



Noah W. Wilcox, *Chairman*
Robert M. Fisher, *Chairman-Elect*
Brad M. Bolton, *Vice Chairman*
Gregory S. Deckard, *Treasurer*
Alice P. Frazier, *Secretary*
Preston L. Kennedy, *Immediate Past Chairman*
Rebeca Romero Rainey, *President and CEO*

Submitted via Regulations.gov

January 21, 2020

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

RE: Community Reinvestment Act Regulations [RIN 1557-AE96]

Dear Sir or Madam,

The Independent Community Bankers of America (“ICBA”)¹ appreciates this opportunity to provide feedback to the Office of the Comptroller of the Currency’s (“OCC”) request for comments in response to its Notice of Proposed Rulemaking (“NPR”)² on reforming the Community Reinvestment Act (“CRA”) regulatory framework. The OCC’s NPR expands on the Agency’s June 2020 Final Rule³ by proposing the approach the OCC will use to determine the CRA evaluation measure benchmarks, retail lending distribution test thresholds, and community development minimums under the general performance standards of its June rule.

The CRA was enacted in 1977 to ensure that each insured depository institution serves the convenience and needs of its entire community, including low- and moderate-income (“LMI”) neighborhoods, consistent with [its] safe and sound operation.⁴ For community banks, serving the needs of their communities is not a regulatory obligation, it is their business model. As local businesses themselves, community banks only thrive when the families and Main Street businesses of their communities prosper. Community bank officers and employees are deeply involved in supporting their local economies and often serve as community leaders in both the business and charitable sphere.

Recently, communities across the United States have been devastated by the health and economic crisis of the COVID-19 pandemic. Community banks have played a key role in the nation’s economic response to the pandemic through their outsized participation in the Paycheck Protection Program. According to SBA statistics, lenders with less than \$10 billion in assets

¹ The Independent Community Bankers of America® creates and promotes an environment where community banks flourish. With more than 50,000 locations nationwide, community banks constitute 99 percent of all banks, employ nearly 750,000 Americans and are the only physical banking presence in one in three U.S. counties. Holding more than \$5 trillion in assets, nearly \$4 trillion in deposits, and more than \$3.4 trillion in loans to consumers, small businesses and the agricultural community, community banks channel local deposits into the Main Streets and neighborhoods they serve, spurring job creation, fostering innovation and fueling their customers’ dreams in communities throughout America.

² 85 Fed. Reg. 78258.

³ 85 Fed. Reg. 34734.

⁴ 12 U.S.C. 2903(a)(1).

made \$233.7 billion in PPP loans, which protected the paychecks of more than 26 million American workers.⁵ Furthermore, according to a report by the FDIC, community banks continue to hold a disproportionately high share of PPP loans, holding 31% of PPP loan balances, despite accounting for only 15% of total loan balances.⁶

Background

CRA’s guiding purpose, to ensure that low- and moderate- income (LMI) individuals have access to credit, is as relevant as it has ever been as banks work to address racial inequality and the economic consequences of the COVID-19 pandemic. While community banks are committed to community reinvestment, prior to the OCC’s June rule, the regulations implementing CRA had not been updated since the 1990s and did not address the changes in the way customers bank made possible by modern technology. Furthermore, we have consistently heard from community banks that CRA exams were conducted in an opaque and inconsistent manner where the result was dependent on subjective judgements by bank examiners.

ICBA has supported modernizing CRA regulations to increase consistency and transparency and to account for technological changes that have affected the banking industry. We have further appreciated the OCC’s outreach to both banks, community groups, and other stakeholders during the rulemaking process. However, in our comment to the Agency in response to its January CRA NPR, we argued:

Due to the lack of data on deposit location, and uncertainty regarding the scope of the new qualifying activities criteria, it has been difficult for community banks to assess the appropriateness of these thresholds or to suggest suitable levels. However, it is improbable that nationally standardized benchmarks would be appropriate in this performance evaluation. This results in a “one-size-fits-all” approach which will not capture the unique efforts of community banks of all sizes and charter types with wide-ranging specialized services and lending focuses that meet the unique needs of diverse communities.⁷

The OCC itself acknowledged the shortcomings of the existing data, saying, “Although the OCC was not limited in its ability to leverage the existing data, the agency agrees that the existing data was limited, rendering the agencies’ and commenters’ choice of thresholds uncertain.”⁸ This led the agency to the conclusion that it was appropriate to “separately gather more data and conduct

⁵ U.S. Small Business Administration, “Paycheck Protection Program (PPP) Report: Approvals through 08/08/2020,” available at: <https://home.treasury.gov/system/files/136/SBA-Paycheck-Protection-Program-LoanReport-Round2.pdf>.

