National Community Reinvestment Coalition

Request for Information on FDIC's Deposit Insurance Application Process

RIN 3064-ZA03

March 29, 2019

To Whom it May Concern:

The National Community Reinvestment Coalition (NCRC) appreciates the opportunity to respond to the FDIC's request for information regarding the application process for deposit insurance. As a coalition of 600 community-based organizations, NCRC believes that a clear and transparent process for deposit insurance applications is critical in order to hold financial institutions accountable for their statutory responsibilities for meeting convenience and needs of communities. This comment letter represents the views of NCRC, its members, and the undersigned organizations.

NCRC suggests that the FDIC could make the process clearer by distilling key information for the public and financial institutions in one manual. Currently, the agency has a number of documents including the regulation (Part 303 of the FDIC rules and regulations), the interagency application form, a statement of policy, a handbook, and a procedures manual. When a user goes to the applications part of the FDIC website, there are at least eight links to navigate. This should be reduced ideally to one or at most two or three.

The process for providing the public with application documents must also be transparent and simplified. The Office of the Comptroller of the Currency (OCC) places application material on its website. The FDIC, in contrast, still requires a member of the public to identify the relevant staff person in the regional office considering the application. The FDIC staff person will then mail or email the application. This is cumbersome and time consuming. The complete applications should be available on the website accompanied by a list of telephone numbers and emails for relevant staff that can answer questions.

All relevant documents must be either readily available or provided upon a freedom of information request (FOIA). In particular, pre-filing discussions and activities can substantially influence the shape and content of an application. All emails and documents exchanged between the applicant and agency staff that have direct bearing on the statutory factors that must be considered by the FDIC must be subject to full public disclosure.

The FDIC, the OCC, and the Federal Reserve Board must enact meaningful Community Reinvestment Act (CRA) reform that will guide financial technology company (fintech) applications for industrial loan companies (ILCs). In particular, the agencies must determine how to apply assessment area procedures to fintechs because the current procedures are woefully inadequate.

The FDIC statement of policy indicates that the agency will evaluate the applicant's willingness and ability to serve the community's financial needs.[1] The current procedure regarding assessment areas that allows a fintech company to designate its headquarters area as its only assessment area makes a mockery of the FDIC's statement that it will assess the applicant's ability and willingness to serve community needs. Fintechs are often lenders with a national scale. Allowing their CRA activity to be confined to one state or metropolitan area is not matching CRA obligations with the ability of the applicant. Moreover the interagency application form asks the applicant to designate assessment areas in conformity with the CRA regulations.[2] If the CRA regulations are outdated for certain lenders, particularly fintechs, this procedure remains inadequate until the regulations are updated.

How to Rectify Inadequate Assessment Area Procedures for Fintechs Applying for Deposit Insurance

It is a contradiction in terms for a branchless fintech to establish its assessment area where its headquarters is. This is the practice that appears to be occurring in the few applications received by the FDIC and OCC so far. The fintech is acting as if its headquarters location is a branch and as such, the headquarters location will make loans in its contiguous community. But the headquarters is not a branch and will not be used for making loans. This sleight of hand mocks the intention of CRA to serve credit needs wherever a lender is conducting business. Fintechs tend to state on applications that they have a national service area. To only establish the headquarter's city or metropolitan area as the area for its primary CRA responsibilities is a ruse that will enable fintechs to avoid rigorous CRA responsibilities in all communities in which they conduct a substantial amount of lending and other business activity.

The CRA regulations do not prohibit a branchless bank from establishing assessment areas beyond its headquarters. Assessment areas can include areas where substantial amounts of lending activity occur.[3] Again, if a fintech's assessment area is restricted to its headquarters city, the fintech is not demonstrating a willingness to serve credit and deposit needs where it does business as required by the FDIC statement of policy. Instead, the fintech needs to conduct data analysis and determine those areas (urban and rural) that receive considerable amounts of its loans and other business activity including deposits. It should then designate these areas as assessment areas.

