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CRA Modernization: OCC Proposes to Rescind June 2020 Rule

Progress has been made since the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC) and the Federal Reserve Board (FED), collectively the Agencies, released an interagency statement publicly committing to working jointly to modernize and strengthen regulations implementing the CRA in July. In September, the OCC, under acting Comptroller Michael Hsu, issued a Notice of Proposed Rulemaking (NPR) to rescind its June 2020 CRA rule and replace it with the 1995 interagency rules. This is to provide OCC-regulated banks with a familiar framework in which to operate while the Agencies go back to the drawing table. The 45-day comment period for the NPR ended on October 29.

At the CRA & Fair Lending Colloquium, representatives from all the regulators reiterated that CRA maintains as a top priority and that interagency cooperation and collaboration is ongoing and frequent. Donna Murphy, Deputy Comptroller for Compliance Risk Policy at the OCC, declined to discuss *(continued on page 3)*

Inside

Discussed at the CRA & Fair Lending Colloquium: Does CRA Have a Role in Addressing Climate Change and Racial Equity?

The CRA & Fair Lending Colloquium hosted by Wolters Kluwer continues to be a key event for stakeholders focused on the Community Reinvestment Act (CRA), The Home Mortgage Disclosure Act (HMDA) and fair lending. In its 25th year, the Colloquium was originally planned to be in-person but made the pivot and was held in a virtual format on November 16 and 17. The conference brought together over 800 bank practitioners, regulators, community advocates and other industry stakeholders. Left, a participant in a virtual conference.

The Community Reinvestment Act (CRA) is legislation that was enacted in 1977 to encourage financial institutions to serve the credit needs of the communities in which they do business, including low– to moderate-income (LMI) neighborhoods, and to do so in a manner consistent with safe and sound business operations. The CRA requires that each federal regulator evaluate the extent to which banks address the credit needs of LMI neighborhoods in their geographic customer markets. The original intent of the CRA grew out of concerns for the deterioration of America's cities, particularly lower-income communities, with the intent to reduce redlining, the *(continued on page 2)*

SBA 7(a) Loan Profile: Pigeonly, Las Vegas, NV

The SBA Loan Fund has been acquiring the guaranteed portion of SBA 7(a) loans in the secondary market for CRA-motivated bank investors since 2004. When portfolio managers at the SBA Loan Fund screen loans, they look for loans in specific investor-targeted counties or census tracts that meet not only the technical requirements of the CRA but also the spirit under which the CRA was created. The SBA 7(a) loan to Pigeonly is an example of the type of loan in the Fund's portfolio that is allocated to an investor.

Pigeonly is a subscription-based platform that makes it easy and cost effective for people to search, find, *(continued on page 3)*

Pigeonly is a communications platform for people to stay in touch with incarcerated loved ones. At the end of 2020, there were more than 1.8 million Americans in prison. Within three years of their release, two out of three former prisoners are rearrested and more than 50% are incarcerated again. The American Civil Liberties Union's (ACLU) National Prison Project found that connectivity with the outside world is crucial to the fight against prison recidivism. Above, prison visit.

Colloquium *(from page 1)* discriminatory practice of denying financial services to residents of certain geographies. Conversations about the modernization of CRA, last revised over 25 years ago, have been focused on the need to address the evolutions in banking brought on by the explosion of technological advancements and changes in consumer behavior, and the need to harmonize and improve the regulatory framework. However, recent national events that have highlighted continued systemic racial injustice and the disproportionate fragility of communities of color as affected by climate change and economic disruptions have prompted the inclusion of these topics into the discussion of CRA. When the original statute was written, and through the rulemaking revisions it has undergone since inception, the law's focus has explicitly targeted LMI communities with issues on racial inequalities explicitly left out. Stakeholders see this current interagency effort at modernization of the CRA as a potential opportunity to include the explicit targeting of communities of color for investment for CRA credit.

Colloquium attendees highlighted the glaring racial wealth inequality, citing a wealth gap of over 17 times between black and white households in 2019, and the less than 50% black homeownership rate. Moreover, recent events have shown that communities of color are disproportionately exposed to environmental health hazards and climate-related challenges. A recent poll from the Associated Press-NORC Center for Public Affairs Research showed that 54% of black Americans have lost some form of household income during the pandemic compared with 45% of white Americans. The poll also revealed that the economic hardships were compounded by personal losses with 30% of black Americans saying they have a close friend or relative who has died from COVID-19 since last March, compared with 15% of white Americans.

