CRAtoday

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

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

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

Re: Community Reinvestment Act (Docket ID OCC-2022-0002 (OCC); Docket No. R-1769 and RIN 7100-AG29 (Federal Reserve); and RIN 3064-AF81 (FDIC))

Dear Mr. McDonough, Ms. Misback, and Mr. Sheesley:

Thank you for the opportunity to provide comments on the proposed rulemaking for the Community Reinvestment Act (CRA). This comment letter will address recommendations to support the agencies stated objectives to:

- Provide greater clarity and consistency in the application of the regulations;
- Promote transparency and public engagement; and
- Create a consistent regulatory approach that applies to banks regulated by all three agencies.

More specifically, this letter will address recommendations as it relates to **regulatory oversight consistency, clarity and resources** necessary to ensure the successful implementation of the amendment of the implementing regulations of the Community Reinvestment Act of 1977.

For context, I have had the pleasure of working with banks and community development financial institutions in various capacities for the past 28 years. Over the past three years, as a woman-owned small business, I shifted my focus from direct CRA and community development consulting, to support the next generation of CRA professionals with practitioner-based Community Reinvestment Act training, professional development, and certification. CRA Today is home to the CRA Hub, a membership that helps bankers master the technical aspects of the CRA, get exam ready and reinvest capital for the greater good.

I commend the agencies for coming back together in a unified approach to modernize the CRA to adapt the regulation to match modernized retail banking distribution strategies and to clarify often misunderstood and subjective aspects of the CRA. Through my daily interactions with today's CRA professionals, I can personally attest to the fact that there is significant turnover in CRA compliance positions and a shortage of CRA compliance professionals in the field. "Seasoned" professionals are retiring and a large percentage of those who remain, contend with the lack of certainty and subjectivity of the current version of the regulations, with too few avenues to effectively address their technical questions and to build their professional capacity to serve.

I have yet to meet a CRA professional who doesn't genuinely care about their local communities and the intent to support equitable access to capital. Based on my range of experience including both running a CRA program within a bank and working with CRA professionals from banks of all sizes from across the nation, the focus of my recommendations are centered from the CRA Officer's perspective. This perspective is often lost in proposed rulemaking, yet it is critical to the smooth implementation of a final rule.

AVAILABLE RESOURCES

As stated in the Department of Treasury's memo dated May 2018[1], the Treasury highlighted several concerns that must be addressed with the final version of the rule, as well as implementation concerns related to agency capacity.

> "Stakeholders agreed that the problems stemming from a lack of clear guidelines are exacerbated by insufficient examiner training. Further, current procedures allow examiners to subjectively interpret and apply CRA examination policies and procedures."
>
> "Stakeholders commented that intra-agency inconsistency between headquarters' examiners and field examiners result in unreliable and confusing messaging to banks. They also noted instances where examiner determinations were based on internal regulator guidance, or interpretations of official guidance, that had not been made public."
>
> "The CRA departments of all three CRA regulators are part of larger compliance divisions. Competing priorities and resource constraints have led regulators to abandon the practice of having dedicated specialized CRA examiners. In some cases, safety and soundness examiners or specialty examiners from other areas (such as Bank Secrecy Act/Anti-Money Laundering examiners) are tasked with conducting CRA exams. Stakeholders stated that the lack of CRA specific examiners creates further uncertainty due to the limited experience of the examiners and lack of familiarity with a bank's activities. This is of particular concern due to the subjective nature of the CRA examination process."

[1] https://home.treasury.gov/sites/default/files/2018-04/4-3-18%20CRA%20memo.pdf

Based on the Department of Treasury's recommendations, my review of the proposed rules, and limited opportunity to dialogue with agency liaisons during the comment period, questions remain regarding the specific implementation strategy and resources that will be paired with such a shift in CRA regulatory oversight.

- Have the agencies increased their operating budgets to ensure successful implementation of the proposed regulation?
  - Are there budgetary line items to support increased bank outreach, bank training, and bank feedback protocols?
  - Is there a plan to augment the community affairs departments to support the successful implementation of the new rules?

- What plans are in the place to build and/or expand data analytics positions within the agencies to support examination management under the new rules?
  - Will examiners be required to do the data analytics, as well as exam management?
  - How will the agencies ensure consistency in the interpretation and application of data among agencies and internally by their own examination staff regarding data analysis and conclusions?