Using loan data, NCRC believes that the agencies can require non-traditional banks and fintechs to create assessment areas that capture the vast majority of their loans. An example of lending by state for Lending Club during the time period of 2012 and 2013 shows that assessment areas can

[1] FDIC Statement of Policy, see statutory factor 6 - Convenience and Needs of the Community to be Served, via https://www.fdic.gov/regulations/laws/rules/5000-3000.html

[2] Interagency Charter and Federal Deposit Insurance Application, p. 5 regarding CRA instructions and assessment areas, via https://www.fdic.gov/formsdocuments/interagencycharter-insuranceapplication.pdf

[3] See § 345.41 (c) (2), Assessment area delineation, of the FDIC CRA regulation via https://www.fdic.gov/regulations/laws/rules/2000-6500.html#fdic2000part345.41

be meaningfully created for an on-line lender (a two year time period is a typical time period covered by a CRA exam).[4] Lending Club makes data on its lending activity by state and for three digit zip codes publicly available, a practice NCRC recommends for all fintechs.

Several states have sizable numbers of Lending Club loans in this time period even before Lending Club's substantial lending increases of more recent years. During 2012 and 2013, Lending Club made more than 188,000 loans; most of these were consumer-related loans and/or refinancing and consolidation of outstanding debt (see table below). Another table below on lending by state reveals that heavily populated states including California, New York, Texas and Florida had the highest percentage of loans. Ten states each had more than 3 percent of Lending Club's loans.[5] On the other end of the scale, 28 states each had less than 1.5 percent of Lending Club's loans. In sum, it is quite feasible for at least the top ten or twenty states to constitute assessment areas; these states had high numbers of loans and reasonably high percentages of Lending Club's loans.

To further investigate how assessment areas would work for a non-traditional bank, NCRC tabulated loans by three digit zip code and metropolitan areas for Texas, one of Lending Club's high volume states. We found five metropolitan areas with more than 1,000 loans each and one area, North Texas that could possibly be considered a rural area. The five metropolitan areas range in size and location across the state and include Houston, Austin, Ft. Worth, Dallas, and San Antonio. El Paso is the seventh largest area by loan volume with more than 500 loans. Using Lending Club as an example, designating metropolitan areas and counties as assessment areas for non-traditional lenders is feasible and can include a diversity of areas.

NCRC believes that assessment areas for fintechs must include rural areas. Populations in rural areas are less likely to be connected to the internet. While only 4 percent of people living in urban areas lack adequate broadband services, this issue is particularly concentrated in rural areas and tribal lands, with 39 percent and 41 percent respectively, still lacking access.[6] If fintechs do not make efforts to serve rural areas, the digital divide disadvantaging rural communities will only widen.

Lending Club Loans 2012-2013

state	#loans	Percent
CA	30,743	16.3%
NY	16,257	8.6%
TX	14,558	7.7%

[4] See https://www.lendingclub.com/info/statistics.action for summary data tables and to download data.
[5] These states are CA, NY, TX, FL, IL, NJ, PA, OH, GA,VA.
[6] *2016 Broadband Progress Report*, Federal Communications Commission, Jan. 29, 2016, retrieved at https://www.fcc.gov/reports-research/reports/broadband-progress-reports/2016-broadband-progress-report

