August 5, 2022

Chief Counsel's Office
Attention: Comment Processing
Office of the Comptroller of the Currency
400 7th Street, SW
Suite 3E-218
Washington, DC 20219

By electronic submission to www.regulations.gov

Re: Joint Notice of Proposed Rulemaking – Community Reinvestment Act Docket ID OCC-2022-0002

Dear Sirs and Madams:

The Online Lenders Alliance ("OLA") welcomes the opportunity to comment on the joint notice of proposed rulemaking issued by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency regarding proposed amendments to the regulations implementing the Community Reinvestment Act (CRA).

OLA represents the growing industry of innovative companies that develop and deploy financial technology, including proprietary and innovative underwriting methods, data analytics, and non-traditional delivery channels, to offer online consumer loans and related products and services. OLA's members include online lenders, as well as vendors and service providers to lenders, such as consumer reporting agencies, payment processors, and online marketing firms.

OLA members provide third-party services to banks that assist in providing unsecured, small-dollar loans to low-and moderate-income ("LMI") borrowers, including in geographies where banks have few branches or borrowers are difficult to reach through traditional banking channels. Through these bank-fintech relationships, banks are able to serve millions of consumers who do not have other realistic or safe options to meet unexpected or emergency expenses or to make ends meet when money is tight. Consistent with the OCC's policy to encourage banks to offer responsible short-term, small-dollar installment loans, the federal banking agencies should give positive consideration under the CRA when a bank makes these loans to LMI borrowers. [1]

This letter provides background on bank-fintech third-party vendor arrangements and sets forth OLA's recommendations for how the federal banking agencies should revise their CRA regulations to incentivize more banks to provide small-dollar loans to LMI borrowers through such working relationships.

Background on Bank-Fintech Third Party Vendor Arrangements

A bank that lacks the technical expertise to market, underwrite, originate, service, and collect loans through the internet can bridge these challenges by working with a fintech company as a third-party service provider. Fintech companies have spent years developing innovative technology and analytics to successfully expand access to credit. Banks and their customers are best positioned to benefit from fintech companies' technology and expertise by associating with such companies. These interactions allow a bank to deploy its own capital to make loans that it would not have otherwise made, thereby expanding and diversifying the bank's customer base and providing broader access to credit for consumers.

The Center for Financial Services Innovation, in a previous comment letter to the Federal Deposit Insurance Corporation ("FDIC"), characterized this as a "win-win-win" for all involved, including consumers. The bank wins because it can serve a broader and deeper segment of the consumer market than it otherwise could. The fintech company wins by creating an opportunity to offer products to consumers at rates that are economical. Consumers win because they "get access to high-quality credit that they otherwise would not." In particular, a borrower of lesser credit quality, or a thin-file or no-file consumer, can benefit from the greater use of non-traditional credit information and cutting-edge fraud prevention, underwriting and risk management techniques employed by fintech firms. These relationships also allow "smaller and more rural banks to broaden the set of products and services they can offer to consumers and small businesses in their communities."[2] All of this translates into greater competition among providers and lower costs of credit, resulting in more options and better access to credit for consumers.

The FDIC, in proposed examination guidance for third-party lending programs, echoed these sentiments: "Third-party lending arrangements may provide institutions with the ability to supplement, enhance, or expedite lending services for their customers. Engaging in third-party lending arrangements may also enable institutions to lower costs of delivering credit products and to achieve strategic or profitability goals."[3]

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[1] *See* OCC Bulletin 2018-14, Core Lending Principles for Short-Term, Small-Dollar Installment Lending.

[2] CFSI Comment Letter on Proposed Guidance for Third-Party Lending (Oct. 27, 2016), https://cfsinnovation.org/research/cfsi-comment-letter-on-proposed-guidance-for-third-party-lending/.

[3] FDIC, Proposed Guidance: Examination Guidance for Third-Party Lending (July 29, 2016), https://www.fdic.gov/news/news/financial/2016/fil16050a.pdf.
Bulletin 2018-14, Core Lending Principles for Short-Term, Small-Dollar Installment Lending.

Bank-sponsored lending programs with fintech firms are subject to robust supervision by the federal banking agencies. Both the OCC and FDIC have published detailed guidance for banks to follow in managing these relationships, as well as for agency supervisory staff to follow in exercising oversight with respect to the relationships. This guidance clearly states that any loans issued by a bank – including those that benefit from the technology of a fintech vendor – are subject to the same high level of scrutiny and regulation as any other loan issued by the bank. This oversight protects consumers and the financial system. In sum, bank-fintech relationships enable the delivery of safer, more transparent, lower cost and more convenient financial products and services to consumers. A bank can leverage such arrangements to reach borrowers with online access, including LMI borrowers, no matter where they reside. Latest research shows 93% of American adults use the internet with high usage rates among those with moderate incomes.[4]

Treatment of Small-Dollar Loans Under the Community Reinvestment Act

Despite the benefits of bank-fintech arrangements in providing LMI borrowers with access to credit, the current CRA framework rarely results in small-dollar loans being evaluated in connection with a bank's CRA performance. The proposed amendments do very little to rectify these deficiencies. OLA recommends that federal banking agencies revise the proposed rule to modernize CRA regulations and practices in three ways to incentivize banks to provide small-dollar loans to LMI borrowers:

Evaluate Out-of-Assessment Area Activity

The proposed amendments do little to change the current CRA framework and should be revised to evaluate the distribution of loans made anywhere in the country, regardless of the bank's CRA assessment area. When the CRA became law in 1977, banks were mostly local enterprises that reached borrowers almost exclusively through their branch footprints. Today, as consumers increasingly prefer accessing financial services through digital platforms, financial institutions' markets are no longer confined to the areas surrounding their physical offices.