⁶ FDIC Quarterly, The Importance of Community Banks in Paycheck Protection Program Lending, Vol. 14 No. 4, (Nov. 2020), available at: https://www.fdic.gov/bank/analytical/quarterly/2020-vol14-4/fdic-v14n4-3q2020-earlyrelease.pdf?source=govdelivery&utm_medium=email&utm_source=govdelivery.

⁷ Independent Community Bankers of America, Comment Letter Responding to NPR on Reforming Community Reinvestment Act Regulatory Framework (April 8, 2020), available at: https://www.icba.org/docs/default-source/icba/advocacy-documents/letters-to-regulators/icba-letter-regarding-cra---april-8.pdf?sfvrsn=bd572b17_0.

⁸ 85 Fed. Reg. 34774.

further analysis to calibrate the benchmarks, thresholds, and minimums associated with each of the three components of the framework.”⁹

ICBA Position

ICBA agrees with the agency to not finalize the benchmarks with the rest of the June final rule. Now, however, comes the critical second step – collecting the data and developing a set of rules that determine how quantitative benchmarks will be set. Whether a tailored, empirical approach can be established will ultimately determine whether or not the OCC’s rule or any modernization of CRA is possible to implement.

We believe that the agency should strive to develop an approach that builds upon significant stakeholder consensus. In the June final rule, the OCC said, “[a]lthough commenters disagreed with the approach outlined in the proposal, the agency ultimately agreed with the minority of commenters who expressed support for the proposed framework.”¹⁰ We do not believe that an approach that lacks support from stakeholders, including the banking industry will produce a sustainable regulatory framework.

Under the approach proposed by the OCC in January of 2020, ICBA was concerned that CRA may devolve into a credit allocation system whereby each successive administration will alter the CRA performance standards based on political preference. This is not a truly empirical approach, nor is it responsive to the needs of communities. We believe benchmarks must be tied to historical, local bank performance data and community demographics – rather than set at a nationwide threshold.

ICBA remains generally supportive of efforts to modernize CRA regulations to ensure they continue to reflect the changes to the banking industry driven by technology. We support a framework, which may consider both quantitative and qualitative factors, to increase the transparency of CRA exams. ICBA believes that the three agencies responsible for implementing CRA, the Federal Deposit Insurance Corporation (“FDIC”), the Office of the Comptroller of the Currency (“OCC”), and the Board of Governors of the Federal Reserve (“the Board”), should work together for a uniform CRA rule.

I. Continued Support for One CRA Rule:

The CRA statute does not require all the prudential regulators to issue joint rulemakings. However, it is the strong belief of community banks that joint rules provide the banking industry with the benefits of reducing compliance burden, increasing regulatory certainty, and industry-wide consistency. Joint rules are also more useful to consumers, community groups, and other non-bank stakeholders, because they allow for true apples-to-apples comparisons of the community reinvestment performance of different financial institutions.

⁹ *Id.*

¹⁰ 85 Fed. Reg. 34738.

After a joint-rulemaking process with the FDIC, in June of 2020, the OCC finalized its new CRA Rule unilaterally.¹¹ While the Federal Reserve Board participated in interagency discussions with the OCC and FDIC regarding CRA, it ultimately elected not to join the OCC's rulemaking or final rule. Instead, it proposed an alternative vision for CRA modernization in an October 2020 ANPR.¹² As with the OCC rule, we believe the Fed proposal includes both positive and negative changes.

