

REINVESTMENT PARTNERS

"ADVOCATING FOR ECONOMIC JUSTICE AND OPPORTUNITY"



May 13th, 2015

Legislative and Regulatory Activities Division
Office of the Comptroller of the Currency
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Robert deV. Frierson
Secretary
Board of Governors of the Federal Reserve System
20th St. and Constitution Avenue NW
Washington, DC 20551

Robert Feldman
Executive Secretary
Attn: Comments, Federal Deposit Insurance Corporation
550 17th St., NW
Washington, DC 20429

RE: OCC Docket ID FFIEC-2014-1, Federal Reserve Docket No. R-1510, FDIC 12 CFP Chapter III

Dear Sirs:

Please accept this comment for proposed review of the Regulatory Publication and Review under the Economic Growth and Regulatory Paperwork Reduction Act of 1996. Our comment concerns how the EGRPRA process will treat issuers of prepaid debit cards under the Community Reinvestment Act.

Reinvestment Partners is a 501 (c) 3 organization located in Durham, North Carolina. Our mission is to help under-secured communities to access safe and sound financial products. We realize our goal through a “people and places” strategy that addresses needs through direct services to individuals, to neighborhood community economic development, and through policy advocacy.

Since the 1990s, we have engaged banks in their commitment to the Community Reinvestment Act. We have secured approximately \$400 million in lending commitments from North Carolina banks. As well, we regularly comment on proposed rules relating to the CRA.

Need for statutory change

Do any statutory requirements underlying the rules in these categories impose outdated or otherwise unnecessary regulatory requirements? If so, please identify the statutes and indicate how they should be amended.

We believe that definitions of assessment areas need to be reviewed and updated to reflect changes in banking.

Today, only a small handful of banks issue the majority of prepaid cards. While people of all income strata use the cards, low-to-moderate income households are most likely to use such an account as their primary means of transacting their financial affairs. This aspect means that the CRA should be sensitive to their activities. Unfortunately, this is not the case. Instead, CRA evaluations force mono-line prepaid card issuers to engage in a variety of investment, lending, and grant-making for activities that are largely outside of their normal day-to-day business model.

Currently, CRA examiners lack a means to evaluate a branchless bank. Indeed, there is flexibility for evaluation but this is largely a function of asset size. The second largest issuer of prepaid cards (by accounts) is considered a “large” bank. As a result, the most important aspect of its exam is the Lending test. The best means of evaluating a prepaid card issuer is through the services test. This bank received a “Needs to Improve” on the service test. But since the bank is evaluated for a model that fits an entirely different business model than the one it uses to derive the majority of its revenues, it still received a “Satisfactory” overall. To some extent, the exam talked about HMDA lending, but it also stated that the bank “has never been a traditional, branch-centered residential lender....the majority of HMDA-reportable loans have been originated through a residential builder program in which TBB is involved in construction financing or are non-owner occupied investment properties.¹” The bank made 11 mortgage loans to low-or-moderate income borrowers over 2010 and 2011. The bank received a “High Satisfactory” for investments. To their credit, the basis for that grade was driven by grants to community development organizations with a common emphasis on lower-income populations. Nonetheless, the sum of grants made over two years was merely \$56,545 – or about 2.01 percent of their deposits. All of those grants were made within their assessment area, which comprises an area with slightly more than 2 percent of the nation’s population. In all, not a single metric of the exam aims to evaluate the company’s prepaid debit card activity; even those accounts comprise more than sixty percent of the bank’s deposits. But how is it possible, given the current design of the CRA? In a word, this approach is outdated. The bank has one branch. The branch is not a physical entity but a “full service cyber office.” Deposits held in that device come from consumers across the country. At the moment, there is no way to accommodate this kind of institution under the outdated concept of the assessment area, the restrictive use of the same categories (Lending, Services and Investments) and the willingness to give a satisfactory to an institution because there is no opportunity to fulfill one of the three core functions.

Overarching approaches/flexibility:

With respect to the regulations in these categories, could an Agency use a different approach to lessen the burden imposed by the regulations and achieve statutory intent? (2) Do any of these rules impose unnecessarily inflexible requirements? (3) If so, please identify the regulations and indicate how they should be amended.

The way that regulators define assessment areas is inflexible and out of date.

The relative regulation is 12 CFR Part 25, Subpart C 25.41 Assessment Area delineation

¹ https://www2.fdic.gov/crapes/2012/35444_120123.PDF

We believe that banks whose revenues are derived entirely or mostly from prepaid card issuance should be treated in a manner consistent with the guidance for (f) Banks serving military personnel. In common with that change, Parts (c) (2), (d), and (e) (4) should be amended. In effect, there is no branch associated with a prepaid card. A CEO of a large prepaid issuer recently commented:

“Our mission is to reinvent personal banking for the masses, and in doing so, become a big sustainable brand name, branchless bank, serving millions of Americans with modern feature-rich bank accounts.”

