April 7, 2020

<u>Sent Via Electronic Delivery</u>: cra.reg@occ.treas.gov & Comments@fdic.gov

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

Robert E. Feldman, Executive Secretary
Attn: Comments
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, D.C. 20429

Re: Comments on Community Reinvestment Act Modernization (Docket ID OCC-2018-0008; RIN 3064-AF22)

To Whom It May Concern:

On behalf of the Idaho, Oregon, and Washington Bankers Associations (collectively "Associations") and our memberships of state and nationally-chartered banks, we appreciate the opportunity to comment on the above-referenced rulemaking ("Rules") modernizing regulations for the Community Reinvestment Act ("CRA"). We applaud the Office of the Comptroller of the Currency and the FDIC (collectively "Agencies") for issuing these proposed Rules and your willingness to work to modernize CRA. There are several improvements in the proposal that our member banks support. We also have concerns with some of the proposed provisions. We urge the Agencies to consider the following as they finalize the Rules.

<u>Comments</u>

The banks in our states work hard every day to meet the deposit, payment and credit needs of the communities they serve. They provide essential services in a safe and sound manner consistent with state and federal law. They also understand that economically healthy, dynamic and vibrant communities are important for individuals and businesses to achieve their goals.

The nature of banking has evolved over the years. Like their counterparts across the country, many banks in the Pacific Northwest have become less reliant on brick-and-mortar branches and have adopted digital banking platforms to help meet the needs of their customers. Interstate banking has also transformed the financial services industry. Through these changes, banks have remained committed to the goals of the CRA and to meeting the credit and other financial services needs of their customers and communities. Unfortunately, however, the CRA regulatory regime has not kept pace with the evolution of the banking industry. Modernization is sorely needed.

In response to an Advanced Notice of Proposed Rulemaking on CRA regulation issued in 2018, stakeholders commented that the current regulatory framework lacked objectivity, transparency and fairness. Further, "stakeholders observed that the evaluation of banks' CRA-qualifying lending, investments, and services … under the current CRA regulations -- including what type of activities count, where they count, and how they count – is inconsistent, opaque, and complex." Pacific Northwest banks share these same concerns, and we commend the Agencies for working to address these issues.

With that said, CRA modernization should not exchange one set of unclear and problematic rules for another. As highlighted below, some of the changes as proposed will cause uncertainty, additional compliance burdens and increased costs for banks. The Agencies should ensure that new Rules do not inadvertently burden banks in their efforts to meet the needs of the communities they serve.

With these general comments in mind, below is a summary of more specific feedback we received from our member banks. The comments are not a point-by-point, exhaustive response to the entire proposal; they are a reflection of input provided by various banks in our region. We believe that many of the comments below will be consistent with comments you will receive from other banks and our national association partners. In formatting our feedback, we have grouped comments in the following categories: Qualifying Activities for CRA Credit; Assessment Areas; Methods to Measure CRA Activity; and Data Collection.

Qualifying Activities for CRA Credit

- Lists of Qualified Activities: We support the creation of a publicly available, non-exhaustive and illustrative list of CRA qualified activities. This would provide transparency and certainty of "what counts" and allow greater confidence in community development service, investment and lending activities. The list should be maintained on an interagency basis and be updated regularly.

  Notice and an opportunity to comment should be provided for any activities that the Agencies propose to remove from the list. Removing previously approved activities could disrupt loans and investments that are in the process of being negotiated and structured.

  It should be made very clear to examiners that that CRA-eligible activity is not limited to the list. Along these same lines, banks expressed concern that the Rules could take away the positive aspects of an examiners interpretive powers, inadvertently excluding "good works" if the overall framework is too rigid. There is a balance that needs to be struck between certainty and flexibility. We believe CRA examiners need to retain the ability to make subjective judgements regarding CRA applicability. This was noted as especially important for community development activities in rural and distressed markets. For example, lending to a local hospital to purchase needed equipment or to provide cash flow is critical when that facility is the only one in a county. Funding a new road grader is very important in a county where a large portion of the roads are gravel and good roads are critical for farmers to get their products to market. Neither of these kinds of loans would likely qualify for credit in most urban and suburban communities.

