Reinvestment Act Regulatory Framework [Docket ID OCC-2018-0008]

Dear Comptroller Otting:

The Mortgage Bankers Association (MBA)[1] appreciates the opportunity to comment on the advance notice of proposed rulemaking (ANPR)[2] issued by the Office of the Comptroller of the Currency (OCC) to improve upon the regulatory framework implementing the Community Reinvestment Act (CRA).

The CRA, which was enacted in 1977 to encourage and incentivize banks to invest in low- to moderate-income communities, has been subsequently amended several times—in 1989, 1991, 1994 and 1999. The federal banking agencies first promulgated regulations to implement the CRA in 1978, and then amended these regulations several times—most significantly in 1995 and 2005—to ensure that its implementation continued to reflect the intent of Congress. Further amendments were made by the federal banking agencies in 2010, 2013 and 2016 through informal published guidance. These various modifications to the CRA framework have largely focused on the process by which bank CRA ratings are calculated, reported, and used.

The ANPR recognizes the broad consensus that, at a higher level, the CRA framework may be in need of a more fundamental recalibration to reflect the significant changes in

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[1] The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 280,000 people in virtually every community in the country. Headquartered in Washington, DC, the association works to ensure the continued strength of the nation's residential and commercial real estate markets; to expand homeownership; and to extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of over 2,300 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, REITs, Wall Street conduits, life insurance companies, and others in the mortgage lending field. For additional information, visit MBA's website: www.mba.org.

[2] 83 FR 45053, "Reforming the Community Reinvestment Act Regulatory Framework," September 5, 2018. Available at: https://www.federalregister.gov/documents/2018/09/05/2018-19169/reforming-the-community-reinvestment-act-regulatory-framework.

the banking industry—changes that encompass both the ways that banks undertake business operations and the ways that consumers utilize banking services. In effect, the ANPR serves as the first step towards a comprehensive modernization of the regulations that have been adjusted in more modest ways over the past forty years.

Fundamentally, the CRA represents an affirmative responsibility of private entities to serve a diverse population of consumers in exchange for access to certain public benefits, such as federal deposit insurance. Conversely, one of the significant consequences for failing to meet CRA requirements is a limitation on the ability of an institution to grow—and thereby engage in additional publicly-supported activity—until it meets this responsibility to its community to the satisfaction of its regulators.[3]

In order to adequately meet its responsibility to its community under the CRA, a bank must devote resources—investment dollars, extensions of credit, education and information, and a significant amount of time and effort—in a manner that can reasonably be expected to improve outcomes for residents of that community. To ensure that a bank is complying with its responsibilities, the CRA regulatory framework establishes processes by which to assess and evaluate the bank's performance.

A central goal of reforming or modernizing these processes should be to improve the ability of banks to meet the needs of their communities under the CRA. At the same time, any changes to the existing framework should ensure that the rules and regulations governing the processes are not unduly onerous, burdensome or confusing—resulting in non-effective or non-functional rules that make it difficult for banks to comply and difficult for regulators to implement. Thus, a reformed regulatory framework should largely focus on improved compliance processes for banks, with the major components addressing certainty in the administration of the rules by regulators and greater flexibility in the rules governing the delivery of services to the community. These components—compliance certainty and flexibility in the delivery of services—should be developed in a manner that encourages, and in fact facilitates, innovation by banks, as such innovation would certainly inure to the benefit of the communities they serve.

Simply put, a reformed regulatory framework that incorporates appropriate process improvements can and should lead to better outcomes for the communities that the CRA was designed to serve.

[3] 12 CFR § 225.84.

