



Reforming the Community Reinvestment Act Regulatory Framework

Docket ID OCC-2018-0008

Comments by the New Markets Tax Credit Coalition

The New Markets Tax Credit Coalition (The Coalition) appreciates the opportunity to respond to the August 2018, Advance Notice of Proposed Rulemaking inviting public comment on ways to transform or modernize the regulations that implement the Community Reinvestment Act (CRA).

The New Markets Tax Credit (NMTC) Coalition is a national membership organization founded in 1998 to advocate on behalf of the NMTC program. The Coalition is made up of 150 community development organizations, investors, and practitioners with a shared interest in bringing jobs and opportunity back to America's poorest communities. Our members' work aligns closely with the Congressional intent of CRA.

Low-income communities often lack access to affordable, patient capital needed to improve community facilities, restore structures, and generate economic growth. The NMTC was designed to increase the flow of capital to businesses in these underserved communities by providing a modest tax incentive to private investors. The program is achieving its purpose. Between 2003 and 2015, the NMTC delivered \$42 billion in direct investments into low-income areas, and these NMTC investments leveraged nearly \$80 billion in total capital investment to businesses and revitalization projects.

NMTC-financing supports a wide range of high-impact projects including new hospitals, business incubators, mixed-use developments, YMCAs, manufacturing expansions, daycare centers, Habitat for Humanity builds, public transit, and even rural broadband. The flexibility of the NMTC allows communities to meet a variety of needs. NMTC financing helps communities expand access to fresh food and healthcare services, restore vacant or abandoned buildings, launch vocational training centers, and create high-quality jobs, attributes that make it a perfect fit for banks seeking to meet the community development needs of their CRA assessment areas.

Bank investors are important partners in the NMTC program and provide the private sector capital necessary for CDEs to invest in meaningful community and economic development projects in underserved areas. CRA serves as a primary motivator for NMTC equity investors. In recent years, demand for NMTCs from CRA-motivated financial institutions has been at or near an all-time high. Higher demand for NMTCs translates to more benefit for businesses, facilities and community revitalization efforts in low-income communities. It allows community development organizations to stretch each dollar of NMTC allocation further, producing a greater community impact and reaching areas of deeper distress. Robust demand for NMTCs also helps CDEs make the vast majority (more than 75 percent) of their loans and investments in severely distressed communities that far exceed the statutory requirements for distress.

Given the alignment of the NMTC and CRA, and the importance of the NMTC in helping banks meet CRA obligations, regulators should carefully consider the impact on tax credit demand when undertaking CRA modernization. Below, find the NMTC Coalition's recommendations for ensuring the NMTC and CRA will

continue to meet the credit needs of low-income communities. For each recommendation, we have noted the corresponding question(s) from the ANPR in a footnote.

Redefining CRA-Qualifying Activities

Recommendation: Maintain CRA consideration for loans and investments supported by the NMTC and preserve the investment test for large banks¹

Under current CRA regulations, a bank can receive consideration for its investments in CDEs, or for the pro rata portion of a loan originated by a CDE, based on the bank's percentage of equity ownership in the CDE. A bank can also receive partial credit for the investment and partial credit for the loan. The investment in the CDE must benefit a bank's assessment area or a broader state or regional area that includes its assessment area.

Nearly all NMTC transactions utilize the leverage structure, which pairs NMTC equity with debt from a leverage lender. In the case of leverage structure transactions, the equity investor and the leverage lender each may receive CRA consideration based on the pro rata share of their investment.

For banks, CRA's investment test often serves as a significant motivator for making tax credit investments. Ending or deemphasizing the investment test for large banks would be disruptive for the community development tax credit markets. Without that test, banks will have a diminished appetite for investing in the NMTC. A decline in the price paid in exchange for NMTCs would translate to a decrease in capital flowing to low-income communities.

CRA-motivated banks are the largest investors in NMTCs, accounting for the vast majority of NMTC equity investments. These institutions make over \$1 billion in annual equity investments into NMTC transactions, helping to revitalize neighborhoods, create jobs, 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 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 value of equity by suggesting that equity can be given an increased weighting of 2:1 under a OneRatio system of metrics, we are wary that this would create the unintended consequence of allowing a bank to satisfy its investment requirements by making half the amount of investments it otherwise would have made². 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 previous performance in this area.

¹ **ANPR Q5:** With the statutory purpose of the CRA in mind, what aspects of the current regulatory framework are most successful in achieving that purpose? **ANPR Q6:** If the current regulatory framework is changed, what features and aspects of the current framework should be retained?

² **ANPR Q10:** In a metric-based framework, additional weight could be given to certain categories of CRA-qualifying activities...for example, should a \$1 loan product count as \$1 in the aggregate, while a \$1 CD equity investment count as \$2 in the aggregate?

Recommendation: Maintain and expand CRA consideration for community development activities in LMI communities³

While modernization is needed, at a baseline, CRA must remain true to its original purpose: helping low- and moderate-income (LMI) communities gain access to financial services, loans, and community development investments that would otherwise be unavailable. The banking industry's CRA-eligible community development activities have been highly beneficial to LMI communities. A significant weakening of CRA could reduce lending in lower-income communities up to \$105 billion in the next five years⁴.

Retaining an obligation to measure community development lending and investment to LMIs and providing greater weight to these activities in CRA exams, is highly recommended. Any expansion of CRA-qualifying activities should prioritize the needs of LMI communities.

Recommendation: Provide favorable CRA consideration to community development investments in disaster-affected areas, regardless of their geographic location⁵

The definition of "community development" includes activities that revitalize or stabilize designated disaster areas. A financial institution will receive consideration for activities that help to revitalize or stabilize a designated disaster area that includes one or more of the bank's delineated assessment areas. When a disaster occurs outside of most banks' assessment areas, as was the case in 2018 with Super Typhoon Yutu in Northern Marinas Islands, and in 2017 with Hurricane Maria in Puerto Rico, OCC typically puts out an Interagency Statement providing a waiver for banks to invest in areas outside of their typical footprint⁶. OCC should consider instituting a permanent waiver for investments in CDFIs serving disaster-affected areas.

Community development organizations are uniquely positioned to meet the lending needs of recovering communities. Disasters hit vulnerable communities the hardest – areas where community development organizations have decades of experience financing the improvement and rehabilitation of real estate, replacement of equipment, and provision of working capital.

³ **ANPR Q5:** With the statutory purpose of the CRA in mind, what aspects of the current regulatory framework are most successful in achieving that purpose? **ANPR Q6:** If the current regulatory framework is changed, what features and aspects of the current framework should be retained?

⁴ "National Community Reinvestment Coalition Forecast: Weakening the Community Reinvestment Act would reduce lending by hundreds of billions of dollars." NCRC (2018).

⁵ **ANPR Section A, Part 3:** Redefining Communities and Assessment Areas

⁶ Interagency Statement on CRA Consideration for Community Development Activities in the U.S. Virgin Islands and Puerto Rico Following Hurricane Maria.