- What plans are in place to build a pool of qualified CRA examiners?
  - Will the training be deployed on an interagency basis to ensure a unified and consistent regulatory approach in examination management?
  - After the rule is finalized, how soon will the agencies be able to outline the scope of the training, develop curriculum and deliver training to support?
  - How will the current pool of examiners handle the balance of resources between their last round of examinations under the current rules while preparing for the first round of examinations under the new rules shortly thereafter?
  - Are there vendors set up to immediately deploy training to support the tight implementation deadline?

- Based on the embedded CRA rating deflation, which will result in more frequent bank examinations (1 or 2 years, in contrast to a typical 3-year exam cycle), is there a plan in place to address the impact to the human resource pool of qualified examiners?
  - Have the agencies increased their operating budgets to accommodate an increase in the workforce to ensure successful implementation of the proposed regulation?
  - Are the agencies in the process of recruiting their workforce accordingly?
  - Are the agencies set up to properly train the new and increased workforce to manage current examinations under current rules and then quickly expand expertise and capacity to exam under the new rules?

- What plans are in place to train, guide and provide feedback to bankers as they work to operationalize the final rule within their banks?

- What training resources will be deployed beyond the bi-annual interagency conference and regulatory roundtables? At what frequency?
- What training resources and guides will be deployed and by when?
- What feedback mechanisms will be in place to allow for bankers to ask bank specific questions?

KEY POINT IMPLEMENTATION TIMELINE

178. The agencies ask for comment on the proposed effective date and the applicability dates for the various provisions of the proposed rule, including on the proposed start date for CRA examinations under the new tests.

The Agencies should institute **at least a 2-year implementation period**. The first year should be focused on regulatory infrastructure, interagency coordination, examiner recruitment, examiner training, publishing a qualified (and non-qualified) list of community development activities, publishing standardized resources (examination procedures, performance evaluation templates, etc.) and a comprehensive plan to train banks on the core concepts of this very complex proposed rule. Once the above elements are in place from a regulatory oversight perspective, then at least a 12-month implementation period should then commence.

Given the depth and breadth of the proposed changes and the increased burden on financial institutions, the agencies have a responsibility to ensure a smooth transition with clear guidance on how to structure their programs to ensure the intended impact. Knowing the complexities and the challenges with not only reconciling all the public comments but then promulgating a final interagency rule, the burden is great. Instead of rushing to implement, it is recommended that the agencies then allow sufficient time to work on the details to ensure a successful implementation before publishing the final rule to start the official implementation timeline. Based on my work with banks of all sizes, the following resources and guides are recommended as a baseline.

RECOMMENDATIONS

CRA Specific Compliance Resources

Before the implementation period of 12 months is triggered, the following resources should be in place to ensure a smooth transition and banks have clear guidance on how to structure their programs given the overhaul of the regulatory framework. Since elements of the current version of the CRA will remain for small banks and to some extent for intermediate size banks, resources will need to be delineated and accounted for accordingly.

The Federal Financial Institutions Examination Council (FFIEC) is a formal interagency body empowered to prescribe uniform principles, standards, and report forms for the federal examination of financial institutions by the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), the Office of

the Comptroller of the Currency (OCC), and the Consumer Financial Protection Bureau (CFPB), and to make recommendations to promote uniformity in the supervision of financial institutions. The FFIEC has a CRA page with resources and publicly available data.

1. FFIEC.gov/CRA website should be revised to include updated resources to reflect the final rules, deadlines and cross referenced to ancillary regulations that impact CRA compliance. Independent agency resources should be vetted amongst all agencies and published with a central repository (resources are currently distributed between FFIEC.gov and agency specific websites).