- Confirmation Process: We agree that a confirmation process, whereby a bank could confirm with a regulator whether a particular activity is eligible for credit, is helpful. However, the six-month review/approval period currently contemplated in the Rules is too long; a shorter period should be adopted. Banks need quicker decisions on their individual requests, especially if approval is needed to close a loan or an investment.

- Expansion of Activities Eligible for CRA Credit: Banks in our region expressed support for expanding the kinds of activities eligible for CRA credit under the Rules. Such expansion recognizes the community benefit that flows from other activities not currently eligible for CRA credit. Banks provided the following feedback on the types of activities that should be eligible to receive CRA credit:

- Clarification and expansion of qualifying community development activities and organizations is positive.
- Investments in public infrastructure, including loans, should qualify for CRA credit, not just when that activity meets community development standards. Smaller and rural communities often lack access to financial markets, especially for small, yet necessary, projects.
- Banks should receive full CRA credit for supporting or providing financial education programs, including digital literacy, regardless of the classification of the community served.
- The requirement that community development service hours be directly related to an employee's job knowledge or skills should be eliminated.
- There should be an option to pro-rate CRA credit for portions of activities that do not primarily serve low-to-moderate income individuals but provide benefit to them.
- As noted in the "List of Qualified Activities" section above, it is critical that examiners retain discretion in allowing additional activities in the community development space to count for CRA purposes.

Assessment Areas

- Deposit-Based Assessments: Comments were received from our member banks about deposit-based assessments as follows:

    - We support the efforts of the Agencies to consider consumer use of online and mobile delivery channels in the proposed Rules.
    - The creation of a deposit-based assessment area could reinforce, not reduce CRA hot-spots.
    - The Agencies should provide for more flexibility regarding the geographic areas in which "branchless" and mobile banking receive CRA credit for qualifying activities.
    - If the focus is only on deposit volume, there may be an incentive for banks to chase large dollar depositors wherever they move. This seems misaligned with the spirit of CRA and meeting the credit needs of communities. There is also a question as to whether there is sufficient CRA opportunity in these new communities.
    - Banks that opt to be examined under the existing performance measures should be exempt from geocoding deposit data.

Methods to Measure CRA Activity

- Measurement Methods Generally: Our Associations appreciate the Agencies efforts to increase clarity with respect to CRA performance metrics. However, we have concerns about the proposed approach and encourage the Agencies to conduct additional study and testing before finalizing the Rules related to measurement methods.

- CRA Evaluation Measure: Additional study and testing is needed. This relates, but is not limited, to the following considerations: (a) insufficient data has been provided as to why the six and eleven percent benchmarks are appropriate for determining a "satisfactory" or "outstanding" rating; (b) the evaluation measure relies too heavily on a bank's balance sheet for purposes of measuring CRA; and (c) the inclusion of consumer loans should be optional and not mandatory. It should also be clarified that CRA-qualified activities will be included in the bank-level calculations regardless of location.

Additionally, the Agencies should provide multiple examples of how the evaluation measure should work in practice. As an example, a bank reported that it could not determine how it would fare under the six and eleven percent targets since it does not currently track data in the way the proposal suggests and does not have access to the numbers needed to come up with the calculation.

- Two Percent Community Development Minimum: Failure to meet the two percent community development minimum should not result in an automatic rating of "Needs to Improve". Different regions have varying community development opportunities. Some areas also face increased competition for community development loans and investments. Additional clarification is needed regarding whether or not the minimum includes donations, and whether or not banks have the option of classifying small business loans as community development loans.

- Small Bank Opt-In: The $500 million threshold for a small bank to opt-out of the new framework is unreasonably low. While arbitrary thresholds can be problematic at any level, the proposed opt-out threshold should at least be considerably higher.

