

October 2017

## Improving Implementation of the Community Reinvestment Act

### 1. In general

- a. **We affirm the importance of CRA** and banks' obligation to serve low- or moderate-income (LMI) people and communities.
- b. **More clear, consistent, simple, and timely policy guidance** is needed so CRA can serve communities better with less administrative burden on banks and agencies' examiners. *In particular, communities will receive more financing if a bank is reasonably confident when it makes a financing decision that it will receive positive CRA consideration.*
- c. **The current regulation can accommodate many important improvements.**

### 2. Community Development (CD) activities outside assessment areas (AAs) should receive full positive consideration if the bank has been responsive to its AAs' CD needs and opportunities. *The following changes would significantly facilitate CD financing, including for rural and smaller metropolitan areas, as well as through nationwide and regional financing intermediaries, including CDFIs.*

- a. **Broader statewide and regional areas (BSRAs)** should be more clearly defined to include, at a minimum:
  - i. Any state contiguous to a state where a bank has an AA; *and*
  - ii. Any of the four U.S. census regions<sup>1</sup> that includes a bank's AA; *and*
  - iii. Other comparable regions proposed by a bank and not disapproved by a banking agency within a limited time.
- b. **Responsiveness** to a bank's AAs should be clearly defined as met by a bank's having a Satisfactory or Outstanding rating at the state level on the relevant test (i.e., lending, investment, or service) on its most recent CRA exam, before considering outside activities. *AA responsiveness is a threshold requirement for considering certain BSRA activities, so banks should know if it has been met when they make financing decisions.*
- c. **A specialized bank's** (i.e., a wholesale, limited purpose, or internet bank's) responsiveness to its AA should reflect the bank's nationwide customer base and its limited presence in an AA. A specialized bank should have flexibility to demonstrate

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<sup>1</sup> [https://www2.census.gov/geo/pdfs/maps-data/maps/reference/us\\_regdiv.pdf](https://www2.census.gov/geo/pdfs/maps-data/maps/reference/us_regdiv.pdf)

responsiveness to its AA in its performance context, including CD needs and opportunities and the bank's business model and competition. As a safe harbor, the share of a specialized bank's CD activity in its AA should not need to exceed the share of its deposits that come from consumers located in its AA. *Specialized banks now have aggregate domestic assets of over \$1.5 trillion.*

- d. **Internet banks' CD activities nationwide** should receive the same positive consideration that wholesale and limited purpose banks receive. The 1995 CRA rule's rationale for positively considering nationwide CD activities for wholesale and limited purpose banks – i.e., because "they typically draw their resources from, and serve areas well beyond, their immediate communities"<sup>2</sup> – is equally valid for internet banks and provides administrative authority within the rule to treat internet banks in the same way.

### 3. Affordable rental housing

- a. **Unsubsidized affordable rental housing** – comprising 80% of all affordable rentals<sup>3</sup> – should receive full positive consideration if rents on most units in the property are affordable to LMI renters as determined when the financing is committed and the housing is located:
- i. In a LMI census tract; or
  - ii. In a middle- or upper-income census tract if:
    1. Most *renters* in the census tract are LMI and most rents in the census tract are affordable to LMI renters when the financing is committed; or
    2. The property owner agrees to keep rents affordable to LMI households for the life of the financing.

*Current guidance is unworkably vague, inconsistently applied, and burdensome.*

- b. **Affordable housing in conjunction with a federal, state, local or tribal government CD policy or program** should satisfy the CD public purpose test, thereby qualifying the full amount of financing for CRA consideration, if at least 20% of the units in the property are occupied by LMI households at rents affordable to LMI households for the life of the financing.<sup>4</sup> *Public policies increasingly rely on mixed-income housing strategies.*
- c. **In determining LMI and affordable rents**, a bank should be permitted to use either FFIEC data or HUD income limits data. *Because HUD data adjusts for high-cost areas,*

<sup>2</sup> *Federal Register*, Vol. 60, No. 86, p. 22160

<sup>3</sup> HUD, *Worst Case Housing Needs: 2017 Report to Congress*, Table A-12, shows 32.8 million rental units affordable to households earning 80% of area median income or less. HUD, *FY 2016 Annual Performance Report*, p. 44, shows about 3 million HUD assisted units [https://portal.hud.gov/hudportal/documents/huddoc?id=FY\\_2016\\_APR.pdf](https://portal.hud.gov/hudportal/documents/huddoc?id=FY_2016_APR.pdf). HUD's Low Income Housing Tax Credit (LIHTC) database shows 3.0 million LIHTC units. <http://www.huduser.gov/portal/datasets/lihtc.html>

<sup>4</sup> The 20% threshold is widely used for federal housing policies, including LIHTC, tax-exempt multifamily rental housing bonds, and the HOME Investment Partnerships program.

allowing banks to use it would be a clear and simple way to operationalize existing Q&A guidance allowing flexibility in considering affordable housing in high cost areas.<sup>5</sup>

- d. **Examiners could disallow consideration** if the housing is maintained in substandard condition or upgraded so that rents are no longer affordable.
4. **CD lending**
    - a. **Letters of credit** (LCs) should receive the same positive consideration as CD loans. *LCs are important to certain CD financing structures and require a bank to commit capital.*
    - b. **Prior-period outstanding CD loans** should receive the same positive consideration as prior-period outstanding investments. *Long-term financing should be recognized as especially responsive to CD needs.*
  5. **Rural and smaller metro CD activities** should be fully considered even if they occur outside “full-scope” review AAs. Under current policy guidance, CD activities in rural and smaller metro areas are inadvertently but systematically disadvantaged because responsiveness and other qualitative factors are considered only in full-scope review AAs, which tend to be the largest metro AAs. CD activities outside full-scope AAs should be aggregated and considered at the state rating level (or, if in a state with no AA, at the institution level) because CD opportunities in rural and smaller metro areas are often intermittent, as well as to streamline the analysis.
  6. **Economic development.** To help distressed struggling metropolitan areas, the same criteria that recognize economic development in distressed, *non-metropolitan* middle-income areas should be applied to distressed, *metropolitan* middle-income areas. The policy would apply to middle-income census tracts located in a metropolitan county that has either (1) an unemployment rate of at least 150% of the national average, (2) a poverty rate of at least 20%, or (3) a population loss of at least 10% between the previous and the most recent decennial census or a net migration loss of at least 5% over the five-year period preceding the most recent census. *The economic recovery has left many metro areas behind.*
  7. **Infrastructure** financing should receive full consideration if most of the beneficiaries are located in LMI areas or are LMI individuals; and otherwise pro-rata consideration based on the share of the beneficiaries that are located in LMI areas or are LMI individuals.
  8. **Administrative processes**
    - a. **Timely performance evaluations (PEs)**

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<sup>5</sup> *Federal Register*, Vol. 81, No. 142, p. 48525. See Q&A §\_\_.12(g)—3.

- i. PEs should be published within 12 months after an evaluation period ends.
  - ii. Evaluation periods should end at least 24 months after the previous PE is published.
- b. **CRA specialists** (not compliance generalists) should examine large banks.
- c. **CRA examiners should receive more training** on CRA policies and the practice of community lending, investment, service, and CD.
- d. **Outstanding CRA banks** should have expedited processing of approval applications. The current expedited approval processing for banks with Satisfactory or better ratings is ineffective as an incentive or reward.
- e. **Compliance downgrades.** Only material violations that directly affect CRA activities should affect a rating. For example, a consumer lending violation should be relevant only if consumer lending is part of the bank's CRA exam.