In particular, small-dollar loans made through bank third-party fintech vendors are often made to LMI borrowers who live in so-called "banking deserts," where banks, including the lending bank, do not have many branches. the CRA should specifically encourage LMI lending so that geographies without bank branches do not become geographies without bank lending.

The proposed CRA amendments should allow the evaluation of loans in any distressed geography, including banking deserts and areas with below-average income levels to incentivize

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[3] CFSI Comment Letter on Proposed Guidance for Third-Party Lending (Oct. 27, 2016), https://cfsinnovation.org/research/cfsi-comment-letter-on-proposed-guidance-for-third-party-lending/.

[3] FDIC, Proposed Guidance: Examination Guidance for Third-Party Lending (July 29, 2016), https://www.fdic.gov/news/news/financial/2016/fil16050a.pdf.

[4] Pew Internet/Broadband Fact Sheet https://www.pewresearch.org/internet/fact-sheet/internet-broadband/?menuItem=9a15d0d3-3bff-4e9e-a329-6e328bc7bcce)

banks to meet the credit needs of LMI borrowers no matter where they reside, while ensuring that financial institutions do not ignore those communities in which they have branches.

Reduce Examiner Discretion to Disallow Evaluation for CRA Performance

Second, the proposed amendments should be revised to put an end to examiners' current practice of not including small-dollar loans and CRA evaluations based on examiners' subjective views of the terms of those loans.

As the U.S. Government Accountability Office ("GAO") described after interviewing staff of the federal banking agencies, "CRA examiners, on a case-by-case basis, determine whether a loan program complies with applicable laws and is responsive to the community."[5] Officially, examiners consider cost, the context in which the loan was made, the communities in which the bank offered the loan, and the other types of programs available in the community.[6] In practice, examiners rarely include in a CRA evaluation loans with interest rates above 36 percent – despite the fact that the CRA and CRA regulations do not provide that loan cost has relevance to a bank's record of serving its communities.

Small-dollar loans sometimes have interest rates of more than 36 percent because of the economic circumstances of lending to LMI borrowers in small amounts. While online access greatly increases the number of customers who could be served by a bank, smaller dollar loans offered online can at times have higher rates of credit losses and borrower fraud than other forms of consumer credit. Moreover, the cost of acquiring a customer and underwriting a small-dollar loan can be greater relative to the size of the loan than the cost of a larger loan.

By excluding from CRA evaluation loans with interest rates above 36 percent, examiners effectively discourage the making of small-dollar loans. A recent GAO report found that banks do not want to offer small-dollar products because they are expensive to develop and uncertainty surrounding regulations or supervisory expectations[7]. The proposed CRA amendments should be revised to prevent examiners from imposing their own policy views in this manner. CRA does not require a bank to provide preferential or uneconomical terms when serving underserved communities. Nevertheless, if it is determined that a loan's cost should affect whether it is included in CRA evaluations, then regulators should establish objective standards through notice-and-comment rulemaking.

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[5] GAO, Community Reinvestment Act: Options for Treasury to Consider to Encourage Services and Small-Dollar Loans When Reviewing Framework Report, p. 52 (Feb. 2008), *available at* https://www.gao.gov/assets/700/690311.pdf.

[6] Id.

[7] GAO Banking Services: Regulators Have Taken Actions to Increase Access, but Measurement of Actions' Effectiveness Could Be Improved [Banking Services: Regulators Have Taken Actions to Increase Access, but Measurement of Actions' Effectiveness Could Be Improved | U.S. GAO]

Permit Evaluation of Consumer Loans with More Flexibility

Finally, the proposed amendments should allow small-dollar loans to be evaluated with greater flexibility.

Current CRA regulations and guidance generally do not include an evaluation of a financial institution's provision of consumer loans unless: (1) consumer loans constitute a substantial majority of the bank's lending; or (2) the bank requests that its consumer loans be evaluated. A bank that chooses to have its consumer loans evaluated in one of the four categories – motor vehicle, credit card, other secured, and other unsecured loans – must have all of its loans in that category counted and must maintain data for all loans in that category. Data integrity requirements can be onerous for small-dollar loans, given the economics of lending in small amounts. The proposed rule should allow a bank to elect to have a subset of its consumer loans in any category counted, without requiring the bank to have all loans in that category counted or to maintain data for all loans in that category. This change would provide banks more flexibility to operate small-dollar loan programs through fintech relationships and still receive credit under the CRA.

OLA strongly supports the CRA's purposes of promoting access to credit and economic opportunity in underserved communities and the goal of updating the regulatory framework. Modernizing CRA regulations to better realize the statute's purposes will ensure that the framework reflects and rewards one of the most important ways in which banks now reach LMI borrowers – through bank-fintech relationships that enable LMI borrowers to obtain needed small-dollar credit.

We appreciate the opportunity to provide input on this important regulatory initiative. If you have questions or need additional information, please feel free to contact me at mday@oladc.org.

Respectfully submitted,

Michael Day
Policy Director
Online Lenders Alliance