On one hand, the Board's proposed evaluation metrics are more straightforward and prioritize retail loans to individual LMI families. Additionally, the Board's proposed evaluation does not use nationwide benchmarks and includes qualitative factors, which helps ensure evaluations are tailored to individual communities. On the other hand, we believe that the Board's proposal does not adequately adjust the threshold for small bank evaluations, which risks insufficient differentiation between community banks and large, money center banks.

The current approach of alternative universes of qualifying activities criteria and how loans and investments are considered by the regulators is unsustainable. Because both proposals have differing strengths and weaknesses, our recommendation is that the OCC, the FDIC, and the Federal Reserve Board resume an interagency dialogue to work towards issuing a joint notice of proposed rulemaking. It is our continued belief that a uniform rule is possible and, if it blends together the best elements of both approaches, will ultimately be a stronger and more lasting reform with broader stakeholder support.

II. The OCC Should Not Proceed with Its Information Collection Survey:

On December 15, 2020, the OCC promulgated an information collection survey ("ICS") that would apply to large national banks (banks greater than \$2.5 billion in assets).¹³ The stated purpose of the ICS is to gather data to set benchmarks within the framework of the June 2020 final CRA rule. The ICS requires banks to collect and report multiple data points including retail domestic deposit data at the county level, the quantified dollar value of banks' CRA qualifying activities under the 2020 final rule, data on retail loan applications and on what would have been the quantified dollar value of banks' CRA qualifying retail loan originations to determine the CRA evaluation measure under 2020 final rule, and information on banks' branch locations.

Most of this data does not currently exist. For example, while banks do track CRA qualifying activities, the ICS would require them to retroactively apply the 2020 rule's criteria to loans and investments that were made before the rule was promulgated. Some activities, which would qualify for credit under the 2020 rule, including community development services by bank staff, are not currently tracked. Furthermore, the ICS would require covered banks to delineate the location of retail domestic deposits at the county level through a process known as geocoding. Currently, banks report deposits based on the branches to which they are assigned, which may or may not be located in the same county in which the depositor lives.

¹¹ 85 Fed. Reg. 34734, available at: <https://www.govinfo.gov/content/pkg/FR-2020-06-05/pdf/2020-11220.pdf>.

¹² 85 Fed. Reg. 66410, available at: <https://www.govinfo.gov/content/pkg/FR-2020-10-19/pdf/2020-21227.pdf>.

¹³ 85 Fed. Reg. 81270, available at: <https://www.govinfo.gov/content/pkg/FR-2020-12-15/pdf/2020-27524.pdf>.

Banks, consumers, and all stakeholders have an interest in ensuring that a modernized CRA rule is based on accurate data. One of the reasons ICBA objected to the OCC's proposed benchmarks was that we did not believe they were based on transparent data analysis. However, we do not believe that this ICS, which was only promulgated after the bulk of the OCC's rule has already been finalized, is an appropriate tool to collect the relevant data. In short, responding to the ICS would be a substantial burden for covered banks, would likely yield flawed results, and is not appropriate because the OCC's June 2020 CRA rule may be meaningfully altered before it goes into full effect. Therefore, we believe that it should be rescinded by the agency.

Instead, we favor the "gradated approach" such as what is proposed in the Board's ANPR.¹⁴ Under the gradated approach, "surpassing a threshold would be taken into consideration, but would not initially grant a presumption of a specific conclusion. This gradated approach would start with a more incremental change from the current evaluation approach until more data permitted a presumption approach."¹⁵ For the sake of increasing transparency and predictability, we strongly believe that the surpassing the established thresholds should eventually grant a robust presumption of a satisfactory rating, but we also acknowledge that may not be appropriate until the "initial data limitations" are addressed.

III. Parity of Community Reinvestment Obligations for Branch-Based Banks and Internet Banks.

One of the major reasons that CRA requires modernization is that it has not kept pace with changing technology. When CRA was enacted in 1977 and, indeed, when the rule was last overhauled in 1995, modern online banking did not exist. While we acknowledge that a digital divide persists in this country and that internet access is not universal, online banking, including features like mobile deposit, has become a necessary service. Furthermore, as the COVID-19 pandemic has proven, mobile banking can be an important way for customers to access bank services when they cannot access a branch.

