



November 19, 2018

Legislative and Regulatory Activities Division
Office of the Comptroller of the Currency
400 7th Street SW
Suite 3E-218
Washington, D.C. 20219

SUBJECT: Comments on Reforming the Community Reinvestment Act Regulatory Format
(Docket ID#: OCC-2018-0008)

To Whom It May Concern:

The Local Initiatives Support Corporation (LISC) is pleased to offer comments in response to the Advance Notice of Proposed Rulemaking (ANPR) pertaining to Reforming the Community Reinvestment Act Regulatory Format.

LISC is a non-profit housing and community development organization and certified Community Development Financial Institution (CDFI) with offices in 35 cities throughout the country, and a rural network encompassing 86 partners serving 44 different states. LISC's work supports a wide range of activities, including affordable housing, economic development, building family wealth and incomes, education, community safety, and community health. In 2017 alone, LISC raised and deployed approximately \$1.4 billion of capital into low-income urban and rural communities – including close to \$1 billion that utilized federal Low Income Housing Tax Credits (LIHTC) and New Markets Tax Credits (NMTC).

In our experience, the Community Reinvestment Act (CRA) remains the primary driver of bank financing for our activities. Most banks tell us that CRA is a threshold consideration in the volume and location of their community development financing. CRA has been a critical, if not the most critical, resource available to facilitate the flow of private capital into underinvested communities. It has been successful not only for the communities and community residents that have benefitted from these investments, but also for the banks – who have managed to find new and profitable investment opportunities that generally perform as well or better than other bank investments.

As successful as the CRA has been, LISC agrees that improvements could be made. The banking industry has undergone significant changes since the CRA regulations were last significantly updated, most notably in the rise of interstate banking, online banking and mobile banking. A reexamination of the current CRA delivery system is therefore appropriate and, some might argue, even overdue.

That being said, we believe that the OCC must adhere to certain guiding principles as it considers moving ahead with substantive revisions to CRA. Most notably:

1. **The end goal should be to improve and expand the delivery of loans, investments and services in distressed communities.** While an argument can be made that the CRA has not fully kept pace with changes in the banking industry, it is also true that the CRA has evolved considerably since its enactment in 1977. Banks and community stakeholders are using data and mapping tools in ways that couldn't have been imagined 40 years ago, and they are now able to identify community needs and fill credit gaps more efficiently than ever. Banks are now utilizing federal financing tools (LIHTC, NMTC, loan guarantees) that by and large didn't exist at the outset of CRA, and banks are also forming partnerships with non-profits and CDFIs, which are invaluable for ensuring that local needs are being met even as the traditional "brick and mortar" bank presence is diminishing. Finally, the regulators have updated the Federal Financial Institutions Examination Council (FFIEC) Q&A document numerous times to help address new issues as they arise.

Despite there being areas for potential improvement, it is important to recognize that CRA has evolved over time and is currently delivering tremendous results. The objective of any reform exercise should be, first and foremost, to ensure that we protect what has been working, and then to determine whether there are ways that CRA can be modernized to more efficiently and effectively deliver still more investments and services into distressed communities. *Simply streamlining program requirements without obtaining equal or greater outcomes in communities would be a failure.*

2. **The OCC should collaborate with other federal banking regulatory agencies.** Because it is important that banks are being treated consistently both within and across institutions, regardless of regulator, it is critical that future efforts be done jointly with the FDIC and the Federal Reserve Board. We understand that this is the OCC's intention, and we hope that this will be borne out as it moves into the next stage of rulemaking.
3. **The OCC should continue to seek public feedback.** The questions raised in the ANPR are a great first step for soliciting comments, but many of the questions raised are conceptual at this point. Stakeholders may find it difficult to fully react at this time, yet will be able to offer much more substantive comments as these initial concepts are fleshed out more fully with specific examples and/or regulatory text. It is critical that the OCC continue to seek public feedback as it moves forward, but not issue any "effective" rules or related guidance unless and until community stakeholders have commented on these specific proposals.

With this as context, LISC is pleased to offer comments below in response to some of the specific questions raised in the ANPR, specifically: (I) adopting a metrics based framework; (II) redefining communities and assessment areas; (III) expanding CRA qualifying activities; and (IV) recordkeeping and reporting.

LISC offers these comments to augment comments provided by other Coalitions and trade associations for which we are active participants, including: the Affordable Housing Tax Credit Coalition (AHTCC); the CDFI Coalition; the National Association of Affordable Housing Lenders (NAAHL); the National Housing Conference (NHC); and the Opportunity Finance Network (OFN).

