April 8, 2020

BY ELECTRONIC TRANSMISSION

The Honorable Joseph M. Otting, Comptroller
Office of the Comptroller of the Currency
U.S. Department of the Treasury
400 7th Street, S.W. Suite 3E-218
Washington, D.C. 20219

RE: OCC Docket ID OCC-2018-0008, Community Reinvestment Act Regulations

Dear Comptroller Otting:

On behalf of its membership, the Small Business Investor Alliance ("SBIA") is pleased to submit the following comments in response to the above-referenced joint notice of proposed rulemaking by the OCC and the Federal Deposit Insurance Corporation ("FDIC") to help update and transform existing regulations that implement the federal Community Reinvestment Act of 1977 ("CRA" or "Act").[1]

The SBIA is the national organization that represents small business funds and their investors, including Small Business Investment Companies ("SBICs") and banks that invest in them. There is no better example of the type of investments that are worthy of complete CRA scoring and assessment than SBIC investments. SBICs are highly regulated private funds that invest exclusively in domestic small businesses. An investment group that seeks an SBIC license must establish a record of not only solid investment performance, but also a record of being a good actor to the small businesses they have backed.

The SBIC program, administered by the Small Business Administration ("SBA"), is a market-driven platform that serves an important public purpose of facilitating private investment into domestic small businesses. The program was created in 1958 during the Glass-Steagall era. SBIC investments by banks are specifically and clearly permitted in statute in the Dodd-Frank Act, as they were under Glass-Steagall. SBICs were permitted because they are highly regulated, have a clear public policy purpose, and because of their unique role in job creation and economic impact. A recent independent study prepared for the Library of Congress found that SBIC-backed small businesses created almost three million new jobs and supported an additional 6.5 million jobs over the 20-year period of their study.[2]

Comments on Proposed CRA Regulations

1. *Generally.*

At the outset, we applaud federal regulators for continued recognition in the proposed regulations of bank investments in SBICs and Rural Business Investment Companies (RBICs) as a "qualifying activity" for

[1] 12 U.S.C. 2901 *et seq*.

[2] Paglia and Robinson, Measuring the Role of the SBIC Program in Small Business Job Creation, Report for the Library of Congress, at 4 (January 2017) <https://www.sba.gov/sites/default/files/articles/SBA_SBIC_Jobs_Report.pdf>.

CRA credit purposes.[3] The U.S. Department of Agriculture operates the RBIC program, a developmental venture capital program for the purpose of promoting economic development and the creation of wealth and job opportunities in non-metropolitan areas and among residents living in those areas. Like the SBA, the USDA licenses investment fund applicants to address the unmet capital needs of small enterprises primarily located in rural areas. The RBIC program does not offer its licensees federally guaranteed capital access like the SBIC program.

SBICs not only have to provide capital to small businesses but they do so in a highly regulated environment that requires additional protections that do not reach most other small business investing. The proposed CRA regulatory framework is express that small business investment through these vehicles meet tests for CRA credit.

Express regulatory recognition as a "qualifying activity" is a gateway requirement, and we remind federal regulators that recognition alone does not trigger CRA credit for bank investments in SBICs and RBICs. CRA examiners must first understand the structures and purposes of the SBIC and RBIC programs so that they can apply CRA credit evaluation criteria in a consistent and objective manner for banks. SBIA stands ready to partner with federal regulators to help educate their CRA examiners about the SBIA and RBIC programs.

Additionally, while there are three federal regulators governing banks under the CRA program only two of them have joined in this rulemaking. SBIA encourages all federal regulators to reach accord on CRA regulatory reforms because a unified position best delivers clarity and consistency to regulated entities that are working to deliver on the CRA's stated purpose to help meet the credit needs of entire local communities, including low- and moderate-income neighborhoods.

