



**Independent
Bankers
Association
of Texas**

Thomas C. Sellers
IBAT Chairman
Alliance Bank, Sulphur Springs

K. Kyle Irwin
IBAT Chairman-Elect
Western Bank, Gruver

Christopher C. Doyle
IBAT Secretary-Treasurer
Texas First Bank, Texas City

Bradley H. Tidwell
IBAT Immediate Past Chairman
VeraBank, Henderson

Justin D. Steinbach
Chairman
IBAT Leadership Division
Frost Bank, Dallas

Hazem A. Ahmed
Chairman
IBAT Education Foundation
Independent Financial, Houston

Christopher L. Williston VI, CAE
President and CEO
IBAT, Austin

July 27, 2022

Ann E. Misback, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551.

James P. Sheesley, Assistant Executive Secretary
Attention: Comments RIN 3064-AF81
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429.

Chief Counsel's Office
Attention: Comment Processing
Office of the Comptroller of the Currency
400 7th Street, SW, suite 3E-218
Washington, DC 2021

Via Federal eRulemaking Portal – Regulations.gov

Re: RIN 1557-AF15; RIN 3064-AF81; RIN 7100-AF[●]

Ladies and Gentlemen,

On May 5, 2022, the Office of the Comptroller of the Currency (“OCC”), the Board of Governors of the Federal Reserve System (“The Board”), and the Federal Deposit Insurance Corporation (“FDIC”) (collectively, “the agencies”) promulgated a Notice of Proposed Rulemaking, proposing major revisions to the implementing regulations of the Community Reinvestment Act.

The following comments are provided on behalf of the Independent Bankers Association of Texas (IBAT), a trade association that represents the independent, community banks of Texas. The Community Reinvestment Act, enacted in 1977, states that “regulated financial institutions have continuing and affirmative obligation to help meet the credit needs of the local communities in which they are chartered.” Texas community banks have done exactly that. They have met the credit needs of the communities they serve and that should be recognized in rulemaking and in evaluating community banks.

Parity in the Application of CRA.

Currently, the CRA does not apply to credit unions, an aggressive financial services entity type that takes deposits and makes loans. Many of these have geographic fields of membership, yet they are not covered by the law.

Credit unions argue that their very mission is to serve their communities and therefore there is no need to add a layer of regulations to their already 'heavy regulatory burden.' Either that same logic should be applied to independent community banks (of reasonable size), or credit unions should be subject to the same 'heavy regulatory burden.'

"Multiple studies have indicated that credit unions are not meeting even the fundamental mandate of their charter to serve people of modest means; their members have higher incomes and education levels than bank customers," the Independent Community Bankers of America reported.

IBAT urges the regulators to use their influence to get the CRA amended to cover these institutions in a reasonable and comparable fashion to the community banks, against which they compete.

Affordable Housing Issues

Questions 3 through 10 relate to various aspects of affordable housing. We understand that this issue has always been a significant concern in various federal laws. However, the biggest dilemma for community banks in evaluating affordable housing opportunities is the fact that this is essentially driven by factors outside their concern, including the priorities of various governmental agencies, zoning laws in various communities and an array of other issues outside of the banking industry's control. Furthermore, until there are incentives to builders (positive, such as financial benefits, or negative, such as requirements to make a certain percentage of a development "affordable"), affordable housing will be a chimera in too many locales. But CRA concerns or expectations on community banks is not the solution.

Community Supportive Services

Several of the issues in questions 14 through 24 deal with disaster recovery and climate risks. We concur that activities related to disaster preparedness and climate resiliency should be qualified activities. However, one problem that has arisen in Texas is that the Texas General Land Office decides on the distribution of disaster relief funds. Despite an admonition from federal authorities, the Land Commissioner's plan steered Hurricane Harvey aid disproportionately to whiter, inland counties at less risk of natural disasters. The City of Houston was awarded nothing. This alleged discrimination against communities of color should not be attributed to banks when they work with disaster relief projects.

Financial Literacy Activities

In response to question 27, IBAT urges that activities that benefit individuals and families of all income levels should be considered. For example, a variety of programs are offered through public schools so that students of all income levels have access without consideration of their income.

Asset Thresholds Should Be Adjusted for Small Banks

Under the proposal, Small Banks are defined as those with assets of up to \$600 million and Intermediate Small Banks are those with an asset of threshold of \$2 billion. Large Banks are those with assets of at least \$10 billion.

While we appreciate the increases in the asset thresholds and pushed for those in the OCC proposal, those asset size definitions are largely reflective of conditions when CRA was adopted in 1977 and should be

significantly increased for Small Banks. Small Banks should be defined as those with assets of up to \$1 billion in total assets, with commensurate adjustments for Intermediate Small Banks and Large Banks.