Specifically, the following resources, at a minimum should be published prior to the implementation period:

a. CRA Background and Purpose
b. Exam Schedule Information
c. Asset-Size Threshold Definitions and Annual Adjustments, as applicable
d. List of Distressed or Underserved Nonmetropolitan Middle-Income Geographies
e. Exam Procedures-Exam procedures that delineate step by step procedures that all examiners will uniformly follow given the finalized rule.
    i. Procedures should be enhanced to include protocol around how data integrity reviews (currently only delineated in the consumer compliance handbooks), will be conducted given the proposed increase in reporting burdens. Delineating between 100% reviews of community development activities (a common current practice) versus a sampled review for lending data integrity should be explicit in the exam procedures. To further reduce uncertainty in uniform application of community development definitions, items that are determined to not count by a specific examiner/regulatory agency during an exam, should be vetted at the interagency level and added to the "list of qualifying activities" as "unqualified." This expansive list will support the consistency of interagency regulatory oversight, a common concern shared by community groups and bankers alike.
    ii. Protocol should be delineated on how to address subjective elements of the CRA and a process to ensure examiner discretion/interpretation is minimized to ensure CRA regulations are applied consistently. This process should include an interagency acknowledgement and public access to final interpretations.
    iii. Exam procedures should specifically indicate the sources of data that will be used during exams. The procedures should indicate the availability timing and proposed adjustments to any lag factors that may impede the ability of a bank to assess where its performance stands at reasonable intervals in advance of exams to shift resources to further serve communities where the calculations/performance fall short. Given the complexity and the countless calculations/conclusions that are embedded in the proposed regulations, banks will need access to conduct pre-exam analysis to support incremental adjustments to ensure they are meeting the credit needs of their communities and within the regulatory thresholds in advance of the finality of an exam.

f. Public Evaluations
   i. Public evaluation templates need to be drafted for each variable as finalized in the new rules. Specific disclosures should be included to indicate if data included was used to assess CRA performance and what data was included for informational purposes only.
   ii. Protocols should be developed to ensure timely reporting by the agencies on the expected timing of the release of public evaluations post exam.

g. Legacy Interagency Q&A and Interpretive Letters for Small and Intermediate Banks

h. [NEW] New Interagency Q&A document based on the finalized rules.
   i. Reference impending changes to small business, small farm data collection protocols with the implementation of Section 1071 of the Dodd Frank Act, as applicable in the final rule.
   ii. A Guide to CRA Data Collection and Reporting (refreshed for small and intermediate size banks-current version from 2015)

i. [NEW] A Guide to CRA Data Collection and Reporting-New version for large banks and banks over $10B.
   i. Include details regarding prescribed formats.
   ii. Include information on recommended source documents for each key field that will be used in a data integrity review prior to a CRA examination
   iii. Include expanded scenarios for mergers and acquisitions to guide banks on data collection and reporting protocols
   iv. Include information on revised composite loan data
   v. Include information on new composite reporting requirements (deposits, CD loans, CD investments, CD services)
   vi. Protocols for data resubmission for all categories of lending and data reporting in the final rule
   vii. Protocols and timing for the availability of disclosure statements, both for use by the institution and for public review (historical delays in availability of small business, small farm data has impeded the ability for banks to compare their performance against peers). The proposed rules rely heavily on market data, but the lag is significant and will further impede a bank's ability to conduct self-assessments.
   viii. Include new file specifications and edit validations
   ix. Reference impending changes to small business, small farm data collection protocols with the implementation of Section 1071 of the Dodd-Frank Act, as applicable in the final rule.

j. [NEW] A specific guide to show how to calculate all required metrics, benchmarks, multipliers, and thresholds and then how to calculate conclusions rolled up into the final institutional rating. Bankers must be able to do this, and the regulation likely won't be prescriptive enough to show banks step by step how to approach this to self-monitor performance, which is primary best practice in CRA compliance.

k. Legacy CRA Data Collection and Reporting Grid

   i. Reference impending changes to small business, small farm data collection protocols with the implementation of Section 1071 of the Dodd- Frank Act, as applicable in the final rule.

l. [NEW] Publish a new CRA Data Collection and Reporting Grid
   i. Reference impending changes to small business, small farm data collection protocols with the implementation of Section 1071 of the Dodd- Frank Act, as applicable in the final rule or all new reporting requirements for large banks and banks over $10B.

m. Reconstitute the CRA Data Newsletter or something similar to aid in the understanding and implementation of the complex new reporting requirements

n. [NEW] Replace CRA Data Entry Software to reflect new data collection and reporting requirements
   i.Reference impending changes to small business, small farm data collection protocols with the implementation of Section 1071 of the Dodd- Frank Act, as applicable in the final rule.