2. SBIA Responses to Specific Questions.

Question #1. *Are the proposed criteria for determining which activities would qualify for credit under the CRA <u>sufficiently clear and consistent</u> with the CRA's objective of encouraging banks to conduct CRA activities in the communities where they serve?*

Federal regulators state explicitly that, when it comes to "qualifying activities," it is their intent to expand, not contract the type of activities that qualify for CRA credit.[4] SBIA applauds the proposed regulation's express language to retain CRA credit eligibility for bank investments in SBICs and RBICs. Regulators argue clearly that "[b]y increasing the specificity…and predictability about whether specific activities would count" for CRA credit, this may "encourage banks to undertake more CRA activities – including novel, complex, and innovative activities – that help meet local community needs."[5]

Regulators propose expanding eligibility criteria to include new and specific qualifying activities such as investments by Qualified Opportunity Funds in Opportunity Zones and investments in "essential infrastructure" that benefits or serves LMI individuals and communities; however, regulators also recommend changes to current CRA regulations that may create uncertainty. SBIA urges federal regulators to provide further clarity about the reason for eliminating the "general aspect of economic development"

[3] *See* 85 Fed Reg 1204-1265 (Jan. 9, 2020) at §§ 25.04(c)(12) and 345.04(c)(12). "Proposed Regulation".

[4] Proposed Reg. at 1208

[5] Proposed Reg. at 1214.

as a criterion for determining whether a bank's activity qualifies for CRA credit because its elimination could trigger unintended consequences.[6]

Regulators propose deletion because they argue that a sufficient number of objective measures to confirm whether such activities as CRA-eligible do not exist.[7] Banks, however, and in particular those that do not make SBIC or RBIC investments, have routinely received CRA credit under this general criterion by documenting for regulators a variety of size and purpose metrics including the number of jobs created and retained to validate how their investment activities promote economic development.[8] Additionally, federal interagency CRA guidance states that activities promote economic development if they ''support permanent job creation, retention, and/or improvement for persons who are currently low- or moderate-income, or support permanent job creation, retention, and/or improvement either in low- or moderate-income geographies or in areas targeted for redevelopment by Federal, state, local, or tribal governments."[9]

Currently, examiners evaluate a bank's qualifying activities that occur during the examination period to award CRA credit. Eliminating the "general aspect of economic development" criterion will not have a direct effect on bank investments in SBICs and RBICs because of their express eligibility, but it may have the unintended consequence to erase certain CRA-credit eligible activities qualified previously under this general criterion. Regulators propose a new rolling admissions-like process to approve new CD investments as CRA-credit eligible, and its six-month review timeline together with the elimination of "economic development" as a general criterion may discourage innovative investments by banks because of the uncertainty of receiving eventual CRA credit.

To encourage the continuation of innovative investments, we recommend retaining the metrics in the Interagency Q&A to measure the promotion of economic development, and granting the conditional provision of CRA credit for a bank during its six-month application period for approval of a new qualifying activity; provided, that if regulators subsequently reject the bank's application, then there would be no further credit awarded prospectively. This policy concept rewards banks for innovation to advance the CRA's statutory purpose to help meet the credit requirements of individuals and communities with needs.[10]

Question #8. *The use of multipliers is intended to incentivize banks to engage in activities that benefit LMI individuals and areas and to other areas of need; however, multipliers may cause banks to conduct a smaller dollar value of impactful activities because they will receive additional credit for those activities. Are there ways the agencies can ensure that multipliers encourage activities that benefit LMI individuals and areas while limiting or preventing the potential for decreasing the dollar volume of activities (e.g., establishing a minimum floor for activities before a multiplier would be applied?)*

[6] Proposed Reg. at 1213.

[7] Proposed Reg. at 1213 ("This aspect of the economic development component of the current CD definition was not retained because the agencies could not identify an objective method for demonstrating job creation, retention, or improvement for LMI individuals or census tracts or other targeted geographies, other than by determining if the activity would create additional low-wage jobs.")

[8] *See* 12 C.F.R Part 25 §§ 25.12(g)(4) and Part 345 §§345.12(g)(4). The regulatory definition of "community development" includes metrics including poverty, unemployment, population loss, population size, density, and disbursement that measure activities to revitalize or stabilize low and moderate-income communities and distressed and underserved nonmetropolitan communities.

[9] *See* Interagency Questions and Answers Regarding Community Reinvestment at §___.12(g)(3)– 1 ("*Interagency Q&A*").

