Office of the Comptroller of the Currency March 5, 2025
400 7th Street, SW, Suite 3E-218
Washington, D.C. 20219
Attention: Chief Counsel's Office, Comment Processing

Re: Regulatory Publication and Review Under the Economic Growth and Regulatory Paperwork Reduction Act of 1996:

Dear Sir or Madam,

As part of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 ("EGRPRA"), the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), and the Federal Deposit Insurance Corporation (FDIC) (hereinafter collectively referred to as the "Agencies") are reviewing Agency regulations to identify outdated or otherwise unnecessary regulatory requirements on insured depository institutions and their holding companies. The Agencies divided their regulations into twelve categories. Over a two-year period, the Agencies are publishing four Federal Register documents that request comment on multiple categories.

This letter responds to the second request for comments from the Agencies concerning the Consumer Protection category regulations and the Community Reinvestment Act. The EGRPRA notice requests public comment on "***how to reduce the regulatory burden for supervised institutions***".

I have been consulting with hundreds of community banks regarding their fair lending and CRA responsibilities since 1994. The issues I raise today have created unnecessary and expensive compliance burdens precipitated by vague and even undefined terminology, inconsistent enforcement, and practices in the field that create greater compliance uncertainty and risk.

The "regulatory burden" can be defined in a number of ways including, (1) the number and volume of regulations, (2) the clarity and consistency of regulation terminology, (3) the accuracy of any performance standards or tests used by regulators to evaluate potential regulatory violations, (4) how the regulations are enforced in the field, and (5) the expense of acquiring data needed by institutions to identify and measure their compliance risk.

My focus on the "***regulatory burden***" is not so much cost as based on the *number and volume* of regulations, but rather the cost resulting from the use of important terms that are not defined or, the definition of which is changed as applied and practiced in the field. I also comment about the *cost* of regulations that are configured to lead to meaningless or misleading performance ratings. Finally, the regulatory burden can also be exacerbated or reduced by practices in the field. I cite an example of exam practices that should be changed to reduce the regulatory burden and increase the collaboration between banks and examiners.

Synopsis:

1. The application of terms not identified nor defined in law and in regulations has increased the costs of compliance as well as the risk of compliance failure. The genesis and evolution of the REMA concept is a great example of this phenomenon. I also cite the definition and identification of Majority-Minority census tracts and their subgroups as another gray area that needs to be clarified and corrected quickly and simply.
2. The 2023 CRA rule created new "assessment area" concepts (Retail Lending Assessment Areas and the Outside Retail Lending Area) that are unrealistic and result in unreliable if not misleading performance conclusions. Additionally, the new *inflexible facility-based assessment area mandates* for banks with assets of $2 billion or more also undermine the reliability of CRA performance evaluations.
3. Exam procedures do not require the disclosure by examiners of the data used to accuse lenders of redlining before potential referral to the DOJ. It should be a standard operating procedure to disclose to a lender the detailed data upon which any such alleged violations are based.
4. For nearly 30 years regulators have cited certain business demographics as key benchmarks for evaluating CRA performance. Those demographics are generated by a single proprietary source, effectively creating a monopoly on the data and making it extremely expensive to banks who would like to have access to the data so they can include it as part of their CRA self-evaluation. This practice should never have happened and should be stopped immediately.

- ***The enforcement of regulations using important terms that are not clearly defined (or defined at all) or terms the meaning of which are unilaterally changed from time to time by regulators without announcement or explanation is extremely harmful, costly and unfair***.

  I refer specifically to the concept of a "REMA" or "reasonably expected market area". There is no definition of a REMA in statute nor in the regulations. Indeed, the term appears nowhere in statute nor regulations to this day. It appears to be based on the definition of an "assessment area" under the Community Reinvestment Act which allows a bank to circumscribe the area it "reasonably can be expected to serve." That determination is left to the discretion of the bank provided it does not involve overt discrimination. But the REMA determination is entirely in the hands of the regulators. banks have no authority to determine their REMA. Banks can only guess how a regulator will define their REMA(s). Consequently, it becomes a guessing game with many permutations. Talk about adding to the regulatory burden.

The REMA concept first emerged in 2009 in examiner manuals pertaining to fair lending enforcement and specifically the illegal practice of redlining. Following its introduction in 2009 in examiner manuals, regulators conducted webinars wherein they explained several specific factors behind the concept of a REMA. Other than a string of webinars sponsored by the Agencies, no written guidance to banks regarding this issue was ever published by regulators.

This approach continued for 12 years until the beginning of 2022 at which time examiners in meetings with bank groups announced they were cancelling the historic approach and considering nothing smaller than an MSA, MD, or statewide non metro area as the REMA even for small lenders for whom the new REMA definition is completely unrealistic.

The significance of this issue cannot be overstated because the basis for redlining accusations using statistical analysis has always been predicated on "performance context" in the market that constitutes the REMA. Who are the bank's peers? What is the peer group's penetration rate in MMCTs? What are the demographics of the community? What and where are the minority neighborhoods (census tracts)? The answers to these questions can change dramatically based on how a market is defined.