In our opinion, the key words in that quote are “reinvent” and “branchless.”

Prepaid cards have changed banking in ways that were never contemplated when the CRA was passed and at the time of its significant legislative updates. The prepaid card is reinvention banking. In spite of that, examination procedures are inflexible to this change. Nonetheless, millions of Americans now use these cards as their primary transaction account and as the ongoing destination for their deposits. The CRA cannot address their needs as currently designed because of how it picks assessment areas. The prepaid card is branchless in spirit. To the degree that some banks have one or several branches is only a function of record keeping. Consumers do not use those branches. Indeed, most will never live or visit the assessment area surrounding the issuer’s branch.

Consider how the Office of the Comptroller of the Currency has defined the Assessment Area for Armed Forces Bank:

“Armed Forces Bank defines its Assessment Area as all active or reserve military personnel and their dependents, retired military personnel, persons enrolled in military academies, and persons participating in college ROTC programs throughout the world. The CRA regulation allows this option to banks whose business predominantly consists of serving the needs of military personnel or their dependents that are not located within a defined geographic area.”²

Given that, AFB was evaluated beyond the communities in its branch network. The OCC also simplified how the bank determined its service to low-and-moderate income households. The OCC allowed AFB to use a single number in the calculation of income status. The denominator in the consumer income/MSA median income was assumed to be the average income (\$49,777 in the reference year) for a US household.

The only reason to not change is assessment areas is because it has not been done in the past. By any realistic observation, these are consumers whose financial profiles are exactly the same as the ones for whom the CRA was designed. Most have low or moderate incomes. Inevitably, most live in underserved areas.

They do interface with physical locations in the process of using their accounts. However, those sites are retail stores.

12 CFR 25.14 Part D specifies that assessment areas should not be too large. We concede that point. Most of these cards can claim to have customers in every state in the country. We believe that the appropriate middle ground is to designate only a

² <http://www.occ.gov/static/cra/craeval/jun14/8796.pdf>

subset of those MSAs as primary assessment areas. With ten or twelve areas, market leading issuers would be more than able to provide appropriate services:

- Deposits in CDFIs
- Financial literacy grant-making to non-profits
- Initiatives to support asset-building, either through partnership or directly within the portfolio of services offered to their own customers.

The updated regulation would have to be similarly flexible with regard to how it asked issuers to demonstrate that their customer base drew from LMI households. From a simplified vantage point, it seems likely that prepaid cards would have significant penetration into the lower strata of income. Nonetheless, without the ability to verify account holder income, that has not been possible. It will remain impossible going into the future. Given that obstacle, we think it would be better to allow institutions to use a system of estimation. Estimation would make the process easier for issuers. For example, it might be possible to impute income from a recurring direct deposit of a relatively constant amount. In that scenario, an issuer could make a good estimate of the consumer's total annual income. If the estimate suggests an imputed income below eighty percent of U.S. household income, then it stands to reason that the consumer considered as low income for the purposes of the exam. This is a simpler approach that actually adds value to the evaluation process. At the very least, as there is no better alternative, there is no "regulatory opportunity cost."

Other Examples: The Office of the Comptroller of the Currency recognizes five kinds of special purpose/narrow focus institutions. Of those, credit card and community development banks are the only ones that serve consumers directly. Credit card banks share in common with prepaid card banks a similar geographic profile. They draw customers from anywhere in the United States. Credit card banks share a similar problem of fit with the Community Reinvestment Act. Department Store National Bank, for example, refers to Sioux Falls, South Dakota for its assessment area. We would thus apply the same concern to credit banks as we would to prepaid debit card issuing banks. Both should have to reformulate their assessment areas to some scope that captures a broader geographic area. As well, they should be evaluated for their core functionality. Department Store National Bank makes qualified investment in Low-Income Housing Tax Credit projects, grants for affordable housing, and provides financial education³ in Sioux Falls. Given that imperative, Department Store National Bank must create special lines of business in order to fulfill the affirmative obligation of the Community Reinvestment Act. Other expectations of a similar nature are placed on other banks with the limited purpose credit card bank definition: TCM Bank is assessed in Tampa, Florida and complies with the law by making qualified investments in pass-through agencies. In TCM's 2011 evaluation, the examiner noted

"The bank's overall level of CD activities is adequate. The bank did not provide any CD services. TCM's narrow focus and small staff limit its ability for involvement in complex CD (community development) activities."