I. Adopting a Metrics Based Framework

LISC agrees with the OCC's overall objectives of providing more transparency, consistency and certainty to the CRA review process. Greater clarity will expand capital for communities, reduce regulatory uncertainty and burden for banks, and simplify the examination process for agency staff. *However, we have significant concerns about the single ratio approach that was suggested as part of the ANPR.* Most notably:

1. A single metric cannot likely capture, or will otherwise disfavor, activities that are "innovative and complex" or "responsive to community needs."

Responsiveness to community needs, as well as innovativeness and complexity of products, are important considerations under CRA – albeit ones that are difficult to quantify. If the CRA evaluation and scoring process is transitioned to a single ratio analysis, then this will likely push banks to seek out the largest financial transactions, likely at the expense of smaller dollar transactions, community development loans, and loans that require more complex underwriting. In short, most of the activities that we believe should actually be given favored status under CRA reviews will be undervalued. In addition, the single metric ratio does not allow for enough nuance to determine whether the investments in question are helpful to the community or may actually be harmful (e.g., if community residents are being displaced as a result of the investment).

An alternative to the single metric approach would be for the OCC to provide additional guidance as to what qualifies a transaction as being innovative and complex or otherwise responding to community needs. As discussed further below in our response to "Expanding CRA Qualifying Activities," LISC believes that banks should receive special consideration for these kinds of activities. Instead of determinations being made solely on a case by case basis during an examination, sometimes years after the investment has been made, banks should be provided with an illustrative list of investment activities that meet these requirements – so that they (as well as OCC exam reviewers) have certainty that they will be treated favorably during an exam.

2. **A single metric could disfavor activities currently supported through the separate “investment” and “services” tests.**

We are concerned that, without a separate investment test for large banks, banks may have a diminished appetite for investing in LIHTC, NMTC and historic tax credit transactions. CRA-motivated banks are the largest investors in these credits. It is estimated that 85% of the investors in LIHTC are CRA-motivated banks, and it is likely that an even higher proportion of NMTC investors are CRA-motivated banks. Collectively, these institutions place well over \$10 billion per year of equity investments into LIHTC and NMTC transactions, helping to develop affordable housing, revitalize neighborhoods and lift families out of poverty. We believe the separate investment test may be the single biggest driver of banks financing these products, since the characteristics of these tax credit investments (e.g., relatively modest yields, longer duration, less liquidity) would otherwise make these investments less attractive to banks.

While we appreciate the OCC recognizing the important role of equity by suggesting that equity can be given an increased weighting of 2:1 under the single ratio, we are concerned that this would have the unintended consequence of allowing a bank to satisfy its investment requirements by making half the amount of investments it otherwise would have made. The concept of additional weighting for equity is well appreciated, but perhaps *should only be offered for the portion of equity investments made above and beyond the bank’s historic performance in this area.*

On a related note, we continue to support a concept that has been embraced by some of our partners in their comments that would provide large banks with an option of a single community development investment test in place of the separate lending and investment tests. However, we would recommend that additional sensitivity testing be done, or safeguards be incorporated, to ensure that this approach will not lead to a decrease of investment activity in LIHTC, NMTCs or historic tax credits by participating banks.

Finally, we are also concerned about how activities currently supported under the services test will be addressed in a single ratio. These activities often have outweighed importance in local communities, yet may not be easily quantified (e.g., donation of staff time to support a financial literacy initiative), or else may be of such small dollar amounts (e.g., capacity building grants to local non-profits) that they would barely even be discernable when included within the numerator of a single ratio. If the bank’s incentive is solely to increase the numerator of the ratio, then these critical activities are likely to diminish or disappear altogether under a single ratio approach.

3. **A single ratio could lead to a further concentration of capital into already favored assessment areas.** As discussed further below under “Redefining Communities and Assessment Areas,” we agree with the OCC that the current methodologies for identifying CRA assessment areas has not kept up with changes in the banking industry and has led to market inefficiencies, through the concentration of activities in “CRA hot” markets at the

expense of “CRA deserts” – markets that are underserved by financial institution branches and therefore are in even more need of bank capital. However, a single metric approach could potentially exacerbate this problem, since banks that are incentivized to increase the numerator of the ratio will likely seek out high cost markets that tend to already draw disproportionate investments under the current assessment area tests.

Example: A bank that is claiming credit for home mortgage financing would have to finance over 13 homes in Youngstown, OH (median home price of \$75,000) to get the same CRA credit for a single home that it finances in San Jose, California (median home price of \$1 million).