We note that the \$1 billion threshold is consistent with the proposed definition of “community bank” in the 2012 FDIC Community Banking Study. Certainly if \$1 billion was appropriate ten years ago, it is absolutely appropriate at this time.

Small and Intermediate Small Bank Opt-In

Texas community bankers appreciate and support the proposal that allows Small Banks (currently below \$600 million in total assets) to remain with the existing Lending Test for evaluations unless they elect to opt into the new Retail Lending Test. Raising the Small Bank threshold to \$1 billion would give more banks needed flexibility.

Banks with total assets between \$600 million and \$2 billion would have the option to remain with the current Community Development Test or comply with the new Retail Lending Test.

CRA-Qualifying Activities Should Be Expanded and Consistently Applied.

The OCC final rule (withdrawn in December 2021) included qualifying activities confirmation and an illustrative list that described examples of qualifying activities that were publicly available on the OCC’s website. That reform also provided a process for interested parties to request confirmation of qualifying activities, which could be added to the list.

Among community banks, qualifying activities confirmation was the most popular element of the OCC’s reform which included the development of an “illustrative list” of acceptable CRA activity.

This proposal would require the agencies to maintain a publicly available, illustrative, non-exhaustive list of activities eligible for CRA consideration. The agencies also propose including a process for modifying the illustrative list of activities periodically. In addition, the agencies are proposing a process, open to banks, for confirming eligibility of qualifying community development activities. In this process, banks would submit the details of a potential loan or investment to their regulator and could receive a binding decision about whether the loan or investment would be eligible for CRA credit.

Based on anecdotal evidence, we believe that there is currently inconsistency in the treatment of activities based on differences in examiners. Thus, maintenance of this list would provide critical certainty as well as appropriate consistency.

Assessment Areas

We appreciate the flexibility that allows Small Banks and Intermediate Small Banks to continue to be allowed to delineate assessment areas consisting of a portion of a county that the bank can be reasonably expected to serve, provided they continue to include only whole census tracts, without having to delineate an entire county. That is what has been the ‘norm’ for years and has been helpful for Texas community banks that operate in expansive rural counties. For example, Brewster County is 6,184 square miles and is located in sparsely populated west Texas. By contrast, Rockwall County is 149 square miles and is located

close to the Dallas/Ft. Worth metroplex. The characteristics of Texas counties vary widely, and banks should be able to appropriately limit their assessment area, while still using whole census tracts.

Under the proposal, regulators would still use “facility-based assessment areas,” which are delineated by a bank’s deposit-taking networks, as the primary factor for determining if banks are meeting their CRA obligations.

Loan production offices (LPO) are not branches and should not be considered in determining the bank’s assessment area. It is common to use LPOs to test the waters and determine whether a branch should be established in a new area. However, until that formal step is taken, the LPO should not affect the assessment area determination.

Large Banks would be required to delineate assessment areas that “consist of one or more MSAs or metropolitan divisions or one or more contiguous counties within an MSA, a metropolitan division or the nonmetropolitan area of a state.”

Large Banks and banks that opt-into the Retail Lending Test would be required to delineate a Retail Lending Assessment Area any MSA or the combined non-MSA areas in which a bank originated in that geographic area, as of Dec. 31 of each of the two preceding calendar years:

- at least 100 home mortgage loans outside of its facility-based assessment areas; or
- at least 250 small business loans outside of its facility-based assessment areas.

Comment: Texas community bankers surveyed by IBAT contend that small business loans be considered only when the number exceeds the proposed threshold of 250 loans.

Comment: The Retail Lending Assessment Area is a prudent approach to address geographic areas where branchless, internet-based banks operate and how those banks are evaluated.

Comment: Texas community bankers surveyed by IBAT contend that Health Savings Accounts, prepaid debit cards and other similar accounts be reported at the bank level and not the branch level. These products are managed at the bank level, and the records reflect that.

Comment: Texas community bankers surveyed by IBAT contend that when MSAs are spread across multiple counties, the dollar value of activities should be distributed to all LMIs across multiple counties. There are twenty-five MSAs in Texas, and most of them have more than one county. The Dallas-Fort Worth-Arlington MSA has thirteen counties.

Retail Lending Test

The proposed Retail Lending Test would apply to Large Banks and that Intermediate Small Banks and Small Banks would opt in. It would be applied in each of several major product lines:

- Closed-end home mortgage loans — all closed-end home mortgage loans secured by a one-to-four-unit dwelling. Open-end home mortgage loans — all open-end home mortgage loans secured by a one-to-four-unit dwelling.

Comment: Texas community bankers surveyed by IBAT contend that home mortgage product lines should be considered only when the number exceeds the proposed threshold of 100 loans.

Comment: Texas community bankers surveyed by IBAT contend that the agencies should aggregate all closed-end home mortgage loans of all purposes and not split out home improvement loans and refinances.