Because of this sea change in bank technology, it is not only appropriate but necessary to rethink the meaning of a bank's community. While the meaning of a bank's community will undoubtedly vary from institution to institution, there is a clear distinction between traditional, branch-based banks and branchless internet banks.

The CRA has traditionally focused on assessing bank performance based on the location of bank branches. We believe that, for most institutions, branch location is still the most relevant way to determine where a bank's community is located and to assess its retail lending (i.e., lending to small businesses and consumers). However, financial technology-focused internet banks, despite having no branches or a limited branch network, conduct business nationwide. Therefore, it is necessary to define their community differently, and may be appropriate to evaluate their retail lending on a nationwide basis. Because a nationwide assessment area will provide internet banks with significant flexibility regarding where they can receive credit, it is important to ensure they are held to a standard that is at equivalent to that of traditional banks.

¹⁴ See 85 Fed. Reg. 66441.

¹⁵ *Id.*

On the other hand, we believe that for community development activities, the current confines of assessment areas are too restrictive. We have consistently heard from banks that they are frustrated with their inability to receive CRA credit for the community development work they do outside of their assessment areas. For example, banks currently do not receive credit for activities in counties that are adjacent to a county where they are assessed, even if that activity would unambiguously qualify for credit in a county where a bank is assessed.

In rural parts of the country, there are counties that have few bank branches. In these areas, it is not uncommon for consumers to cross county lines to visit a bank branch. However, these rural counties become CRA deserts (areas with relatively little community reinvestment activity) because they are too sparsely populated to sustain a viable bank branch. Therefore, banks are unable to receive CRA credit for any community development activity conducted in that county. Allowing all banks, either traditional or internet-based, to receive credit in these areas, would directly benefit underserved populations.

IV. A Final Uniform CRA Rule Should Minimize Data Collection Burden for Small Community Banks

For small banks, data collection is a particularly heavy burden. In addition to meeting their obligation to regulators to collect information, banks must also invest in data security systems to ensure that customer privacy is not compromised. While larger banks generally have in-house software developers and large compliance and legal teams, small banks must deal extensively with third-party providers. This is expensive, time consuming, and it requires small banks to evaluate differing and highly complicated products. Ultimately, it often requires community bankers to rely on the technical expertise of contractors from outside of their banks.

The OCC's June 2020 final rule would require all national banks, whether or not they are large enough to become subject to the rule's general performance standards, to geocode the location of deposits. This would be extremely burdensome for the smallest banks. Collecting depositor location data is not a simple proposition because depositors are transient and tracking their location on an ongoing basis means building new technological systems and continuous verification that customer information is current.

Therefore, we support tailoring provisions so that small banks would be exempt from the requirement to geocode deposits. This is a narrowly tailored accommodation that would be a huge benefit for the smallest banks and the communities they serve. The vast majority of the deposits of these banks come from the immediate proximity of their branches. Unlike large banks, they do not solicit foreign deposits. Therefore, the FDIC summary of deposits data is a sufficiently accurate accounting of their deposit base for examiners to conduct accurate CRA evaluations.

Conclusion

Once again, ICBA appreciates this opportunity to provide feedback to the Office of the Comptroller of the Currency regarding its NPR on reforming the CRA regulatory framework. In general, we believe that the proposed approach to determine the CRA evaluation measure

benchmarks, retail lending distribution test thresholds, and community development minimums under the general performance standards is more suitable than the one-size-fits all benchmarks proposed in the January 2020 NPR. Any final rule should ensure that the CRA does not become a credit allocation scheme, where the benchmarks fluctuate unpredictably due to political changes. Instead, benchmarks must be tied to real world data and local community needs.

Furthermore, we urge the OCC, the FDIC, and the Federal Reserve Board, to work together to create a uniform CRA framework that applies to all regulated banks, regardless of their charter type. We see significant commonality between the OCC's final rule and the Federal Reserve Board's ANPR and believe that interagency compromise is still possible. We urge the agencies to consider that the consistent feedback of industry and consumer groups has been that the agencies should proceed together on a rule that has broad stakeholder support.

Please feel free to contact me at Michael.Marshall@icba.org if you have any questions about the positions stated in this letter.

Sincerely,



Mickey Marshall
Director, Regulatory Legal Affairs