4. **It may not be possible to fairly compare institutions across a single metric.** The OCC alone regulates 891 national banks, 317 savings associations, 55 trust banks, and 9 credit card banks. These banks vary considerably in size (both as measured by assets and number of branches), product mix, and product delivery strategy. It is difficult to conceive of a single metric that can be developed that will fairly compare institutions that are of vastly different sizes and that engage in dramatically different practices with respect to product mix and delivery of services. In addition, it is not clear that a single metric can adequately address year-over-year changes to industry opportunities, or conversely, local, regional or national market downturns.

II. Redefining Communities and Assessment Areas

LISC is a certified CDFI with a national footprint that includes local LISC offices in 35 markets in 21 different states. We also have a national rural program that partners with 86 non-profit CDCs serving over 2,000 rural counties across 44 different states. Our broad geographic reach gives us great insights into the needs of a variety of communities throughout the country, as well as to the challenges and opportunities with respect to raising capital from CRA-motivated bank investors that need to be responsive, first and foremost, to their assessment areas.

There can be little doubt that a bank’s chosen assessment areas will have an outweighed influence on where bank capital is directed. We see this in practice every time a national bank asks LISC to provide a “sidecar letter” to verify that the capital it invests in an otherwise national or regional fund will be directed to certain specific local markets. Earmarking is burdensome because it requires an institution to artificially segment and assign portions of loan/equity funds to certain investors. This can lead to additional documentation expenses and, in some cases, may artificially limit an investor’s participation in a fund if it cannot obtain the segment of a project to match its investment. But even worse, it can lead to over-concentration of investments in certain geographies, which: (i) unnaturally distorts the pricing of investments in these markets; and (ii) affects the geographic balance of an investment portfolio.

It is well documented, for example, that the price that banks are willing to pay for LIHTCs are primarily driven by assessment area considerations. According to the accounting firm

CohnReznick, “the largest single determinant of Housing Credit pricing is based on the CRA investment test value of a given property’s location,” with pricing differentials currently between 10 – 15 percent between Housing Credit developments in “CRA-hot” markets and “CRA deserts,” and at points in the program’s history, the pricing differential was as high as 35 percent.¹ Lower pricing results in less equity available for a given property, leaving additional gaps in financing that need to be filled; thus, making it that much harder to finance affordable housing in underserved markets, particularly in underserved rural communities.

Too strict an adherence to a branch/ATM based approach to defining assessment areas creates other problems as well. For instance, national or regional banks with a large network of branches and ATMs can be assigned hundreds of separate assessment areas, significantly complicating their reporting requirements as well as the auditing responsibilities of CRA bank examiners. And banks that do not have a significant networks of branches or ATMs (including internet banks, investment banks, credit card banks, wholesale banks, and US outposts of some foreign banks) are assigned assessment areas based upon where they are physically located – which often has no correlation whatsoever to where their customers are located. This has led to extremely localized CRA pricing discrepancies in the states where many of these specialized banks are formed or headquartered (e.g., Utah, South Dakota, and Delaware).

In short, the current methodologies for delineating assessment areas are in need of improvement, and we offer the following recommendations:

1. **Consolidate assessment area coverage for certain branch-based banks.** In keeping with the statutory intent of CRA, it is important to maintain a nexus between the location of a bank’s branches and service to those communities. However, bank assessment areas shouldn’t be drawn so narrowly as to create in some cases dozens of separate assessment areas within a single state. Banks with multiple assessment areas outside of MSAs should be allowed to consolidate these non-metropolitan assessment areas into a single assessment area – thereby creating more investment opportunities and incentives for banks to work in rural and micropolitan communities where they may not have branches.
2. **Expand assessment area coverage for branchless banks.** The methodology of defining a service area based on where a bank conducts its operations does not work for branchless banks. These banks tend to be assessed on where they are headquartered, rather than where their customers are located. While it might be appropriate to identify an assessment area based on the headquarters’ location, a bank whose primary customer base is outside of that area should also be assessed on the extent to which their loans and investments are also serving low-income communities outside of the local assessment area. This could be done either by allowing these institutions to serve a single national assessment area, or by creating additional statewide or MSA-wide service areas for which the institution must demonstrate it is serving (e.g., some subset of the largest markets from which the bank is drawing deposits).

¹ Ibid.

3. **Provide certainty for banks interested in making investments outside of their assessment areas, including in national funds.** LISC acknowledges that the regulators have, in recent years, made better efforts to try and encourage banks to make investments outside of their traditional service areas. In particular, the updated FFIEC CRA Q&A document from 2013 included preamble language noting that nationwide funds “are important sources of investments for low- and moderate-income and underserved communities throughout the country and can be an efficient vehicle for institutions in making qualified investments that help meet community development needs.” And that “nationwide funds may be suitable investment opportunities, particularly for large financial institutions with a nationwide business focus, including wholesale or limited purpose institutions.”