o. [NEW] CRA Data Analytics-Market (peer) data sets should be available for banks to use to incrementally measure compliance with the new provisions. Create protocol around the timely availability of both market (peer) and community (demographic) data for use in computing ratios, benchmarks, and weighted averages necessary to derive ratings under the proposed rules.
   i.Reference impending changes to small business, small farm data collection protocols with the implementation of Section 1071 of the Dodd- Frank Act, as applicable in the final rule.

p. [NEW] Publish a banker's guide on how to proactively plan to serve community credit needs while using the proposed calculations with presumptive ratings in mind. Specifically delineate how to use proposed performance standards, assessment areas (FBAA, RLAA and OAA), and community development activities to effectively serve.

q. [NEW] Publish the list of qualified and non-qualified community development activities.
   i. Distribute the list and set up protocol and timing for future updates.
   ii. Create a process to submit questions and a common response timeframe

It is also recommended that examination periods under the final rule is phased in after enhanced data collection is collected so bankers will have ample time to understand how their performance will be measured against market and demographic information to course correct to ensure they are meeting the new thresholds and performance expectations.

Regulatory Oversight Capacity

Section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act) (2 U.S.C. 1532) requires that the OCC prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by state, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation, currently $165 million) in any one year. The proposed rules burden estimates are limited to

the estimated burden to the financial institutions only and are estimated to be $42.8 million in the first year.

The estimated burden to financial institutions is extraordinarily understated.

For example, of the estimated 130 institutions that will be required to report community development services data, the supplementary information contained in the proposed rule document estimated that reporting community development services will require an average estimated 8 hours to report and only 50 hours per bank for recordkeeping[2]. Given the high volume of community development service hours (hundreds and most times, thousands of transactions per year), the collection of the activities from employees, the collection of the required fields, data integrity audits and validations, and the inputting into the "yet to determined" prescribed format, the estimated burden is grossly underestimated and should be reassessed to determine the true burden.

Based on my work in the industry, I would estimate that a bank with $20B in assets would spend at least 1,560 hours (.75 FTE equivalent) initially under the first year and an estimated 1,040 hours (.50 FTE) annually thereafter in collecting, validating, and reporting community development services (15,000-20,000 volunteer hours are tracked on average for a typical CRA exam period for a $20B bank), notwithstanding the other regulatory provisions as proposed.

Future estimates should be vetted with financial institutions to derive specific feedback based on actual implementation burdens and considerations based on today's operating environment. I hear from my members that current CRA data collection, maintenance and integrity is where they spend most of their time and resources. Layer in the proposed rules and a CRA compliance officer will be stuck in the office mired down with data collection and calculations with relatively little time to get out to forge impactful relationships to drive real impact.

Given the complexity of new performance standards, increased data collection, expanded assessment areas, CRA data analytic conclusions and rating calculations and data reporting, as proposed, it is assumed that the aggregate burden to all financial institutions far exceeds the $165 million threshold under the OCC Unfunded Mandates Reform Act.

Not stated in the proposed rules is the estimated burden to the regulatory agencies which is also significant.

Regulatory Oversight Burden-Increased Volume of CRA Examinations

Embedded rating deflation will increase the frequency in exams and thus the number of exams which will require an exponential increase in the examiner pool as questioned above.

[2] Burden estimates delineated on Page 34014 of the Federal Register, Vol. 87, No. 107

Furthermore, given the increased complexity of the proposed rules, agency field examiners should specialize in CRA, and these specialists should be deployed to exclusively exam for CRA compliance. Current practice deploys examiners that serve as consumer compliance generalists and exam banks for CRA in a rotation with other regulatory teams. Since the CRA is different from other consumer compliance regulations and the complexity is increasing, it is time to shore up the CRA expertise with examination teams to ensure consistent CRA compliance reviews across all agencies.

Professional Examiner Capacity-Increased Need for Specialized Training and Capacity Building

It is recommended the examiners specialize in CRA compliance and are trained on via an interagency initiative to ensure timely and cost-effective training as well as consistency in implementation of regulatory oversight.

CRA Professional Development for Bankers-Increased Need for Regulatory Training

The proposed rules imposes a complete overhaul of CRA regulatory oversight, include new methods for identifying assessment areas, complex new tests under which banks may or may not be evaluated, new multi-step and weighted frameworks for assigning conclusions and ratings, and new data collection and reporting requirements that will necessitate the increased availability of training resources.