Colloquium attendees also highlighted how communities of color are more vulnerable to the effects of climate change. According to the American Public Health Association (AHPA), communities of color are more likely to experience pre-existing health conditions and poor living conditions than their white counterparts. Communities of color are less likely to have heat-coping tools during extreme heat events and that low-lying areas, which are predominantly low-income and tend to be communities of color, are at risk of hurricanes causing catastrophic flooding.

The general consensus at the Colloquium was a deep concern regarding both these issues and acknowledgement that action should be taken to invest to strengthen communities of color. The Advanced Notice of Proposed Rulemaking (ANPR) on CRA released by the FED in September 2020 posed questions on these topics, signaling that the regulators are considering whether the CRA has a role to play and sought input to this effect.

Included in the ANPR released by the FED in September 2020 were questions seeking feedback on racial equity and climate resilience:

Question 2: In considering how the CRA's history and purpose relate to the nation's current challenges, what modifications and approaches would strengthen CRA regulator implementation in addressing ongoing systemic inequity in credit access for minority individuals and communities?

Question 62: Should the Board include disaster preparedness and climate resilience as qualifying activities in certain targeted geographies?

Buzz Roberts, President of the National Association of Affordable Housing Lenders revealed that a new study conducted by the Urban Institute will show that LMI is not a good proxy for race.

Lloyd Brown, Corporate CRA Officer, Citi, stated his personal view that CRA can be a catalyst for change and that while CRA can't be the solver of every problem, it can play a role. He said, "wherever the joint harmonized ruling lands, it must be a durable rule, rather than one that changes with each administration." ■

SBA Loan Fund Impact Metrics

as of Sept 30, 2021

Newsletter Sources:

Cusick Director, J., Cusick, J., Director, Director, S. H. A., Hananel, S., Director, A., Seeberger Director, C., Seeberger, C., Oduyeru Manager, L., Oduyeru, L., Manager, Gordon Director, P., Gordon, P., Shepherd Director, M., Shepherd, M., Director, J. P. D., Parshall, J., Director, D., President, L. R. V., … Zhavoronkova, M. (2018, May 10). *A CRA to meet the challenge of climate change*. Center for American Progress. Retrieved November 22, 2021, from https://www.americanprogress.org/article/cra-meet-challenge-climate-change/.

Smith, K. A. (2021, July 7). *How communities of color are hurt most by climate change*. Forbes. Retrieved November 22, 2021, from https://www.forbes.com/advisor/personal-finance/communities-of-color-and-climate-change/.

SBA administrator Guzman announces $44.8 billion through Signature lending programs. (n.d.). Retrieved November 22, 2021, from https://www.sba.gov/article/2021/oct/29/sba-administrator-guzman-announces-448-billion-through-signature-lending-programs.

www.pigeonly.com

www.revolvingkitchen.com

CRA Modernization *(from page 1)* specifics as the rulemaking is ongoing, but assured the audience that the OCC is carefully considering the comments received to its NPR as quickly and responsibly as possible. Guidance on next steps and timing should be forthcoming. On October 26, the OCC released a Frequently Asked Questions regarding its NPR to rescind the June 2020 rule. Reasons cited for the NPR include: 1) opportunities for improvement to the June 2020 rule, 2) concern about the data collection and reporting burdens, and 3) the COVID-19 pandemic's disproportionate effect on minorities and rural and LMI communities. The June 2020 CRA rule and related guidance that became effective on October 1, 2020, remains in effect during the rescind-and-replace rulemaking process unless and until the new rule is replaced by a final rule.

Industry stakeholders are hopeful that the OCC's actions to rescind the June 2020 rule is laying the groundwork for interagency action going forward. ■

Pigeonly *(from page 1)* and communicate with prison inmates from anywhere in the world. The company's technology cuts the cost of expensive prison calls by roughly 80% and provides customers with the ability to send printed photos and greeting cards from any cell phone, tablet, or computer.

Pigeonly was established in 2012 by Alfonzo Brooks and Frederick Huston, both Veterans of the U.S. Air Force. Huston is a former inmate who spent 51 months in prison on drug charges and moved eight times during his stay. Huston said in an interview that "people get lost in the system all the time" and "saw firsthand that inmates who stayed in touch had a better chance of not going back to jail when they got out."

Proceeds of the SBA Loan were used to finance equipment and supported the creation and/or retention of nine jobs. The borrower is located in a low-income census tract. This is an African American-owned and Veteran-owned small business. ■

Record SBA Lending in FY 2021

Administrator Guzman's top priority for FY 2022 is to address the systemic gap in access to capital for the smallest and underserved businesses across the county. Left, Administrator Guzman.