A better assessment are standard would have the flexibility to accommodate banks that are not really rooted in a particular geography. The CRA should be able to recognize such instances. Indeed, only a few banks would potentially qualify for examination as mono-line prepaid card issuers: Green Dot Bank, MetaBank, Bancorp Bank, and H&R Block Bank. For another group of institutions, issuance of prepaid cards is a significant business line, but not the only one. Bank of the Internet/ B of I Federal Bank and Inter National Bank are examples. For those entities, amending their assessment area to include some areas beyond their branch network would be reasonable. Lastly, major issuers of government benefits cards (Comerica,

³ <http://www.occ.gov/static/cra/craeval/feb12/24622.pdf>

American Express) should be considered if only because they have such scale in the market. Comerica might serve 10 million consumers. The 3 million it serves through its Direct Express cards should be relevant to the bank's CRA activities.

Scope of rules:

- (1) Is the scope of each rule in these categories consistent with the intent of the underlying statute(s)?
- (2) Could we amend the scope of a rule to clarify its applicability or reduce burden, while remaining faithful to statutory intent?
- (3) If so, please identify the regulations and indicate how they should be amended.

The Community Reinvestment Act is designed to address problems for those individuals who are traditionally underserved by financial services. Without a doubt, many prepaid card account holders are drawn from this group. By not updating the CRA to reflect this new technology, the Act is bypassing the audience that it was designed to assist. We understand that homeownership is vitally significant, but for those that no longer have a bank account of any kind, the opportunity to have a transaction account is a need of a higher order.

It also puts some banks in the position of having to build out lines of business that are outside of their primary business model. To paraphrase a conversation I had with the CEO of a large prepaid card issuing bank:

“We have to hire half of an FTE just to make mortgages and grants for our local community. I do not want to make mortgages. In our regular business, we have no need to make mortgage loans. I would much rather do something that serves my consumers. But I do not have that choice. I have to follow the rules. I do not have money to do both.”

In fact, special rules established for prepaid card issuers make it difficult to participate in any kind of mortgage lending. Prepaid banks are required to maintain a very high (15 percent in some instances) Tier 1 Leverage Ratio. Even more significantly, they are expected to keep one dollar of cash and cash equivalents on their balance sheet for every dollar they hold in deposits. In that context, a prepaid card issuer is systematically challenged to make loans of any kind. Their resources to make loans are solely based upon their equity position.

Consider these data points from recent annual reports of Green Dot Bank, an issuer whose focus is almost exclusively inside prepaid card issuance.

	2012	2013	2014
Deposits			
Amount	\$ 198,451	\$ 219,580	\$ 565,401
Loans			
	2012	2013	2014
Real Estate Loans	\$ 3,556	\$ 3,383	\$ 3,861
commercial loans	\$ 1,179	\$ 1,474	\$ 697
installment	\$ 3,292	\$ 2,509	\$ 2,436
Total Loans	\$ 8,027	\$ 7,366	\$ 6,994

\$ In thousands. Data from 2015 10-k⁴

While deposits are surging, loans held on Green Dot's balance sheet are actually shrinking. On a year-over-year basis, this table shows that Green Dot is actually letting its lending business lapse over time, perhaps by not re-deploying those

⁴ <http://www.sec.gov/Archives/edgar/data/1386278/000138627815000022/a2014-12x31form10xk.htm#s17EC860906F2D6F2CAA23CE4A6A20CA9>

funds as they come to their end of their current terms. Although loans have never represented more than 4 percent of total assets at Green Dot Bank, the share made up by lending dropped to just 4/10ths of 1 percent in 2014.

In fact, there are ways in which a current CRA evaluation is unfair to a prepaid issuer. At the end of 2014, Green Dot Bank had a loan to deposit ratio of 1.2 percent. This is an absurdly low number. Commonly, most banks report a ratio closer to sixty percent and many operate at nearly 100 percent. Indeed, as CRA exams highlight loan-to-deposit ratios in every evaluation, it stands that such performance should virtually insure that Green Dot receive a “Needs to Improve” rating on its Lending test. That is not the case in fact. Green Dot received a “Satisfactory” in 2012. Clearly, the solution at the moment is to ignore the standard and move on, rather than designing an appropriate substitute.

In reviewing a recent CRA exam for such an issuer, we note that it was essentially allowed to pass even though it had done little to extend credit in under-served areas. The review acknowledged that lending was not the bank’s main focus and under such logic, allowed that it would not downgrade the bank for a low record of lending. The exam turned to a commendation for the Bank’s practice of including a bill pay function with their accounts.

In essence, existing rules and current examination procedures are at odds with each other. The former established an unrealistic set of criteria and the latter then excuses the institution for its non-performance.