REGULATORY OBJECTIVES

Consistent with the legal requirement that insured depository institutions meet the convenience and needs of the communities they serve,[4] the purpose of the CRA is "to encourage such institutions to help meet the credit needs of the local communities in which they are chartered consistent with the safe and sound operation of such institutions."[5]

MBA supports the OCC's objective of transforming and modernizing the CRA regulations "to help regulated financial institutions (banks) more effectively serve the convenience and needs of their communities by (1) encouraging more lending, investment and activity where it is needed most; (2) evaluating CRA activities more consistently; and (3) providing greater clarity regarding CRA-qualifying activities."[6]

MBA strongly believes that the key to achieving these outlined goals and objectives is to pursue an approach by which the process of banks developing their community reinvestment strategies—and complying with all applicable requirements—actually encourages more effective and innovative reinvestment outcomes. Three pillars of such an approach are:

- Compliance transparency and certainty;
- Flexibility in identifying assessment areas; and
- Flexibility in the range of activities that can receive credit.

Compliance transparency and certainty[7]

While a very high proportion of banking organizations across the country have consistently achieved a CRA rating of Satisfactory or better, the ratings process is marked by uncertainty and a lack of transparency. Banks of varying sizes and complexity often struggle to understand exactly how their CRA activities are evaluated. An improved CRA process would feature clearer expectations, better-understood paths for innovation, and ratings produced by a more transparent methodology.

[4] 12 U.S.C. § 1816(6) (Factors to be considered [in connection with an application for federal deposit insurance]). See also 12 U.S.C. § 1815 (Deposit insurance).
[5] 12 U.S.C. § 2901(b) (Congressional findings and statement of purpose [community reinvestment]).
[6] 83 FR 45053, "Reforming the Community Reinvestment Act Regulatory Framework," September 5, 2018. Available at: https://www.federalregister.gov/documents/2018/09/05/2018-19169/reforming-the-community-reinvestment-act-regulatory-framework.
[7] See ANPR questions 1-3.

Flexibility in identifying assessment areas[8]

The CRA was enacted in an environment of brick-and-mortar branch banking. While the branch-banking model remains in place, it is increasingly being supplemented—and in some cases displaced—by changes in technology and consumer preferences. As a result, the notion of "community" within the context of CRA needs to be revisited to provide sufficient flexibility to conform assessment areas to new circumstances. Any regulatory changes that follow should not be tailored only to the ways that banking services are delivered today, but should also recognize that these services are likely to continue to change over time. In effect, sufficient flexibility in terms of identifying assessment areas would allow the CRA regulations to better achieve their purposes and be more dynamic over time.

Flexibility in the range of activities that can receive credit[9]

Just as the notion of "community" should be viewed more flexibly and dynamically, so should the evolving needs of that community. While originating mortgages for single-family homes produces benefits for the community, activities such as commercial and multifamily lending and consumer education, among others, can also have catalytic impacts on the community. Moreover, the most pressing needs that can be addressed through bank community reinvestment activities may, and likely do, vary across communities (and over time). Regulations implementing the CRA should therefore be inclusive in terms of acceptable activities, and should allow for innovation so that banks may develop new activities in conjunction with other representatives of their communities.

RECOMMENDATIONS

To achieve the OCC's regulatory objectives, a reformed CRA regulatory framework must include the following three elements:

1) Allow for definitions of assessment areas to reflect the more modern ways in which consumers engage with banks, including online banking.

2) Specify a broad menu of activities for which banks are eligible to receive CRA credit, including commercial and multifamily lending, which can have catalytic impacts. Such a menu could leverage other government programs aimed at similar objectives, for example, U.S. Department of Housing and Urban Development programs aimed at community development[10] or activities under

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[8] See ANPR questions 4, 7-14.
[9] See ANPR questions 7-12, 15-28.
[10] See, for example, the U.S. Department of Housing and Urban Development description of "community development activities": "Community development activities build stronger and more resilient communities through an ongoing process of identifying and addressing needs, assets, and priority investments. Community development activities may support infrastructure, economic development projects, installation of public facilities, community

the recently-established Opportunity Zone Tax Credit program, while preserving the treatment of activities that have proven to be highly successful, such as Low-Income Housing Tax Credit activities.

3) Clarify the standards that examiners will apply when assessing banks' CRA activities—reducing reliance on less transparent methodologies that are poorly understood across the industry.