SBA Administrator Isabella Casillas Guzman announced record levels in SBA loan program lending for FY 2021. SBA lending amounted to $44.8 billion through more than 61,000 traditional loans, in addition to more than $1.1 trillion in COVID-related relief since the start of the pandemic. The SBA authorized nearly 52,000 7(a) loans worth more than $36.5 billion to small businesses. Minority business owners received nearly $11 billion in 7(a) loans, representing roughly 40% of the total 7(a) portfolio. Women-owned businesses received nearly $5 billion and Veteran-owned businesses received $1.2 billion. ■

Did you know?

The SBA Loan Fund offers banks a turnkey opportunity to invest in the guaranteed portion of SBA 7(a) loans in a fund structure for targeted Community Development credit. Bank investors make equity investments in the Fund and become pro-rata shareholders alongside over 120 other bank investors. For CRA, the Fund acquires Community Development-eligible 7(a) loans in bank-targeted Assessment Areas and the CRA credit is passed on to the investor banks. For returns and risk management, banks share in the advantages of being invested in a diversified "mega pool" of the guaranteed portion of SBA 7(a) loans. Investors are provided with two levels of reporting: investment and impact reporting at the portfolio level on a quarterly basis, and Community Development reporting on an as needed basis. The SBA Loan Fund is rated triple-A by Moody's Investor Services. To learn more, visit www.SolomonHess.com.

SBA Loan Profile: Revolving Kitchen, Dallas, TX

Revolving Kitchen in the Dallas Fort Worth region was established by seasoned restauranteurs Tyler Shin and Peja Krstic. They saw an opportunity to provide fully equipped commercial kitchens that can be rented on a short-term or long-term basis. In addition to offering 25 commissary kitchens, the facility offers spacious dry, cold, and frozen storage and modern office spaces and conference rooms. The facility is conveniently available 24/7 with monitored on-site and overnight parking.

Another example of the type of loan the SBA Loan Fund tries to acquire for bank investors for Community Development is the loan to Revolving Kitchen, a commissary kitchen that provides infrastructure and production space for local food entrepreneurs such as caterers, food truck operators and ghost kitchens. By offering commercial kitchens on a rental basis, the company hopes to encourage new and innovative entrants to the food industry. Proceeds of the SBA 7 (a) loan were used to finance the property on which the business is established. The borrower is located in a low-income census tract and a CDFI Fund Qualified Investment census tract. The borrower self -reported to the SBA that this loan supported the creation and/or retention of four jobs. This is an Asian American co-owned business. ■

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SBA Loan Fund Impact: Supporting Community Development

Since inception in 2004, the Solomon Hess SBA Loan Fund has invested over $2.4 billion in small business loans. These loans, made to over 4,500 small businesses located in 47 states, have helped to create and/or retain over 66,000 jobs. Over 70% of the loans in which we have invested are located in low and moderate income or otherwise economically distressed census tracts. The majority of these loans are made to under-served small businesses that do not have access to conventional commercial debt.

Managing Good Capital Well

Solomon Hess Capital Management ("Solomon Hess") is an alternative asset manager specializing in fixed income. Our mission is to provide investors with community and economic development-focused investment funds that generate both competitive risk-adjusted returns and positive quantifiable community impact. Founded in 2004 and located in Falls Church, Virginia, Solomon Hess has over $800 million of assets under management. Solomon Hess is Fund Manager to the SBA Loan Fund and investors include banking institutions of all sizes that are seeking Community Development Investment or Lending test credit within the Community Reinvestment Act (CRA) rules via exposure to SBA 7 (a) loans and related assets. Other investment opportunities with Solomon Hess include investing in our Absolute Return strategy. We offer our strategies as funds or separate accounts.

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The Solomon Hess SBA Loan Fund LLC attempts to provide its investors with CRA credit related to their participation in the Fund. Investment decisions are not always exclusively based on the economic characteristics or investment merit of a specific asset. Certain CRA eligible securities sought by the Fund in specific geographies may not provide as great an economic benefit to the Fund as the same securities located in non-CRA geographies. The Fund may engage in transactions at times for reasons related to CRA considerations that may not be desirable from an investment standpoint. If one or multiple federal banking regulators, such as the OCC, FDIC or the Federal Reserve Board, were to deem an investment in the Fund as not qualifying for CRA credit, the impact to Fund investors could be material.