- Multifamily loans — loans secured by multifamily housing will be considered as a major product line. The proposal also considers the subset of multifamily loans that provide affordable housing to low- or moderate-income individuals under the Community Development Financing Test.
- Small business loans — the agencies propose to define “small business” and “small farm” in the CRA regulations in alignment with the CFPB’s proposed definition of “small business” in its Section 1071 Rulemaking. As such, the agencies propose to define “small business” as a business having gross annual revenues of \$5 million or less for its preceding fiscal year. This is a significant increase from the current level of \$1 million.

The increase from \$1 million to \$5 million as proposed under the section 1071 proposed rule would mean virtually every loan made by a Texas community bank would be a ‘small business loan’ or ‘small farm loan’ subject to reporting requirements. This will impose significant new data collection and reporting requirements on already taxed community banks that opt-in to the Retail Lending Test. As we commented on in our section 1071 comment letter, a \$5 million gross revenue threshold is simply too high.

However, Texas community bankers surveyed by IBAT contend that the same size standard should be used under both section 1071 and CRA. Therefore, if the final 1071 rule uses the larger size threshold, then we agree that the same definition should apply for CRA purposes. Otherwise, banks will have complicated, inconsistent data analyses to perform.

- Small farm loans — a small farm loan would be a loan to a farm with gross annual revenues of \$5 million or less.
- Automobile loans — automobile loans will be evaluated for banks with \$10 billion or more in assets. Auto loans are the only type of consumer loan to be quantitatively evaluated under the proposed rule’s framework. We find this break-out puzzling. In Texas, automobile loans have essentially been taken over by aggressive credit unions or by auto dealers offering dealer paper financing.

Comment: Texas community bankers surveyed by IBAT contend that banks should be able to choose whether a ‘Small Business’ or ‘Small Farm Loan’ is considered under the Retail Lending Test or, if it has a primary purpose of community development, under the applicable community development evaluation, regardless of the reporting status of these loans.

In any event, Texas community bankers surveyed by IBAT contend the agencies should provide consideration for ‘Small Business,’ ‘Small Farm’ and home mortgage loans under the Community Development Financing Test.

Community Development Services Test

For large banks with average assets of over \$10 billion, the Community Development Services Test would include an additional quantitative benchmark to evaluate community development service hours. The metric would calculate the average number of community development service hours per full-time equivalent employee by dividing the hours of community development services activity in each facility-based assessment area during the evaluation period by the total full-time-equivalent employees in the facility-based assessment area. This should not be limited to nonmetropolitan areas.

Comment: Texas community bankers surveyed by IBAT contend that the agencies should clearly define ‘full-time equivalent employees’ and that calculation should include executive and clerical staff. Although few IBAT members are “large banks,” they may grow into that category. Currently, it is common for executive and clerical employees to engage in community development services activities.

Examples of Qualifying CRA Projects

The notice of proposed rulemaking also amends the type of activities that qualify as community development, revising what constitutes affordable housing and economic development as well as adding new categories. Banks would be credited for activities in:

- Affordable housing (with important clarifications for unsubsidized and mixed-income housing);
- Economic development that supports small businesses and small farms (mostly evaluated under the retail lending test);
- Community supportive services;
- Revitalization activities (with significant changes from current regulations);
- Essential community facilities;
- Essential community infrastructure;
- Recovery activities in designated disaster areas;
- Disaster preparedness and climate resiliency activities;
- Activities with minority depository institutions, women’s depository institutions, low-income credit unions and Treasury-certified community development financial institutions; and
- Financial literacy.

Credit for Activities Outside CRA Assessment Areas

One significant change originally proposed by the OCC would allow banks to get credit in their CRA exams for investments and other activity outside their assessment areas but benefit LMI populations, which are now limited to physical branch networks.

Comment: Texas community bankers surveyed by IBAT contend that volunteer activities unrelated to the provision of financial services be considered in all LMI areas. As noted in our description of Texas counties, the state is extremely diverse. For some small banks, it is difficult to find qualifying investments and other activities that are explicitly in their assessment area. Thus, this flexibility is extremely important.

Transition

The rule would become effective 60 days after publication of a final rule in the Federal Register. For certain provisions, the agencies propose an applicability date of approximately 12 months after publication of a final rule.

Comment: Given the additional burden this will place on banks that would conceivably coincide with implantation of final rule under section 1071, a more appropriate effective date would be 24 months after publication in the Federal Register for all provisions.

Texas community bankers recognize that in the case of CRA, both banks and the communities they serve will benefit from a modernized regulatory framework that recognizes the changes in the financial and banking environment that have occurred since 1977. We urge the agencies to take this opportunity to make bold changes that benefit all stakeholders and will result in making more credit available and will not simply be an example of 'regulatory burden.'

Sincerely,



Christopher L. Williston, CAE
President and CEO