However, this same document indicated that a bank would get CRA consideration for loans and investments made outside of its assessment areas only to the extent it can demonstrate “that it has been responsive to the community development needs of its assessment areas” (emphasis added). Under this approach, a bank cannot be sure that the activity will qualify for CRA consideration until it undergoes its CRA evaluation, which may be several years after the investment is made. Banks need to be provided with a “bright line” test so that an institution can be certain that it is satisfying these requirements at the time the investment is being made. Without such clarity, institutions will default to making investments that can be traced to projects in their defined assessment areas, which adds significant burdens to the banks and to the national funds in which they invest and continues to provide less dollars to underserved markets outside the defined assessment areas.

To this end, and consistent with the intent of the regulators as expressed in the preamble to the Q&A Document, we recommend that the OCC provide certainty for any institution serving a statewide, regional or national service area as follows:

- (i) provide a minimum benchmark requirement that banks must meet in order to be deemed to have been responsive to their assessment areas (e.g., at least 75% of a bank’s reported CRA activities must be within their chosen assessment areas); and
- (ii) once this threshold has been met, allow banks to receive CRA credit for additional CRA investments outside of their assessment areas, but only to the extent that such investments:
 - a. are made within the bank’s service area (i.e., statewide, regional or national); and
 - b. are made in areas that have been deemed by OCC to constitute an underserved CRA market area (e.g., persistent poverty communities, communities without access to bank branches; etc.), or

- c. are otherwise made in funds or in entities (e.g., CDFIs) that will predominantly serve low-income communities or low-income persons throughout the bank's service area.
4. **Provide special consideration for LIHTC investments.** We encourage the OCC to provide more clarity around when a LIHTC investment outside of an assessment area will qualify for CRA credit. As noted above, the guidance contained in the current FAQ document does not provide sufficient certainty to banks at the time of investment that the investment will be eligible for CRA credit. As a result, banks are not inclined to pursue LIHTC investments outside of their delineated assessment areas.

Since Housing Credits are a limited resource that are competitively allocated by state or local housing agencies in accordance with state qualified allocation plans, which are intended to address the areas of the state that are most in need of affordable housing or otherwise are part of state designated redevelopment areas, we believe that banks should be given wider latitude to invest in Housing Credit properties outside of their assessment areas. We advocate consideration of adopting regulations that provide that: (i) any investment in a project eligible to claim the Housing Credit that is located in a state in which a bank's assessment area is located be treated as within the assessment area; and (ii) any LIHTC investment in a fund that aligns with the bank's service area shall be treated as located within the bank's assessment area. These changes would help encourage more housing credit equity to flow to projects that have been determined to need investment, rather than to concentrated "CRA-hot" markets.

III. Expanding CRA Qualifying Activities.

LISC supports the OCC's efforts to establish more clarity and certainty regarding which community development, small business, lending and retail services activities will receive CRA consideration. There are currently a great many bank activities that are eligible for CRA consideration, but no clear methodology for driving banks to engage in those activities that produce the most impact for low-income communities and low-income families. It should be a fundamental tenet of CRA reform to provide a clear set of "favored" activities that banks have absolute certainty will qualify for CRA credit, and that such activities should be the ones that are likely to produce the most impactful outcomes for low-income persons and residents of low-income communities. We offer some illustrative examples below.

1. **Affordable housing.** The availability of affordable housing for low-income persons remains perhaps the most critical resource for helping to lift families out of poverty. There are currently over 11 million families, or 1 in 4 renter households, that are paying more than 50% of their income in rent. This means that these families are left with little income to cover food, medical expenses, daycare and transportation, much less to set aside for savings for education or homeownership or other long-term wealth building strategies. The OCC needs to continue to prioritize investments in affordable housing, including through

the Low Income Housing Tax Credit, as part of any CRA reform efforts. Investments in affordable housing should be deemed to qualify not only when they are located within low-income communities, but also when they are located in higher opportunity communities, even if in adjacent communities outside of a bank's assessment area. Finally, the OCC should provide more clarity and certainty around when naturally occurring affordable housing may also be deemed to qualify as eligible for CRA credit (e.g., by requiring that the underwriting of the project assumes that the project will continue to be affordable to low-income families throughout the period of the loan).