Change the delineation of the REMA and you change not only a lender's majority-minority census tracts' penetration rate, but you also change the benchmarks that are used to determine if a lender's distribution of residential mortgages is statistically significant. Accordingly, how a REMA is determined is of the highest consequence for the validity of any statistical analysis. A vaguely or inconsistently defined REMA definition adds greatly to the regulatory burden.

The new REMA definition announced at the beginning of 2022 without fanfare or explanation is divorced from reality in many cases. It ignores a bank's ability to serve the market, its branch network, the size and structure of the competition within the REMA, and the size and demographics of the REMA itself. An unrealistic REMA will mean unreliable statistical analysis that is meaningless if not misleading.

Two years ago, we reviewed a bank that was facing a potential referral for alleged redlining. The bank did not have any majority-minority tracts in its rural and suburban assessment areas. At its most recent CRA exam at that time the bank was told (in writing) by the examination team there was no evidence of redlining and that the closest city (where there were some MMCTs) was too far away to be considered as part of the bank's REMA. After five months, without notice from the regional or Washington exam teams, the Agency reversed the findings of the examination team and claimed the bank's REMA was double in size, including many distant communities and MMCTs previously considered to be too far removed to be reasonably within the bank's REMA.

Based on the expanded REMA the bank was threatened by regulators with a redlining referral to the DOJ even though it was <u>*impossible*</u> to redline in its historically defined communities. *If the bank were to be accused of redlining, the analysis should have been limited to the only community in which it could have possibly practiced redlining*! But the expanded REMA skewed the statistical analysis because all that bank's lending in its traditional markets where there were no MMCTs diluted any lending it did extend in minority tracts miles removed from its defined communities. As a result, any analysis based on the vastly expanded REMA is statistically suspect, if not entirely invalid. Nonetheless the flawed statistical analysis has been the basis for alleged discrimination not only by the bank's regulator but also by HUD and is costing the bank huge sums of money to respond to. Trying to resolve this for nearly 2 years, this community bank had to expend hundreds of thousands of dollars to pay lawyers and consultants and to try to placate regulator's demands.

The above experience is not an isolated incident. We have been involved with an increasing number of similar situations. If the Agencies want to reduce the regulatory burden it is strongly suggested that the REMA issue be formally clarified, including publishing a regulatory definition of what a REMA is and how it is determined.

- **The foregoing comments about the concept of how a market is defined for regulatory compliance purposes apply to the 2023 CRA rule and its prescriptions and proscriptions regarding CRA assessment area delineations making the regulatory burden far more expensive and performance evaluations potentially meaningless if not misleading.**

  Not only are the 2 new types of CRA assessment areas (Retail Lending Assessment Areas and the Outside Retail Lending Area) created by the new 2023 rule completely unrealistic, but the new arbitrary and inflexible mandate for facility-based assessment areas circumscribed by nothing less than entire counties will in many cases dictate an unrealistic market. As explained in my comments about REMAs, statistical analysis predicated on unrealistic markets is worthless and will force many banks to explain why their performance under the CRA tests is misleading and to develop an analysis based on the bank's true market which will add substantially to the compliance costs while increasing the risk that examiners may inappropriately underrate the bank's performance. The new rule boasts of "tailored" performance benchmarks but makes no adjustment for the competitive disadvantages suffered by banks in markets that can be a thousand miles or more removed from their closest branch.

In particular, the concept of the *Outside Retail Lending Area* violates any reasonable cost-benefit analysis. Table 36 of the preamble to the 2023 CRA rule shows that about 18% of all bank lending during the 2018-2020 time-period occurred in the ORLAs and nearly 29% of performance recommended conclusions in the ORLAs would fail to attain a "satisfactory" Retail Lending Test "recommended conclusion". *This would precipitate a dramatic increase in CRA exam Institution failure rates from an historical average of about 1.2% to 10.3% (see Table 33 in the preamble to the 2023 CRA rule appended to my comments)*. This would be a record-breaking increase in the regulatory burden imposed on CRA covered lenders. FDIC Chair, Martin Gruenberg made public speeches making statements that one of the goals of the 2023 CRA Rule was "to raise the bar" to pass a CRA exam. In other words, a goal of the new rule was to increase the regulatory burden.

The irony of the situation is that since 1995 regulators insisted that no retail bank could delineate an assessment area where it did not operate deposit-taking facilities, even where a bank maintained a facility such as a loan production office. In other words, the new 2023 rule is a complete contradiction to 3 decades of practice.

- ***The failure of examiners to disclose to a lender the specific data used by examiners when threatening a referral to the Department of Justice based on statistical analysis of alleged redlining makes it difficult and costly for a bank to potentially refute the allegation. This practice is an unnecessary regulatory burden. It should be SOP for examiners to provide the data that is the basis of their allegations.***

I have seen a good number of examples that alleged a bank was redlining in which the examiners refused to disclose the specific peer market data used to calculate statistically significant performance. No bank should be accused of redlining without being shown the data used by examiners to calculate if the results are statistically significant. It should be the written policy and practice of all the prudential banking regulators to present a bank with data used as the basis for any potential redlining allegations when examiners are considering a potential referral to the DOJ.