[10] *See* Proposed Reg. at 1205

The proposed multiplier concept is intriguing because, together with the proposed "CD minimums" threshold, regulators recognize the critical importance of targeted and sustained investments that help create jobs and strengthen LMI communities.[11]

Whether the multiplier succeeds to encourage CD activities in LMI areas, or unintentionally distorts capital allocation decisions remains uncertain, but the answer will likely depend, in no small part, on how CRA examiners interpret its scope and apply its rules. As proposed, once the value of a qualifying activity for a bank is quantified, including both for services rendered and adjusted for the portion that benefits LMI individuals, areas, or both, the multiplier is applied to qualifying activities of CDFIs, "other community development investments" such as SBICs and RBICs, and "other affordable housing-related community development loans."[12]

There is strategic risk that bank LPs may allocate a smaller share of total investment dollars among more SBICs and RBICs, or even shift investment dollars out of those programs entirely and into other qualifying investments if those individual investments were also doubled by the multiplier. It is not the role of SBIA to take positions on the specific investment strategies of individual banks because they retain the fiduciary duty to deploy capital in a safe and sound manner. But, SBIA encourages federal regulators to establish policies that set benchmarks to incent banks to invest, not policies that risk discouraging real dollar growth in CRA investments, because Congress enacted the CRA with the purpose of encouraging sound lending to all areas of a bank's community.

If the multiplier concept is retained, then federal regulators should consider setting aggressive investment "floor" levels for the "satisfactory" and "outstanding" ratings. A bank must first meet the floor level of the CRA rating sought before qualifying to receive the multiplier because this would incent banks not to drop investments below previous individual levels. Regulators might also consider setting a lower floor for bank investments in SBICs and RBICs because, as long-standing CRA-eligible investments, SBICs and RBICs provide patient long-term capital for small businesses, which is critical to help stabilize communities and stimulate job growth.

Question #20-21. *The proposal would require banks to collect and report additional data to support the proposed rule. Although most of this data is already collected and maintained in some form, some additional data collection may be required (e.g., banks may need to gather additional data to determine whether existing on-balance sheet loans and investments are qualifying activities.) Are there impediments to acquiring this data? If so, what are they? What burdens, if any, would be added by the proposed data collection, record keeping and reporting requirements?*

SBIA acknowledges the importance of data collection and reporting by regulated entities like financial institutions because it promotes transparency and public disclosure. Under the current CRA regulatory framework, federal regulators do not collect data on CD investments or CD services by banks. But, if those banks are limited partners in an SBIC or an RBIC, then the U.S. Small Business Administration and U.S. Department of Agriculture, which administer the SBIC and RBIC programs respectively, already impose detailed data collection and reporting obligations on those banks.

SBIA recommends that federal regulators recognize for CRA credit compliance purposes bank LP data, including investment location information, reported under other federal programs such as the SBA's SBIC program or the USDA's RBIC program. To require additional data collection and reporting by bank LPs about their SBIC or RBIC investments to meet new CRA data requirements is redundant, costly and a

[11] Proposed Reg. at 1218. For a bank to earn a satisfactory or outstanding CRA rating, the sum of the quantified value of its CD loans and CD investments *divided by* the average quarterly value of its retail domestic deposits must meet or exceed two (2) percent ("CD Minimums").

[12] Proposed Reg. at 1244.

disincentive to participate in those programs. Federal regulators should develop protocols and IT procedures to share data collected from regulated banks across federal agencies, while also protecting the proprietary nature of the data already collected.

Regulators also propose to credit a bank's investment in an SBIC or RBIC to the "census tract that includes a particular project" that the bank can document was financed by its investment; alternatively, without such documentation, regulators would allocate the bank's investment "across all of the bank's assessment areas and other metropolitan and non-metropolitan statistical areas" that benefit from those investments "according to the share of the bank's retail domestic deposits in those areas."[13] SBIA notes that CRA examiners already credit banks for their full investment commitments into SBICs and RBICs because of their legal obligation to fund, regardless of where geographically those dollars were eventually invested. Continuing this policy could help maximize CRA participation by banks of all sizes and limit uncertainty.

Generally, the SBIA acknowledges the approach to data presented by Federal Reserve Governor Brainard "that CRA metrics tailored to local conditions and the different sizes and business models of banks would best serve the credit needs of the communities that are at the heart of the statute."[14]

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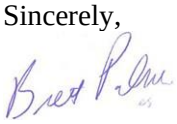
As always, SBIA appreciates the opportunity to discuss these issues and looks forward to the opportunity to work together to update applicable regulations to ensure America's small businesses have access to the capital they need.

Sincerely,



Brett Palmer
President
Small Business Investor Alliance

[13] Proposed Reg. at 1227.

[14] *Strengthening the Community Reinvestment Act by Staying True to Its Core Purpose* at 13, Speech by Federal Reserve Governor Brainard, Urban Institute (Jan. 8, 2020).