To complement the proposed pre-approval process and list of qualifying activities, a feedback process should be developed to allow for banks to reach out to the agencies to ask bank specific questions and obtain guidance on how to ensure compliance with the proposed rules.

It is recommended that the agencies have ample budgets to deploy a variety of training opportunities and guidance documents to ensure a smooth transition which includes but shouldn't be limited to the following:

- Conferences, Frequent Roundtables
- Comprehensive training, manual and guides (as outlined above)
- Overview training on the final rules based on bank size
- Detailed and ongoing training on data collection and maintenance of performance data
- Detailed and ongoing training on data collection and reporting based on bank size
- Detailed and ongoing training on performance standards and calculations based on bank size
- Responsive protocols to get bank specific questions answered in a timely manner

ADDITIONAL RECOMMENDATIONS BASED ON SPECIFIC NPR QUESTIONS

1. Should the agencies consider partial consideration for any other community development activities (for example, financing broadband infrastructure, health care facilities, or other essential infrastructure and community facilities), or should partial consideration be limited to only affordable housing?

Pro-rata consideration should be extended for all community development activities for the qualified portfolio of a community development loan or investment.

2. If partial consideration is extended to other types of community development activities with a primary purpose of community development, should there be a minimum percentage of the activity that serves low- or moderate-income individuals or geographies or small businesses and small farms, such as 25 percent? If partial consideration is provided for certain types of activities considered to have a primary purpose of community development, should the agencies require a minimum percentage standard greater than 51 percent to receive full consideration, such as a threshold between 60 percent and 90 percent?

Partial consideration should reflect true pro-rata consideration without thresholds.

3. Is the proposed standard of government programs having a "stated purpose or bona fide intent" of providing affordable housing for low- or moderate-income (or, under the alternative discussed above, for low-, moderate- or middle-income) individuals appropriate, or is a different standard more appropriate for considering government programs that provide affordable housing? Should these activities be required to meet a specific affordability standard, such as rents not exceeding 30 percent of 80 percent of median income? Should these activities be required to include verification that at least a majority of occupants of affordable units are low- or moderate-income individuals?

Governmental programs shouldn't need to have a stated purpose or bona fide intent yet securing documentation to show that rents do not exceed 30 percent of 80 percent of area median income is a solid and reliable measure consistent with the statute.

5. Are there alternative ways to ensure that naturally occurring affordable housing activities are targeted to properties where rents remain affordable for low- and moderate-income individuals, including properties where a renovation is occurring?

The preservation of naturally occurring affordable housing requires continued renovation and maintenance, and as such, a common loan request includes cash out for improvements. If cash out for improvements exceeds a certain threshold (more than 50% for example), then perhaps the projected (on a proforma basis) market rents that are included in the market appraisal (common for underwriting investor real estate transactions) can be used to calculate affordability.

6. What approach would appropriately consider activities that support naturally occurring affordable housing that is most beneficial for low or moderate-income individuals and communities? Should the proposed geographic criterion be expanded to include census tracts in which the median renter is low- or moderate income, or in distressed and underserved census tracts, in order to encourage

affordable housing in a wider range of communities, or would this expanded option risk crediting activities that do not benefit low- or moderate-income renters?

One of the three recommended approaches should be sufficient to determine that low- and moderate-income renters are likely to occupy the rental housing. Additional eligibility standards for naturally occurring affordable housing shouldn't be necessary and are overreaching and impractical as proposed.

The proposed approach (obtaining a written affordability pledge and securing tenant income documentation is overreaching) for each loan is burdensome for banks and examiners alike. Short of income verification, reasonable assumptions must be made and have been made in practice.

1. The property is located in a LMI neighborhood (i.e., census tract). It is long-standing CRA policy to recognize activities located in low- and moderate-income census tracts. It is common practice that agencies recognize unsubsidized affordable housing located in low- and moderate-income tracts. **OR**
2. Apply the 30 percent of income affordability standard for **80 percent** of area median income consistent with the statute. Many federal programs use this affordability metric based on the initial rent relative to the local area median income. This is a common practice that agencies recognize in CRA examinations. **OR**
3. Match the current rents or proforma rents within the credit approval memorandum against HUD Fair Market Rents for the area for purposes of qualifying unsubsidized affordable rental housing. This same data set and thresholds are used in many federal programs. This is also a common practice that agencies recognize in CRA examinations.