A good example is the identity of the Majority-Minority tracts. Examiners don't clearly identify which group of MMCTs they use for redlining analysis. Do the MMCT's include all minorities, or do they exclude certain minorities such as Asians? Believe it or not, there is ambiguity when determining Majority Black Census Tracts. The demographic files released by the FFIEC contain a field that breakouts the "Black Population" and specifies it includes only "non-Hispanic Blacks". This has led to confusion as to whether Hispanic Blacks are included in the population counts of Majority-Black census tracts. When I questioned the FFIEC about whether Hispanic Blacks were included in Majority Black tracts I could not get a straight and simple answer. There should be no guessing about what tracts qualify for different Minority census tract categories. This adds to the regulatory burden. It should be standard operating procedure for the agencies to disclose such critical information used for analysis redlining analysis. The agencies should publish an annual list of census tracts and their designation in the various Majority-Minority tract categories. That would eliminate potential confusion and facilitate lender responses to examiner questions thereby providing regulatory relief.

- ***The practice of using a demographic variable for the evaluation of CRA performance and that variable can be obtained from only 1 source essentially creates a monopoly for that source***.

  I am referring to the business demographics used by regulators. This practice should be discontinued immediately since it makes the cost of the acquisition of that data extremely expensive for a bank that is trying to evaluate its CRA performance. The 2023 CRA rule indicated that the Agencies would acquire that data and make it publicly available when that rule becomes effective in 2026. But why wait until then? Effectively, the Agencies have acknowledged the untenable nature of this practice that has been in effect for far too long. It's time to end this practice that inflates the cost of data needed for any bank's self-evaluation.

Respectfully,

[redacted]

Leonard F. Suzio Jr., President

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Table 36 to § __.22: Estimated Retail Lending Test Area Recommended Conclusions with Final Rule Multipliers, 2018-2020

	Retail Lending Test Area Type					
	Facility-Based Assessment Areas		Outside Retail Lending Areas		Retail Lending Assessment Areas	
Percent of all bank lending	74%		18%		8%	
	Frequency	Percent	Frequency	Percent	Frequency	Percent
Recommended Conclusion						
"Outstanding"	1,460	21.1	14	4.0	130	18.0
"High Satisfactory"	2,742	39.5	85	24.1	218	30.1
"Low Satisfactory"	1,827	26.4	152	43.1	214	29.6
"Needs to Improve"	613	8.8	99	28.0	149	20.6
"Substantial Noncompliance"	52	0.8	3	0.8	13	1.8
Below Retail Lending Volume Threshold	239	3.4	--	--	--	--

Table 33 to § __.22: Estimated Institution-Level Retail Lending Test Conclusions, 2018-2020, with Retail Lending Volume Screen Applied

	Final Rule Approach with NPR Multipliers		Final Rule Approach with Final Rule Multipliers	
	Frequency	Percent	Frequency	Percent
Institution-Level Conclusion				
"Outstanding"	36	6.6	51	9.4
"High Satisfactory"	227	41.7	252	46.2
"Low Satisfactory"	214	39.3	186	34.1
"Needs to Improve"	67	12.3	55	10.1
"Substantial Noncompliance"	1	0.2	1	0.2

44.4% Low Satisfactory, NTI, and SNC

10.3% fail

Census Population Information

Tract Population - This is the census tract's population based on the 2020 DHC file.

Tract Minority % - This is the percentage of the tract's total population minus the white alone population according to the 2020 DHC file. It is calculated by dividing the minority population by the tract population.

Number of Families - This is the number of families in the tract as determined by the 2016-2020 ACS. A family is defined as two or more related people living together.

Number of Households - This is the number of households in the tract as determined by the 2016-2020 ACS. A household is any residence, including those occupied by single people and unrelated groups of two or more. By definition, all families are also considered households, but not all households are families.

Non-Hisp White Population - This is the number of people in the tract that listed themselves as non-Hispanic White on the 2020 DHC file.

Tract Minority Population - This is the census tract's total population minus White alone population based on the 2020 DHC file.

American Indian Population - This is the number of people in the tract that listed themselves as non-Hispanic American Indian or Alaskan Native on the 2020 DHC file.

Asian/Hawaiian/Pacific Islander Population - This is the number of people in the tract that listed themselves as non-Hispanic Asian or Pacific Islander on the 2020 DHC file.

Black Population - This is the number of people in the tract that listed themselves as non-Hispanic Black/African-American on the 2020 DHC file.

Hispanic Population - This is the number of people in the tract that listed themselves as Hispanic only on the 2020 DHC file.

Other Population/Two or More Races - This is the number of people in the tract that listed themselves as non-Hispanic and some other race plus non-Hispanic and two or more races on the 2020 DHC file.