



Massachusetts Community & Banking Council

Comments Regarding

Joint Notice of Proposed Rulemaking

(Docket ID OCC–2018-0008)

(RIN 3064-AF22)

Reforming the Community Reinvestment Act
Regulatory Framework

March 31, 2020

Massachusetts Community & Banking Council, Inc.
P.O. Box 960305
Boston, MA 02196

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, Federal Deposit Insurance Corporation
550 17th Street NW, Washington DC 20329

Re: Joint Notice of Proposed Rulemaking

(Docket ID OCC-2018-0008)

(RIN 3064-AF22)

To the Office of the Comptroller of the Currency and Federal Deposit Insurance Corporation:

Given the trying times we are faced with in light of COVID-19 and the economic impact of the Pandemic, the Massachusetts Community and Banking Council, Inc. (MCBC), feels that both banking and community resources should be dedicated to serving to vital needs of the low- to moderate- income (LMI) families and communities we serve. The impact of this emergency on the LMI populations is unknown, and we do not envision a point in time in the foreseeable future where we will be able to reallocate resources to the extensive implementation of the proposed rule. To ensure that CRA reform is done right, MCBC respectfully requests that the rule making process be suspended until such time as the state of emergency brought on by COVID-19 is lifted and regulators, banks and community groups are able to dedicate sufficient resources to this endeavor.

To ensure that the OCC and FDIC receive appropriate input, MCBC has prepared the following:

The Massachusetts Community & Banking Council, Inc. (MCBC) welcomes the opportunity to respond to the Office of the Comptroller of the Currency's (OCC) and Federal Deposit Insurance Corporation's (FDIC) Notice of Proposed Rulemaking (NPR) regarding the Community Reinvestment Act (CRA).

Since its inception in 1990, MCBC has regularly convened financial institutions and community organizations across Massachusetts to consider issues of mutual importance and to develop and promote market-based banking products and programs for the benefit of low- to moderate- income (LMI) and minority communities across the state.

Today, Massachusetts' bankers and community organizations describe their relationship as one of partnership and collaboration. In the spirit of MCBC's first board chairmen: "community development – successful, long-term community development – is as much about **working relationships and shared objectives** as it is about dollars. That conclusion does not often make headlines, but...is one that should be recognized."

We couldn't agree more with those sentiments. Which is why MCBC finds it difficult to reconcile certain aspects of the NPR with the basic tenets of what we know works: **working relationships and shared objectives**. Specifically, we are challenged by:

Divided Regulatory Agencies: Consistent CRA enforcement standards amongst regulatory agencies should be maintained. This is even more important in the Commonwealth of Massachusetts where a state CRA statute exists. The lack of alignment amongst the three federal regulatory agencies and the Massachusetts Division of Banks (DOB) creates confusion for all stakeholders - financial institutions, community organizations, local governments, and individual customers - and undermines **working relationships**. The fundamental disagreements at the regulatory level must be reconciled so as not to diminish the **shared objectives** held by CRA practitioners and **working relationships** at the local level.

Together, the three agencies as well as the DOB should develop data-driven and evidence-based rules that improve CRA for all. A measured policy approach would allow financial institutions and community partners to better understand how the proposed changes will impact access to credit, investment and services required by LMI families and the communities where they live.

Increase the Regulatory Burden on Banks: A modernization framework should be congruous with existing practices and workflows currently in place at most financial institutions. It is important to leverage the current CRA data infrastructure and incrementally improve metrics currently in place. The current proposal requires bank-wide changes to monitor CRA. The proposed changes are likely to be disruptive for banks and delay public reporting. Moreover, there is insufficient relevant data available for banks, community partners, and local officials to assess the impact of NPR on the flow of capital to LMI areas. If new data elements are to be used, all aspects of these changes should be thoroughly analyzed to ensure the regulatory burden is minimized and there are no unintended or unanticipated effects that could damage **working relationships and shared objectives** to ensure access to credit, investment and services required by LMI families and the communities where they live.

NPR Framework Could Reduce Responsiveness to Local Need: The proposed framework does not incentivize CRA activities that are most responsive to local needs. Local markets are the nexus of banking relationships. Participation in Massachusetts-based solutions that ensure access to credit and community investment- such as Basic Banking for Massachusetts, the ONE Mortgage, and the Community Investment Tax Credit should be embraced and not diluted by lending or investment that supports the greater community as opposed to the LMI community. We should remain focused on the LMI community and clearly outline those activities that are or will be designed to support the LMI. While a transparent process whereby banks can solicit feedback regarding CRA consideration before engaging in an activity would be welcomed, that process must be informed by local representation.

Current CRA regulations favor facility-based AAs. Creating a new category of deposit-based AAs would neither mitigate the legacy of redlining nor reduce the number of banking deserts because underbanked rural and urban areas are unlikely to be the source of deposits. Furthermore, most financial institutions would agree that corporate deposits do not necessarily correlate with residents or businesses in a particular geography.

Currently, banks can engage in qualifying activities beyond facility-based assessment areas (“AA”) only after satisfactorily serving them – we agree this flexibility should be maintained and further clarified. MCBC members should have the flexibility to receive CRA consideration for expanding financial services and products throughout Massachusetts ensuring that all within the Commonwealth have the same access to credit, investment and services required by LMI families and the communities where they live.