13. Should the agencies retain a separate component for job creation, retention, and improvement for low- and moderate-income individuals under the economic development definition? If so, should activities conducted with businesses or farms of any size, and that create or retain jobs for low- or moderate-income individuals, be considered?

The size and purpose test of the current "economic development" definition under community development is sound as is and represents a reasonable approach consistent with the statute.

Community Development Financial Institutions

The agencies should be commended for including renewed emphasis and acknowledgement of bank partnerships with CDFIs. All activities with Treasury Department-certified CDFIs should be eligible CRA activities. Specifically, lending, investment, and service activities by any bank undertaken in connection with a Treasury Department certified CDFI, at the time of the activity, should be presumed to qualify for CRA credit given these organizations have an express purpose of community development and provide financial products and services to low- or moderate-income individuals and communities.

Banks should also have full autonomy to partner and invest with CDFIs in and out of their assessment areas and receive full credit for all eligible CRA activities.

31. Should the agencies also maintain a non-exhaustive list of activities that do not qualify for CRA consideration as a community development activity?

Yes, once fully vetted on an interagency basis and added to the list with specific context to aid in future applicability.

32. What procedures should the agencies develop for accepting submissions and establishing a timeline for review?

Submissions should be acknowledged by the reviewing agency within 48 business hours and if the question is not clear, another 48 hours should be allowed to provide supplemental information to aid in a proper review. Submissions should follow a standardized format to aid in the review process. The receiving agency would engage in a joint interagency review and final determination. Final joint determinations should be made within 30-60 calendar days (after a submission is deemed to be complete) to support the efficient deployment of resources into the intended communities.

39. Should both small and intermediate banks continue to have the option of delineating partial counties, or should they be required to delineate whole counties as facility-based assessment areas to increase consistency across banks?

All banks should maintain the ability to delineate partial counties, based on the portion of a political subdivision that it reasonably can be expected to serve. 12 CFR 228.41(d)

46. The proposed approach for delineating retail lending assessment areas would apply to all large banks with the goal of providing an equitable framework for banks with different business models. Should a large bank with a significant majority of its retail loans inside of its facility-based assessment areas be exempted from delineating retail lending assessment areas?

Yes.

If so, how should an exemption be defined for a large bank that lends primarily inside its facility-based assessment area?

If not more than 51% of its lending is made beyond its facility-based assessment area, it should be exempt from alternative methods of delineating assessment areas.

87. Should all large banks have their retail lending in their outside retail lending areas evaluated?

No, consistent with the statute, banks should continue to have the autonomy to delineate assessments areas as long as the assessment does not reflect illegal discrimination and does not arbitrarily exclude low- or moderate-income geographies, taking into account the bank's size and financial condition.

12 CFR 228.41(a) ***In general.*** A bank shall delineate one or more assessment areas within which the Board evaluates the bank's record of helping to meet the credit needs of its community. The Board does not evaluate the bank's delineation of its assessment area(s) as a separate performance criterion, but the Board reviews the delineation for compliance with the requirements of this section.

12 CFR 228.41(d) ***Adjustments to geographic area(s).*** A bank may adjust the boundaries of its assessment area(s) to include only the portion of a political subdivision that it reasonably can be expected to serve. An adjustment is particularly appropriate in the case of an assessment area that otherwise would be extremely large, of unusual configuration, or divided by significant geographic barriers.

87. *Continued.* Should the agencies exempt banks that make more than a certain percentage, such as 80 percent, of their retail loans within facility-based assessment areas and retail lending assessment areas? At what percentage should this exemption threshold be set?

Agencies should exempt banks that maintain at least 51% (the majority) of their retail loans within their facility-based assessment areas consistent with the statute.

12 CFR 228.11(b) ***Purposes.*** In enacting the CRA, the Congress required each appropriate Federal financial supervisory agency to assess an institution's record of helping to meet the credit needs of the local communities in which the institution is chartered, consistent with the safe and sound operation of the institution, and to take this record into account in the agency's evaluation of an application for a deposit facility by the institution.