FL	12,848	6.8%
IL	7,313	3.9%
NJ	7,212	3.8%
PA	6,346	3.4%
OH	5,898	3.1%
GA	5,874	3.1%
VA	5,772	3.1%
NC	5,414	2.9%
MI	4,549	2.4%
WA	4,512	2.4%
MA	4,403	2.3%
MD	4,287	2.3%
AZ	4,272	2.3%
CO	3,953	2.1%
MN	3,230	1.7%
MO	2,956	1.6%
CT	2,906	1.5%
NV	2,769	1.5%
OR	2,570	1.4%
AL	2,339	1.2%
IN	2,302	1.2%
WI	2,295	1.2%
LA	2,268	1.2%
SC	2,124	1.1%
TN	2,046	1.1%
KS	1,790	1.0%
KY	1,700	0.9%
OK	1,683	0.9%
UT	1,482	0.8%
AR	1,421	0.8%
HI	1,110	0.6%
NM	1,018	0.5%
WV	914	0.5%
NH	889	0.5%
RI	800	0.4%
MT	570	0.3%
AK	567	0.3%
DC	566	0.3%
DE	475	0.3%
WY	458	0.2%

SD	407	0.2%
VT	306	0.2%
MS	3	0.0%
NE	3	0.0%
ID	2	0.0%
IA	1	0.0%

Purpose	**# Loans**	**Percent**
Car	1,951	1.0%
Credit Card	43,107	22.9%
Debt Consolidation	111,451	59.2%
Home Improvement	10,297	5.5%
Medical	1,519	0.8%
Small Business	2,745	1.5%
Miscellaneous	17,111	9.1%
Total	188,181	

Texas Zip Codes	**# Loans**	**Percent**
770, 72, 73, 74, 75 Houston	3,634	25.0%
750 North Texas	2,074	14.3%
760, 61, 62, 64 Ft. Worth, TX	1,836	12.6%
786, 87, 89 Austin, TX	1,360	9.3%
751, 52, 53 Dallas	1,215	8.3%
780, 81, 82, 88 San Antonio TX	1,084	7.4%
798, 99 El Paso, TX	527	3.6%
765, 66, 67 Waco, TX	455	3.1%
785 McAllen TX	361	2.5%
756, 57 East Texas	245	1.7%
793, 94 Lubbock, TX	231	1.6%
790, 91 Amarillo, TX	225	1.5%
769, 97 Midland, TX	208	1.4%

754 Greenville TX	198	1.4%
783, 84 Corpus Christi	195	1.3%
768, 78 Bryan, TX	155	1.1%
776, 77 Beaumont, TX	121	0.8%
795, 96 Abilene, TX	99	0.7%
759 Lufkin, TX	93	0.6%
763 Wichita Falls TX	77	0.5%
755 Texarkana	53	0.4%
779 Victoria, TX	50	0.3%
758 Palestine, TX	42	0.3%
792 Childress, TX	14	0.1%
Total	14,552	100.0%

Three digit zip codes, some metro areas had more than one zip code, some zip codes are abbreviated
see https://pe.usps.com/archive/HTML/DMMArchive20070717/print/L002.htm

How Goal Setting for Alternative Service Provision must be improved on Fintech Applications

The FDIC statement of policy requires that applicants for deposit insurance must indicate what services they intend to provide in relation to the needs of the community. Instead of lending, some fintechs are in the business of offering deposit accounts, financial management, and planning services including mobile applications. The few fintechs offering these types of services that have applied to either the FDIC or OCC offer only vague descriptions of their services on applications. The public often lacks basic information regarding the numbers and types of deposit accounts that the fintech offers or plans to offer to low- and moderate-income (LMI) customers and communities. These fintechs are savvy financial companies that most likely have data on deposit accounts segmented by demographics of borrower and community. It is NCRC's educated guess that they could be more forthcoming on existing and planned deposit accounts and services to LMI populations. We believe that they have not been forthcoming because the agencies have not required them to be.