Lastly, existing CRA regulations provide consideration regarding bank efforts to support those affected by natural disasters and significant events, such as the COVID-19 global pandemic. Such consideration should be clearly articulated and credit given under the proposed CRA modernization regulation. The COVID-19 global pandemic is not only a public health emergency - it is a socio-economic crisis exacerbating the resource limitations of our most vulnerable populations. For the eventual recovery from the economic fallout of COVID-19 to be equitable, a robust and vigorous CRA law must be in place.

Importance of Retail Test to Serve LMI Communities and Close the Racial Wealth Gap: Given the strong statistical correlation of majority minority communities and poverty within the Commonwealth of Massachusetts, MCBC is focused on closing the racial wealth gap. CRA modernization should demonstrate particular focus on reducing income inequality to ensure that our LMI communities see a path out of poverty towards a sustainable future. Banks must remain incentivized to offer **wealth building products** that include low-cost checking and savings accounts, financial education, safe mortgage loans, and small business credit to LMI borrowers and communities.

For the last 25 years, MCBC has reported on statewide mortgage and small business lending trends using CRA and HMDA data, with a focus on lending to LMI borrowers and in LMI and minority neighborhoods. Report after report has shown:

- *LMI communities continue to be under-banked in terms of home loan and small business lending. Loan volume is not in proportion to minority populations.*

Nationally, the homeownership gap between black and white families was greater (30% difference) in 2017 than it was in 1960 (27% difference) when it was legal to refuse to sell someone a home because of the color of their skin. When applicants in Boston, in Greater Boston, and statewide are grouped into income categories, the 2017 denial rates for blacks and for Latinos were generally well above the denial rates for white applicants in the same income category.¹

- *Mortgage and small business lending activity in LMI communities varies based on the existence and/or strength of a CRA requirement and institutions not covered by CRA appear to be less likely to provide conventional financing.*

For instance, in 2017, banks with local branches accounted for the most loan dollars by CRA lenders in LMI areas in Massachusetts and put the largest share of their overall loan dollars into LMI areas (24.1%) in recent years compared to lenders without a physical presence in the state (20.2%).²

As such, the retail test should not be only pass or fail. And the weighting of the current retail test on a financial institution's overall CRA rating should be maintained.

Moreover, CRA modernization should encourage the provision of deposit accounts to LMI customers. For 25 years MCBC has overseen **Basic Banking for Massachusetts**, a set of guidelines for low-cost deposit savings and checking accounts. It is our most popular program in which more than 100 financial institutions voluntarily participate. It is a program championed at the retail level, further demonstrating the importance of bank branching and the provision of deposit accounts to LMI customers.

Proposed Changes to Performance Metric-Minimizes Incentives to Meet Local Credit Needs The proposed single evaluation metric prioritizes the amount of dollars over the impact of those dollars. This approach would incentivize banks to make large investments in communities with the least amount of need and devalue smaller - more impactful – investments, such as loans to first-time homebuyers, low-income homeowners, and small businesses.

¹ Source: Campen, J. (2018). Mortgage Lending to Traditionally Underserved Borrowers & Neighborhoods in Boston, Greater Boston and Massachusetts, 2017. *Massachusetts Community & Banking Council*. <http://mcbc.info/publications/mortgage-lending/>

² Source: BankMaps, LLC. (2019). Small Business Lending in Massachusetts, 2008-2017. *Massachusetts Community & Banking Council*. <http://mcbc.info/publications/small-business-lending/>

In addition, we are concerned with:

- Defining the revenue size for small business from \$1 million to \$2 million
- Applying a 2x multiplier to community investments such that the same amount of credit would be achieved for half the current investment volume
- Limited credit for loans sold within 90 days

CRA was one of several landmark pieces of civil rights legislation enacted to address inequities in bank lending. The legacies of redlining continue today as evidenced by the Federal Reserve Bank of Boston's 2015 report *The Color of Wealth in Boston*, which found strikingly high racial wealth disparities in the Boston metropolitan area. MCBC, a proponent of CRA, wants to be sure the modernization methodology incentivizes long-term commitments to capital that are outcome driven. Performance evaluations should marry the availability of financial service and products with how effectively the CRA strategy moves the needle on financial inclusion and equality in local markets. As such, the fact that the proposal allows banks to fail in one half of the areas on their exams and still pass under the proposal does not meet the goals of CRA as outlined within the preamble.

In closing, we feel strongly that it is more important to get CRA modernization right than to get it done quickly. MCBC favors a modernization policy framework that:

- establishes two distinct tests for CRA-eligible activities - retail lending and community development;
- determines benchmarks for each AA based on local demographics and the aggregate lending of other in-market competitors;
- includes the development of a national database whereby each bank can track its activity against thresholds on an ongoing basis using current data; and community partners can access and understand CRA performance trends in real time

MCBC would encourage the OCC and the FDIC to work with the Federal Reserve Bank as well as the limited number of states that have local CRA regulations to develop a set of reforms that improve upon CRA's 40 year history in a way that ensures meaningful access to credit, investment and services required by LMI families and the communities where they live.

Sincerely,



Regan St. Pierre
Executive Director
Massachusetts Community & Banking Council

CC: Hon. Senator Elizabeth Warren, Senate Banking Subcommittee
Hon. Representative Katherine Clark, Vice-Chair of the House Democratic Caucus;
House Committee on Appropriations
Hon. Representative Stephen Lynch, House Financial Services Committee
Hon. Representative James McGovern, Chair of the House Committee on Rules
Hon. Representative Richard Neal, Chair of the House Committee on Ways & Means
Hon. Representative Ayanna Pressley, House Financial Services Committee
Federal Reserve Bank of Boston
Massachusetts Division of Banks
Massachusetts Bankers Association