

February 27, 2024

House Economic Matters Committee

Chair: Delegate CT Wilson

House Bill 1135 - Financial Institutions - Community Benefit Plan Act of 2024

Re: Letter of Information

This Bill establishes new state level requirements on regulated entities, defined as banks, credit unions, and non-depository mortgage companies. The Bill's requirements are virtually identical to those already imposed on state-chartered banks under the federal Community Reinvestment Act (CRA), however, they will be new for credit unions, who account for less than five percent of the mortgage originations in the state, and non-depository mortgage companies. It is being proposed at a time that has seen (a) the recent issuance of revised CRA regulations by federal banking regulators, (b) adverse mortgage market conditions affecting mortgage lenders, and (c) the pre-existing expansion of the Office of Financial Regulation (OFR) operations.

The Bill requires that covered regulated entities provide the OFR with a Community Benefit Plan upon submitting an application for a deposit facility, which includes applying for a charter for a banking institution or credit union, requesting to open a branch in the State, or acquiring or merging with an existing regulated entity, relocating a home office or a branch office of a regulated financial institution, the acquisition of shares or assets of a regulated financial institution requiring approval under state law or an initial license or renewal license to make loans or to offer other financial services. The Community Benefit Plan is also required when a non-depository mortgage company requests a new license or an annual renewal of an existing license. The Bill mandates the creation of a Community Review Committee ("The Committee"), to review and assess each Community Benefit Plan, monitor whether the entity is attaining its goals of meeting meaningful and measurable goals to serve underserved communities, monitor OFR's oversight of the Community Benefit Plans, and make recommendations for improvements. Should a regulated entity fail to meet its goals, the Commissioner is authorized to penalize the entity by, among other things, denying its branch or license application, imposing a financial penalty, requiring them to divest from a branch, or requiring revisions of their plan.

The Bill establishes a Community Investment Fund the purpose of which is to finance community development activities. The fund is to be administered by the Commissioner and its funding is to come from, among other sources, budget appropriations and any fines and penalties imposed by the Commissioner associated with non-compliance with the bill's requirements.

The Bill also requires the OFR to commission a disparity study to identify underserved counties and census tracts and to update the study once every three years.

This Bill will have a significant fiscal impact upon the OFR as its implementation will require the OFR to launch a new program that will require additional resources. In order to implement the Bill OFR will need to hire dedicated CRA and/or Fair Lending trained staff to review and monitor the Community Benefit Plans and review the public comments and otherwise implement, manage, and execute the Bill's requirements. The newly created unit will require a structure to be able to effectively evaluate all the required data in a professional, uniform manner that conforms to industry standards. A new framework of communication will have to be developed between the regulated financial institutions, Community Benefit Review Committee, and the general public. The

implementation of this new unit will also require strategic organization concepts to ensure a successful integration into OFR.

As explained in 1-501 sections C and D of the proposed Bill, the type of data that will have to be acquired and analyzed for the Community Benefit Plan will require a skill set associated with CRA and/or Fair Lending knowledge and experience. OFR will need to develop appropriate processes and/or systems to collect and maintain the data necessary to monitor the attainment of plan goals along with enforcement responsibilities for non-compliance. Additionally, OFR will require funds and additional resources in order to contract with individuals for the purpose of both initiating the disparity study, understanding the impact of the data provided, developing a plan to communicate the data provided to the public, and updating it on a regular basis.

The establishment of the Community Reinvestment Fund will require resources to fund, implement, and manage. This Bill makes OFR, for the first time, a grant making agency and as such, it may also create a potential conflict of interest for the OFR. A conflict is possible because it provides that OFR will be both the agency that enforces the statute and penalizes regulated financial institutions for non-compliance while at the same time being the agency that administers the Community Reinvestment Fund, which receives funding from the fines imposed by the OFR. OFR has no experience as a grant funding organization.

The OFR anticipates the first-year cost implementing the law to be \$636,915, not including any costs associated with funding the Community Reinvestment Fund. This cost includes salary, supplies/equipment, and disparity study cost of \$75,000 (Note, a new study is required every three (3) years). In the fiscal year 2027 it is estimated the program would cost \$692,655.

With regards to the Bill's operational impact, it is significant. The Bill requires that the OFR:

- annually receive and review submitted plans for adequacy from an estimated 100-120 non-depository mortgage companies and state chartered depository institutions, twenty-two (22) banks, and seven (7) credit unions that will be required to comply with the Act when the requirement for the filing of an application for a deposit facility is triggered. Although there will be a ramp up period on the depository side due to the timing of the triggering events that require the filing of a Community Benefit Plan, OFR cannot handle these responsibilities in addition to its existing activities with existing staff. OFR would have to manually review applications, eschewing electronic application processing, and as such the process will likely require additional manual review time by OFR's staff which will result in delays in the issuance of approvals for licensing and deposit facility applications. Additionally, if OFR deems a plan to be inadequate, there could be additional delays as OFR may be required to work with the applicant to adjust the plan. These Community Benefit Plans will also be made publicly available prior to their approval to allow for a period of public comment; such a requirement will further lengthen the review process as OFR seeks to receive and review any public comments. Further, the Bill does not provide a mechanism for OFR to provide guidance to licensees on how to comply with its requirements. This omission may result in OFR's staff spending time answering licensee and public questions. Finally, existing law requires the Commissioner to approve or deny a Mortgage Lender license application within 60 days of submission; a delay due to review or revision of a plan could result in non-compliance with this requirement.
- review and monitor community benefit submitted plans. OFR cannot handle these responsibilities in addition to its existing activities with existing staff. In order to implement these requirements, OFR will require data to verify past and present performance of goals set by the financial institution. Such a

requirement partially justifies OFR's anticipation of a need for additional OFR staff. The staff would have to understand the concepts needed for a successful community benefit plan by analyzing the data compared to regulated financial institutions performance (past/present), comparison to demographic benchmarks and peer/industry levels of activities. The staff will also have to understand what components are necessary to be included in each community development plan presented by the institution. Determining how a plan's components measure up to the goals set in the plan will require staff members that have CRA/Fair Lending skills or can be trained in those types of skills. The Bill requires an initial approval of each plan, annual review of the plan, and an approval of a new plan every three (3) years.

- enforce the new requirements. OFR cannot handle these responsibilities in addition to its existing activities with existing staff. The analysis, determination, and communications of the identified enforcement actions will require staff to handle them in a professional and constant manner. For example, the investigation of unfair, abusive, or deceptive trade practices will require extensive review and investigation. The communication and execution of these actions will require additional staff to implement, execute, and manage the process.
- manage and interact with the Community Benefit Review Committee that is mandated by the Bill and which will help review the Community Benefit Program along with the creation and activities of a Community Reinvestment Fund. The Commissioner, with the advice from the Community Benefit Review Committee, will disburse funds to support community development activities. The collaboration with the committee and administering of the fund will require staff to implement, execute, and manage the process. OFR cannot handle these responsibilities in addition to its existing activities with existing staff.

We respectfully request that the Committee consider this information.