The FDIC must develop performance measures for alternative service delivery for applicants. These could be similar to the guidance on how CRA examiners evaluate alternative delivery systems in the Interagency Questions and Answers Regarding CRA (Interagency Q&A).[7] The Interagency Q&A advises that CRA examiners will scrutinize whether a financial institution's alternative delivery systems are effectively delivering services to LMI populations by

[7] Community Reinvestment Act; Interagency Questions and Answers Regarding Community Reinvestment Act Guidance, OCC, Board of Governors of the Federal Reserve System, FDIC, Fed. Reg. 81, 142 at 48506, https://www.gpo.gov/fdsys/pkg/FR-2016-07-25/pdf/2016-16693.pdf

considering a variety of factors including: ease of access; cost to consumers; range of services delivered; ease of use; rate of adoption and use; and reliability of the system.[8]

A fintech should establish specific performance measures and goals for LMI customers and communities for each of these factors. Factors like the rate of adoption and use and the reliability of the system should have separate metrics and goals specifically set for rural as well as urban areas, and for populations not connected to the internet. The federal bank agencies have an opportunity to use their recent Q&A guidance and insist that a fintech's CRA plan incorporate these metrics so that the public can discern whether a fintech's charter application would meet the convenience and needs of LMI communities instead of the vague promises common in current fintech applications. The development of metrics for alternative service provision must be a part of updating the CRA regulations and then applied to deposit insurance and merger applications for fintechs and traditional banks.

Fintech Applications Must Outline Clear Fair Lending and Consumer Protection Procedures

An application for an ILC submitted by an on-line lender must have rigorous responsible lending protections. Serious concerns have arisen due to possible fair lending disparities caused by unorthodox underwriting using algorithms employed by many fintechs. Machine learning and big data can lead to using factors like particular colleges attended in underwriting that may lead to disparate racial impacts that are not justified by business necessity. A fintech must describe in its application how its underwriting criteria are fair, unbiased, and will avoid disparate impacts.

Fintech applications to-date offer little insight into marketing or outreach plans to communities of color. Agencies, including the FDIC, conduct fair lending exams to determine if all areas of a REMA (Reasonably Expected Market Area) are receiving fair access to loans and services or if there are some areas, including communities of color, that appear to be systematically excluded from lending and services.[9] Financial institutions violate fair lending laws when they purposely avoid opening branches or marketing to communities of color. Because of its branchless operation and focus on online advertising, a fintech must ensure that its products and information are reaching traditionally underserved communities. Without clear policies and procedures in place, a fintech could end up redlining by neglecting those populations and communities that have less access to smartphones or the internet.

A fintech that has recently applied for an ILC charter and deposit insurance employs merchant cash advances that have had an uneven reception with complaints about high costs and unaffordability. The fintech did not describe standards for disclosure that would ensure fairness and transparency for small business borrowers. For instance, it did not indicate whether it will

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[8] Interagency Q&A at 48542.
[9] FDIC presentation at New York Region Planning Call, March 2017, https://www.fdic.gov/news/conferences/otherevents/2017-03-30.pdf

adhere to the Small Business Borrower's Bill of Rights, a check-list of compliance including transparent disclosures of loan terms and conditions that have been endorsed by many lenders.[10]

The FDIC must have a section in its deposit insurance applications requiring applicants to answer detailed questions about how they will comply with fair lending and consumer protection laws. Currently, the interagency application form that the FDIC uses for deposit insurance applications lacks a fair lending and consumer protection section (the supplemental material including the Statement of Policy and Handbook also do not discuss fair lending and consumer compliance issues). If the FDIC does not add a robust fair lending and consumer compliance section, it will be approving applications without sufficient fair lending and consumer protection safeguards. It will be setting up fintech and other applicants to fail fair lending and consumer compliance reviews.

Conclusion

The FDIC must improve its deposit insurance application procedures in order to ensure that lending institutions are fully complying with their statutory responsibilities under CRA and the fair lending and consumer compliance laws. The FDIC must make the process clearer and more transparent by consolidating instructions and reducing the number of documents that must be referenced. The interagency application form must require robust answers about CRA and fair lending and consumer compliance. All communications including pre-filing communications that have bearing on the statutory factors considered in deposit applications must be publicly available and subject to full FOIA disclosure.

