Community Reinvestment Act Regulations

Docket ID OCC-2018-0008

Comments by the New Markets Tax Credit Coalition

April 4, 2020

Chief Counsel's Office
Attention: Comment Processing
Office of the Comptroller of the Currency
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The New Markets Tax Credit Coalition (The Coalition) opposes the proposed rule overhauling the Community Reinvestment Act (CRA). We encourage the FDIC and OCC to go back to the drawing board and come up with regulations that increase the quality and quantity of financial services in low-income communities. The proposed rule would accomplish the opposite.

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 consists of 150 community development organizations, investors, and practitioners with a shared interest in bringing jobs and economic opportunity back to America's most impoverished communities. Our members' work aligns closely with the Congressional intent of CRA.

The Coalition is concerned that the proposed regulations would upend banks' role in the NMTC program and decrease the incentive for thoughtful, high-impact community development projects. It has the potential to collapse demand from investors for NMTCs, reducing the price paid in exchange for the credit, and correspondingly, the benefit reaching businesses and community facilities in our most distressed communities.

The Dramatic Expansion of Eligible Activities Would Have a Detrimental Impact on Investor Demand for the NMTC

Large-scale bank investors are essential partners in the NMTC program, providing the private sector capital necessary for CDEs to invest in meaningful community and economic development projects in underserved areas. For banks, CRA's investment test often serves as a significant motivator for making NMTC investments. This approach has been tremendously successful.

In recent years, demand for NMTCs from CRA-motivated financial institutions has been at or near an all-time high. High demand from investors allows community development organizations to stretch each dollar of NMTC allocation further, producing a more significant community impact and reaching areas of more profound economic 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.

The proposed regulations end the investment test and instead rely on a simplified, ratio-based system of metrics. The rule also expands the range of eligible activities to such a degree as to reduce investor demand for NMTCs, depressing the price equity investors pay in exchange for the credit.

In particular, the proposed rule's expansion of CRA eligible activities to include "essential infrastructure" would crowd out traditional community development activities such as investment in affordable housing, community facilities, and loans to LMI individuals. CRA was not enacted to address transportation infrastructure. In fact, the redlining tactics CRA sought to remedy were often accompanied by large-scale, urban renewal transportation projects that cut through communities depressed by decades of redlining.

The proposed dramatic expansion of eligible activities could also divert resources from community development activities toward large discrete investments that help a bank easily meet its obligations.

Changes to the way NMTC activities qualify in the new CRA rules

When comparing the current regulatory guidance to the NPR, it appears there are only limited references to New Market Tax Credit-eligible Community Development Entities in the proposed rules. However, NMTC activities should always qualify for CRA consideration based on the intent of the NMTC program, whose mission is to expand economic opportunity for underserved people and communities by supporting the growth and capacity of a national network of community development lenders, investors, and financial service providers.

Should the agencies stick with this framework, we strongly encourage the agencies to expand the final rulemaking to include "New Markets Tax Credit-eligible Community Development Entities" to provide clarity that investments in, to, and through NMTC-eligible CDEs are activities that qualify for CRA consideration. The inclusion of NTMC's would ensure consistency with the current regulatory guidance and Q&A's which state: "The Agencies will presume that any loan or service to or investment in an SBDC, SBIC, Rural Business Investment Company, New Market Venture Capital Company, New Market Tax Credit-eligible Community Development Entity, or Community Development Financial Institution that finances small businesses or small farms, promotes economic development."

The Proposed Rule Would Discourage Thoughtful, High-Impact Community Development Activities

The NMTC helps banks take on additional underwriting risk in severely distressed areas. Stiff competition at every layer of the NMTC program ensures community development entities seek out high-impact investments that address community challenges, including high-unemployment, inadequate healthcare facilities, underutilized buildings, homelessness, and vocational training, to name a few. These investments would not be possible but-for investments from CRA-motivated banks through the NTMC.

Many of these activities were included in the rule as qualifying Community Development services. Still, beyond their inclusion in the list of qualifying activities, the framework lacks a mechanism for determining whether these activities meet actual community needs.

The needs of communities vary considerably. Quantitative metrics should be supplemented with clear, qualitative standards to ensure that small-scale, high-impact community development activities are rewarded, along with a bank's responsiveness to local needs and priorities. The proposal uses multipliers to weigh certain activities more heavily than others, but multipliers are a blunt tool. Without a robust set of performance context metrics, regulators cannot reliably determine whether banks are meeting the needs of their respective assessment areas.

Qualitative measures of bank performance – such that they exist – are applied retrospectively. In practice, we fear that assessors will only take a closer look at performance context when banks fail to meet quantitative benchmarks.

Projected Impact of the Rule

As previously mentioned, right now, NMTC pricing is at an all-time high of around 86 cents. NMTC projects vary significantly, but the current price of the credit allows community development organizations to finance projects with a 20 to 30 percent financing gap. When the amount paid by investors in exchange for the credit declines, the ability of CDEs to fill project financing gaps declines correspondingly. For example, if the price of the credit dropped from 86 to 72 cents, the benefits reaching an identical project would decline by 16.3%, all things being equal.

Higher pricing also correlates with an increase in the NMTC's leverage of financing from other sources. For example, when pricing bottomed out at 70 cents in 2010 at the height of the Great Recession, each dollar of foregone tax revenue generated a total of $5.81 in project investment in low-income communities. By 2016, when the price reached 86 cents, NMTC's leverage increased to $7.85 to 1.

Finally, higher pricing drives NMTC investments into areas of deeper distress. In 2010, about 72 percent of projects were located in severely distressed communities with economic conditions far exceeding the statutory requirements for economic distress. In 2018, with credit pricing at 86.5 cents, nearly 80 percent of projects were in severely distressed communities.

Other community development tax credits would also face declines in their pricing. The Coalition and other community development groups urged the OCC to take community tax credit markets into account when devising an overhaul of CRA. Unfortunately, this rule would weaken some of the federal government's most effective tools for community development.

CRA has been tremendously successful in delivering financial services to historically disadvantaged populations. With the right data-driven reforms, it can be even more effective. It needs a tune-up, not a facelift. We urge regulators to rethink this approach.

Suspending the CRA Rulemaking Process during COVID-19 pandemic

If regulators are determined to move forward, in light of the ongoing global pandemic caused by the novel coronavirus (COVID-19), we strongly encourage the regulatory agencies to suspend the CRA rulemaking process indefinitely, or at least until after the states of emergency are lifted to allow the industry to focus efforts where they are needed most. While the CRA continues to play a critical role in banks meeting the credit needs of the communities they serve, it is too soon to tell what the economic impacts of this pandemic will be, and if any changes to the proposed CRA rules may be needed as a result of this global crisis.

If the agencies proceed with the CRA rulemaking process, we respectfully request that the transition period be significantly extended beyond the currently proposed implementation timeline. Our communities, including LMI neighborhoods and populations, will be best served by the industry focusing all available resources on providing much-needed support rather than interpreting and implementing a new CRA regulation and its record-keeping and reporting requirements.