2. **Other activities benefitting low-income persons.** In addition to prioritizing the development of affordable housing, CRA should provide a clear preference in consideration for other activities that benefit low income persons, as opposed to those investments that just happen to be occurring in low-income communities. Examples of preferable investment activities include: investments in, or technical support to, non-profit organizations that primarily serve low-income families; investments (either directly or indirectly) for financial literacy, workforce development, credit-building or other interventions that help to lift families out of poverty; loans for homeownership, particularly for first time homebuyers and minority homebuyers; and investment in community facilities (e.g., community health centers, childcare centers, charter schools) that primarily serve low-income persons.
3. **Economic development loans and investments in small businesses.** LISC believes in a multidisciplinary economic development framework that expands the ability of people, places, and businesses to contribute to equitable prosperity. CRA should continue to prioritize activities such as supporting district development and commercial corridor improvements to bring jobs and services in underinvested areas; connecting low-income residents to quality jobs and prospects for upward mobility; and delivering technical assistance and access to capital to small businesses and entrepreneurs that create livable wage job opportunities.
4. **Investments in certified CDFIs.** The OCC should continue to single out for preferential consideration investments in certified CDFIs. The Treasury Department's CDFI certification review process is sufficient to ensure that these institutions are primarily serving low-income communities and low-income borrowers, and in some respects provides an even greater assurance that the institutions will be serving these underserved markets.

LISC believes that banks should be incentivized not only to invest in certified CDFIs, but also to offer forms of capital (equity like investments; long term loans) that cannot readily be accessed by CDFIs or their customers. One mechanism for achieving this outcome could be to treat loans to CDFIs as equity investments are currently treated (i.e., a bank gets CRA credit for all years in which a loan to a CDFI is outstanding). This would encourage banks to make longer term investments to CDFIs (ideally 10-years and beyond) that span CRA review cycles, rather than recycling shorter term loans multiple times (e.g., 3 times over a ten year period) in order to ensure the loans are booked anew in each CRA review cycle. In

considering this recommendation, OCC must also strive to ensure that the total volume of CRA lending to CDFIs does not diminish as a result of this provision; perhaps by only giving the bank credit for the principal outstanding during each review period. This could even encourage banks to provide interest only options as part of their long term loan strategy.

5. **Small dollar lending.** The OCC should continue to encourage banks to engage in reasonably priced small dollar consumer lending and microenterprise financing. These activities are particularly difficult for banks to engage in, given the staff-intensive nature of the work and the relatively low returns. But they have an outweighed impact on consumers and small businesses, and should receive substantial consideration under CRA lending or services tests.

These are illustrative examples of the kind of investments that LISC believes should receive advantaged status under a revised CRA scoring framework. LISC would like to see the OCC establish a clear list of preferred activities, so that banks can know with certainty that these activities will not only qualify for CRA credit, but will also help the bank more readily attain an outstanding score. By contrast, other activities that are currently permissible but are deemed to have less of an impact on community residents or low-income persons (e.g., purchases of municipal bonds; purchase of mortgage backed securities) should not be elevated for preferential consideration and, in fact, should be limited with respect to counting for CRA credit.

Finally, while LISC is very supportive of the Opportunity Zones initiative, we do not at this time support Opportunity Zone investments receiving automatic CRA credit. Unlike NMTC and LIHTC, which are competitively allocated and therefore ensure some basic level of community development outcomes, the Opportunity Zone investments receive no independent vetting or screening for community impacts; and in fact, are most valuable to the investor when the investment appreciates in value after ten years. Without guardrails in place, it is likely that some Opportunity Zone investments may end up harming the communities they are intended to serve (e.g., through displacement of community residents). The OCC should establish a “safe harbor” list of the kinds of O-Zone investments that will be given preferential CRA treatment (e.g., the projects that meet one or more of the objectives outlined above), but otherwise should review O-Zone investments on a case by case basis to ensure that the community is in fact benefitting from the investment.

IV. Recordkeeping and Reporting

LISC supports more timely examination reports, more timely communication of information to the public, and changes that increase transparency and give banks and community stakeholders more certainty on which deals qualify for CRA credit. We believe that all of this can be accomplished through internal process reforms, real time collection and reporting of data (preferably on an annual basis, not at the end of an exam cycle and only after the exam is complete), and better guidance to the banks, bank examiners and community stakeholders. All of these objectives can be supported without the need to adopt a simple ratio, and we would hope that the OCC will continue to find solutions without resorting to this approach.

We thank you for considering these comments, and look forward to working with the OCC and other banking regulatory agencies on implementation going forward.

Sincerely,

A handwritten signature in blue ink, appearing to read "Matt L. Josephs", with a long horizontal flourish extending to the right.

Matt Josephs
Senior Vice President for Policy