The FDIC must apply updates of the CRA regulation to the deposit insurance application process so that fintechs cannot shirk CRA responsibilities through the designation of assessment areas that cover a small fraction of their lending and business activity. The interagency application form must also have updated performance measures and goals for alternative service delivery.

Fintechs can either widen the digital and banking divide or narrow them. The early evidence suggests that fintechs making home loans or other complicated lending products are not as effective in serving LMI people and communities as traditional banks that can more readily guide LMI people through the lending process.[11] In contrast, fintechs offering consumer loans and other less complex products might be effective in reaching areas underserved by traditional

[10] http://www.responsiblebusinesslending.org/
[11] Bank of the Internet CRA exam of 2016, the lender typically lags its peers in making home loans to LMI borrowers and communities, https://www.occ.gov/static/cra/craeval/nov16/716456.pdf

lenders.[12] However, their loan terms and conditions are prone to more abuses since they are not as stringently regulated as traditional banks.[13]

By asking the fintechs for thoughtful goals and plans, the deposit application form has a key role to play in promoting better service by fintechs that are having difficulties lending to and serving LMI people. At the same time, the application process presents an opportunity to ensure that those fintechs that are serving LMI populations are not doing so recklessly with irresponsible and abusive products.

NCRC appreciates the opportunity to comment on this important matter. We believe that if the FDIC adopts our suggestions, it will be helping the lending marketplace become fairer, more equitable, and more responsible.

Thank you for the opportunity to comment on this important matter. If you have any questions, please feel free to contact me or Josh Silver, Senior Advisor, on 202-628-8866.

Sincerely,

Jesse Van Tol

Organizations signing onto to this letter

National

Americans for Financial Reform Education Fund

Allied Progress

Center for Responsible Lending

Consumer Action

National Association of American Veterans, Inc. (NAAV)

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[12] Julapa Jagtiana and Catharine Lemieux, *Fintech Lending: Financial Inclusion, Rick Pricing, and Alternative Information, Working Paper No. 17-17*, Federal Reserve Bank of Philadelphia, https://www.philadelphiafed.org/-/media/research-and-data/publications/working-papers/2017/wp17-17.pdf

[13] 2018 Small Business Credit Survey: Report on Nonemployer Firms, Federal Reserve Bank of New York, Cleveland, and Richmond, see page 18 regarding dissatisfaction with fintech loan terms and conditions compared with traditional lenders, https://www.fedsmallbusiness.org/medialibrary/fedsmallbusiness/files/2018/sbcs-nonemployer-firms-report.pdf

National Consumer Law Center (on behalf of its low income clients)

Alabama

HUB Community Development Corporation

NAACP, Huntsville

Florida

St. Petersburg Neighborhood Housing Services, Inc. dba Neighborhood Home Solutions

Solita's House Inc.

Georgia

Georgia Advancing Communities Together, Inc.

Hawaii

Hawai'i Alliance for Community-Based Economic Development

Illinois

Chicago Community Loan Fund

Universal Housing Solutions CDC

Woodstock Institute

Indiana

Northwest Indiana Reinvestment Alliance

Louisiana

Multi-Cultural Development Center

Michigan

Fair Housing Center of Metropolitan Detroit

Missouri

Metropolitan St. Louis Equal Housing and Opportunity Council

New Mexico

Southwest Neighborhood Housing Services

United South Broadway Corporation

NCRC
National Community Reinvestment Coalition

New York

Association for Neighborhood and Housing Development

Empire Justice Center

Fair Finance Watch

North Carolina

Rebuild Communities NC

The Twenty, Inc.

Ohio

County Corp

Nazareth Housing Dev. Corp.

Ohio Fair Lending

Oregon

CASA of Oregon

Pennsylvania

Fair Housing Rights Center in Southeastern Pennsylvania

Pittsburgh Community Reinvestment Group

Rhode Island

HousingWorks RI

Texas

Our Casas Resident Council Inc.

Southeast Houston CDC

Wisconsin

Metropolitan Milwaukee Fair Housing Council