88. Does the tailored benchmark method proposed for setting performance ranges for outside retail lending areas achieve a balance between matching expectations to a bank's lending opportunities, limiting complexity, and setting appropriate performance standards? Should the agencies instead use less tailored benchmarks by setting a uniform outside retail lending areas benchmarks for every bank? Or should the agencies use a more tailored benchmarks by setting weights on geographies by individual product line?

Agencies should consider a separate and unique approach/category of CRA evaluation to address financial institutions that are primarily internet-based, by adding another category much like for wholesale purpose banks. The current regulatory approach works for the majority of the banks.

Banks that continue to maintain facilities in their local communities are the cornerstone of the banking industry and shouldn't be expected to be evaluated against market or demographic benchmarks where they have a minority distribution of loans outside of their facility-based assessment areas.

Creating retail lending assessment areas coupled with the outside of retailing lending assessment areas is inconsistent with the deposit-centric statute and adds exponential regulatory and data collection burdens in markets where banks have a minimal presence.

To the extent the agencies consider a final alternative approach to facility-based assessment areas, the non-facility-based assessment area should be based on a threshold that is significant enough of a threshold that indicates a true market presence such as 250 mortgage loans or 500 small business loans in a MSA or non-MSA level.

Community Development Financing Test

The agencies should maintain separate tests for community development investments and community development loans in the Community Development Finance Test.

Combining these two community development activities devalues/disincentivizes the complex investments transactions that require more effort, risk and in some cases, results in more compoundable impact. For example, originating a loan to a commercial entity that has a primary purpose of community development is often an organic function of a bank that falls within the bank standard underwriting standards. In contrast, forging a relationship with a CDFI and extending an equity-equivalent investment (EQ2) requires more time, structure, and risk.

With that said, community development loans are also essential vehicles to drive capital and liquidity to communities which need it most. Because community development lending would no longer be eligible for consideration under the more heavily weighted Retail Lending test, instead, it would be lumped in with investments and assessed under a lesser weighted Community Development Financing Test. This sends a dangerous message to underserved communities and eliminates the incentive for banks to allocate time and resources into building out community development lending programs.

Charitable contributions are also vital to sustaining local nonprofit organizations that are primarily serving the needs of low- and moderate- income individuals and disadvantaged communities. Blending investments and loans within the Community Development Finance Test may disincentivize banks from making more charitable contributions when originating a loan would suffice.

122. What other considerations should the agencies take to ensure greater clarity and consistency regarding the calculation of benchmarks? Should the benchmarks be calculated from data that is available prior to the end of the evaluation period, or is it preferable to align the benchmark data with the beginning and end of the evaluation period?

Most banks prepare a CRA plan at the beginning of an evaluation period, reflecting back on their CRA performance from the last regulatory examination. The CRA plan is an opportunity to set annual goals, create special purpose loan program and find innovative ways to fill performance gaps like partnering with CDFIs to ultimately meet the credit needs of their community. Banks then evaluate their goal to actual performance, year over year and against their peers. This is a common best practice.

The proposed community and market performance benchmarks, metrics and analytics are calculated over the bank's entire (typically 3 year) performance period that does not consider annual fluctuations in market demand and specific community development needs. This also removes the ability to proactively cure any deficiency in loan performance based on self-evaluation.

127. Should volunteer activities unrelated to the provision of financial services be considered in all areas or just in nonmetropolitan areas?

Any volunteer effort, offered on behalf of the bank that primarily benefits any CRA qualified activity, should count as qualified community development services. This should include serving food at a homeless shelter, co-building a home for a low-income Habitat for Humanity family, and even fundraising for entities like ringing the bell (collecting/fundraising) for the Salvation Army's Red Kettle Campaign. Any activity that the nonprofit or community-based organization has deemed to be necessary to serve primarily low- and moderate-income individuals should be a qualified activity under the CRA.

128. For large banks with average assets of over $10 billion, does the benefit of using a metric of community development service hours per full time employee outweigh the burden of collecting and reporting additional data points? Should the agencies consider other quantitative measures? Should the agencies consider using this metric for all large banks, including those with average assets of $10 billion or less, which would require that all large banks collect and report these data?

Given that community development services is proposed to be only 10% of a large bank's CRA performance, the burden of collecting and reporting (for banks <$10B) data points for community development services does not match the impact of evaluating service hours with a metric. An estimated 20,000 hours of volunteer transactions for a bank with $20B in assets, would add a tremendous burden to report this data which doesn't match the 10% impact to a bank's overall rating. Community development services reflects the highest volume of activities typically collected under the CRA.