Leverage the strategic plan process

As a complement to changes in regulations that would specify expressly permitted activities for the purposes of CRA, the federal banking regulators should also enable banks to develop strategic plans to guide their community reinvestment activities, allowing them to innovate beyond the range of what is explicitly specified in the regulations. Such plans would be most useful for situations in which banks seek to identify their applicable assessment areas and/or provide services to the community in ways that are innovative or unique to their particular circumstances.

This approach would allow CRA implementation to evolve alongside changes in technology and consumer preferences without the need for frequent updates to the corresponding regulations. In order for this approach to be successful, examiners reviewing proposed strategic plans should evaluate such plans in an open-minded manner. Examiners should consider banks' strategic plans in the context of the broad purpose of CRA, rather than simply through the lens of traditional or historical means of compliance. Review and approval of (or non-objection to) strategic plans should occur within a reasonable timeframe, and examiners should then evaluate banks against the targets identified in the strategic plan. Such an approach would increase compliance certainty while also fostering innovation and flexibility—thereby furthering the regulatory objectives set forth above. Over time, the banking agencies could codify proven, effective CRA activities in the regulations.

Improve evaluation process and timing[11]

In recent years, the lag time between the examiner review of a bank's CRA performance and the receipt of the results of this review has proven to be problematic. Some banks have to wait for six months or more before receiving feedback on their CRA performance. This slow turnaround time, together with a lack of transparency in the evaluation process, impedes the ability of a bank to address or mitigate infractions identified in the reviews, as well as to prepare for upcoming reviews.

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centers, housing rehabilitation, public services, clearance/acquisition, microenterprise assistance, code enforcement, homeowner assistance and many other identified needs." Available at: https://www.hud.gov/program_offices/comm_planning/communitydevelopment.

[11] See ANPR questions 1-3.

Significant increases in regulatory clarity, via changes to both the regulations and the acceptance of strategic plans, could be the foundation for broad-based improvements in the evaluation process. For example, increased clarity should simplify examiners' reviews, as the applicable performance standards would be found in the regulations or embedded in the approved strategic plans. More simplified reviews should yield faster turnaround times, allowing for a more dynamic process that is especially useful when there are examiner concerns or infractions that banks seek to mitigate.

The resulting clarity in performance standards could enable the OCC and other federal banking agencies to explore the use of reporting portals or other technological means to modernize, standardize and make more efficient the evaluation process. Such tools could facilitate a shorter reporting cycle,[12] as well as reduce costs for both banks and examiners. They could also provide additional functionality, such as real-time tracking of progress that could be used to transparently and proactively prevent avoidable adverse CRA ratings.

Consider transition issues

While the approaches described above should lead to a vastly improved CRA regulatory framework, MBA also recognizes that any change can have disruptive effects if not implemented in a prudent manner. Banks that are subject to CRA requirements have, in most cases, spent considerable time and resources developing their current community reinvestment strategies and compliance systems. As such, the OCC should undertake any regulatory changes over a sufficient time period to reasonably allow for banks to update their strategies as necessary, as well as to ensure that they are compliant with any new requirements.

To that end, the OCC may wish to explore options to effectively allow for grandfathering of certain ongoing CRA activities and compliance processes for banks with consistent ratings of Satisfactory or higher. Under such a system, any changes to the CRA framework would incorporate a "do no harm" provision that ensures high-performing institutions are not dissuaded from pursuing strategies that have proven effective, provided that these institutions continue to fully comply with the spirit of the reformed regulations.

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MBA appreciates the OCC's efforts to reform and modernize the CRA regulatory framework in order to recognize the changes that have occurred in the banking industry over time, and thus make the regulations more reflective of the original intent of the legislation. We share the OCC's objectives of making community reinvestment more

[12] See ANPR questions 29-31.

effectively targeted and efficiently delivered based on the changing needs of communities across the country, particularly those that are historically underserved.

Should you have questions or wish to discuss these comments, please contact Fran Mordi, Associate Vice President, Residential Policy, at (202) 557-2860 and fmordi@mba.org or Sharon Walker, Associate Vice President, Commercial/Multifamily Policy, at (202) 557-2747 and swalker@mba.org.

Sincerely,

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