A better alternative would be to openly reframe the expectations for mono-line prepaid card issuers.

Going back to the bill pay criterion, we wonder why the question of scale was outside of the examination process. A review should determine how many consumers are utilizing bill pay in general across all cards. Is it really a service of value? If it is, then such a service might be evaluated based upon rates of pickup. In the current system, a bank could charge ten dollars for a la carte bill pay, but would still be able to claim the presence of the service as evidence of provision of benefits to lower-income populations.

Aspects of services which could be used in a better CRA evaluation:

- Free use of a surcharge-free ATM network
- Provision and uptake of interest-bearing savings accounts
- Scalable Financial Education, with a preference toward the distribution of existing content.
- Grants to non-profits
- Placing deposits into community development financial institutions across a variety of MSAs

Scale is important. Unless take up rates are relevant, CRA exams will be insensitive to the value proposition for consumers.

Secondly, we believe that re-assimilation into the banking system is relevant for a qualitative review. Prepaid card companies should be viewed favorably when they can enroll formerly unbanked individuals in to accounts that receive a recurring direct deposit. This would serve to address a substantial problem faced by many employers. According to VISA and MasterCard, penetration of payroll card programs among small-and-medium-sized businesses is very low. Many of these companies avoid payroll cards because of the complexity of signing up, anxiety over liability for making financial choices for workers, or because they do not have enough unbanked employees to justify the investment of time. By contrast, it takes only minutes to sign up for a general-purpose-reloadable prepaid debit card. It is easy for any issuer

to determine if an applicant has a bank account at the moment of application, so this would not be a burdensome task for issuers.

Additional Concerns

We want to emphasize that CRA evaluations, as currently scheduled, do not impose an undue regulatory burden upon small banks. The CRA has already been re-designed to reflect their concerns. CRA exams for small banks can be as infrequent as every five years. Unless an institution receives a “Needs to Improve” or “Substantial Non-Compliance,” the next exam will be at least four years off. In only a handful of instances has it been the case that a small institution received an NPI or an SNC.

Institutions with assets of less than \$500 million that received either a ‘needs to improve’ or a “substantial non-compliance” between 2010 and 2014

Year/Bank Size	Needs to Improve		Substantial Non-Compliance	
	Intermediate	Small	Intermediate	Small
2014	3	0	0	3
2013	1	3	0	2
2012	9	6	0	1
2011	19	9	1	3
2010	35	3	0	2
Total	67	21	1	11

From 2000 to 2008, no small or intermediate small institution received a substantial noncompliance. Two banks received three substantial non-compliance ratings and another was given two. There were multiple cases when a single bank received more than one “needs to improve” rating. This infers that banks view the regulatory burden lightly. They prefer to ignore the needs of the community, even it means another exam. In other words, paperwork is not a reason to change their long-term low commitment.

While it is certainly the case that some voices will prevail upon regulators to reduce expectations for the service to the community, that claim is false. A review of the Examination Procedures for Small Institutions shows that this asserting does not hold up⁵. Data asked by regulators of small banks should already be on file. Standard TFR call reports or UBPR reports require a bank to know its loan-to-deposit ratio. Is loan-to-deposit ratio itself a regulatory burden? We assert that it is not. Any bank should use this to asset how loan performance would impact their safety and soundness. Doing so involves three descriptive statistics. Perhaps I am over-emphasizing the simplicity of the procedure, but the facts are incontrovertible. Reporting a loan-to-deposit ratio uses two of the four most basic factoring devices: addition and division. A bank must sum its loan amounts and then divide that number by the sum of its assets. This is not a regulatory burden. The other six characteristics required for the exam are similar in their complexity. The absolute truth is that the paperwork required of a small or intermediate size institution is a) already done b) minimal.

Conclusion

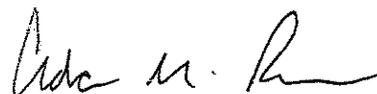
We believe that the CRA is an important tool for bringing capital to under-served communities. In its four decades, it has created opportunity in neighborhoods across the country. It does not impose undue burdens on banks – except in

⁵ https://www.ffiec.gov/cra/pdf/cra_exsmall.pdf

specific circumstances. In our belief, the treatment of mono-line prepaid card issuing banks is not appropriate. These institutions currently escape from the purview of the CRA because of the poor fit between their customers and the basis for an assessment area. The end result is that some of the most underserved households are removed from the reach of the CRA. The model is outdated. The branchless bank must be accounted for and updates to the CRA are necessary.

Thanks for your concern.

Sincerely,

A handwritten signature in black ink, appearing to read "Adam Rust". The signature is fluid and cursive, with a prominent initial "A" and a long, sweeping underline.

Adam Rust
Reinvestment Partners