129. How should the agencies define a full-time equivalent employee? Should this include bank executives and staff? For banks with average assets of over $10 billion, should the agencies consider an additional metric of community development service hours per executive to provide greater clarity in the evaluation of community development services?

Every community across the nation is different, no metric will truly reflect impact or the value of bankers volunteering within their local neighborhoods.

130. Once community development services data is available, should benchmarks and thresholds for the bank assessment area community development services hours metric be developed? Under such an approach, how should the metric and qualitative components be combined to derive Community Development Services Test conclusions?

Every community across the nation is composed of different community development resources and opportunities. Trying to set a benchmark or a metric tied to FTE or otherwise, around people, nonprofits and community development initiatives is counter to the intent of community development service.

162. What other steps can the agencies take, or what procedures can the agencies develop, to reduce the burden of the collection of additional community development financing data fields while still ensuring adequate data to inform the evaluation of performance? How could a data template be designed to promote consistency and reduce burden?

If the definition of small business is adjusted in the final rule to match the CFPB's section 1071 definition as having gross annual revenue of $5 million or less, banks should have the flexibility to classify small business loans that have a primary purpose of community development. The fields should be few and mirror small business fields such as a unique identifier, date of origination, loan amount, gross annual revenue indicator (under $1MM, over $1MM<$5MM and $>5M?) and location (geocoded).

163. Should the agencies require the collection and maintenance of branch and remote service availability data as proposed, or alternatively, should the agencies continue with the current practice of reviewing this data from the bank's public file?

Branch and remote service availability data is widely and publicly available through most bank's websites. The current practice seems adequate and unless there is a benchmark or metric that the data will be uniformly measured by the data collection and reporting burden seems to be unproductive.

Furthermore, as stated throughout the proposed rule, the examiners will rely on data regarding bank distribution utilizing Summary of Deposits data solicited and published annually by the FDIC for banks that are not required to submit new branch distribution reporting. The separate collection and reporting of data on branch distribution within the proposed rule that is already being collected through the established, comprehensive FDIC process seems redundant and burdensome for banks.

173. Should the agencies disclose HMDA data by race and ethnicity in large bank CRA performance evaluations?

Given the statutory limitation of the CRA as an income-based regulation, the addition of race and ethnicity data will not impact the conclusions or ratings of the bank, as stated in the proposed rules. Given this limitation and the fact that HMDA data (with race and ethnicity) is publicly available annually through HMDA public disclosure reports, including it in the performance evaluation may cause confusion around a bank's performance if performance context is not included or required to be paired with the data.

Agencies should consider expanding the public disclosure of data and rigor under the Equal Credit Opportunity Act, and other fair lending regulations to achieve the proposed intent.

176. Should the agencies publish bank-related data, such as retail lending and community development financing metrics, in advance of an examination to provide additional information to the public?

Without a proposed structure, a formal feedback protocol and the impact of the specific feedback on the final outcome on the bank rating (that has been properly vetted through a proposed rule process), this will slow down the process of examinations and add administrative burdens to the agencies already constrained process flow and resources.

177. Should the agencies ask for public comment about community credit needs and opportunities in specific geographies?

This is currently handled within the community contacts process during a CRA examination and seems to adequately address additional context to make a final determination on the bank's responsiveness to its local communities.

CLOSING

Given the complexity of the proposed approach, it is recommended that bankers have the opportunity to ask questions and weigh alternatives in partnership with the agencies. Short of this, since more questions were posed than answers, the agencies should issue a revised set of proposed rules and open a new comment period for public feedback to ensure the final version of the rule is sound, implementable and meets the collective intent to drive more impact into our disadvantaged communities.

Thank you for the opportunity to submit feedback on the regulations that implement the Community Reinvestment Act. I believe we share a sincere interest in modernizing the CRA to reflect current banking practices and to ensure financial inclusion. I remain deeply committed to this work and hope for the opportunity to be a part of the solution to ensure the equitable reinvestment of capital remains a cornerstone of the CRA. Should you have any questions, contact the undersigned at info@cratoday.com.

Sincerely,

[redacted]

Linda Ezuka
Founder and CEO
CRA Today and the CRA Hub