Data Collection

- Data Generation and Collection Burden: The Rules are not compatible with the manner in which bank data systems are currently structured. The Rules do not recognize that the necessary data generally does not reside in a single system within a bank. Many – perhaps most – banks do not currently have processes in place to acquire consumer loan data for CRA analysis or reporting. Successful collection, recordkeeping and reporting of new data will undoubtedly present a considerable burden for all banks, especially community banks. The additional resources required to implement added data collection under the Rules will increase costs for financial institution, which may in turn increase the cost of services to consumers and businesses.

  One bank pointed out that identifying the census tracts of bank retail deposits alone would be a significant undertaking, as it is not something that the bank currently tracks. Again, the bank does not currently have a way to track its community development loans and activities in a manner that would allow it to do the kind of reporting or tracking that the Rules contemplate.

  Another bank provided details of increased data collecting reporting costs and burdens as follows:

  - New Data Management: Costs associated with geocoding all deposits and retail lending could amount to $0.40 per address, per year.
  - Deposit and Retail Lending Data Flow and Compatibility: Historically, these data sets have not been subject to compliance standards requiring high levels of accuracy, nor to being reported on a frequent basis. As written, a monthly requirement of data collection and documentation of both qualified and non-qualifying loans would create considerable work for a bank. By including non-qualifying retail loans in the documentation process, this not

only substantially increases the volume of what must be reviewed and monitored, but impacts compliance level standards of documentation and oversight needed to maintain confidence in data accuracy and reporting.
  - Frequency of Reporting: The frequency of reporting certain elements (i.e., monthly, quarterly, annually) imposes documentation standards, and these reporting timeframes are out of sync with the qualified activity review standards presented (i.e., 6 months).

<u>Miscellaneous Issues</u>

- <u>Transition Period</u>: As noted above, the Rules as drafted would impose significant new data collection, recordkeeping and reporting requirements that will require substantial system changes. These data changes will be difficult and time consuming to implement. They will require extensive coding and testing. If the Agencies move forward with these requirements, additional time will be necessary to train staff and develop the necessary policies and procedures. The transition period in the final Rules should allow banks at least two years to comply with the requirements regarding assessment areas, data collection and recordkeeping and at least three years to comply with the new reporting requirements.

- <u>Examination Schedule</u>: To avoid further complications and disruptions, if an implementation period occurs within the bank's next exam period, all banks, regardless of size, should have the option to be examined under either the current regulatory structure or the new CRA Rules regime.

- <u>Implications of COVID-19</u>: The agencies should factor in the impacts of COVID-19 when considering how to proceed with CRA modernization. Even under normal circumstances, the cost of CRA modernization implementation would be a major added expense for the industry. As the COVID-19 situation evolves, the Agencies should consider whether it is prudent to require banks to make costly changes in the immediate future.

<u>Conclusion</u>

We reiterate our appreciation to the Agencies for considering modernization of the CRA regulatory framework. Meeting the credit needs of the communities we serve is crucial for a healthy and vibrant economy. A modernized CRA regulatory regime could and should support our banks efforts, rather than creating unnecessary additional burdens. We encourage the Agencies to fine tune the proposed Rules based on our feedback and that of other banks and bankers associations across the country. Our associations stand ready to assist the Agencies in this ongoing effort.

We would be remiss if we did not add that financial institutions of all types should be subject to the same CRA requirements as banks. Credit unions, especially those that are essentially indistinguishable from our member banks in the services they provide, as well as fintech companies should be held to the same standards to meet the credit needs of the communities they serve. While we acknowledge that action to this end must be taken by Congress, the Agencies have a role to play in educating lawmakers about these changes.

Finally, we urge all banking agencies – OCC, FDIC and Federal Reserve – to develop a final CRA rule that is issued on an interagency basis. Multiple regulatory regimes add unnecessary burden and could create compliance confusion in the event of conflict. A single, interagency CRA regime would provide clarity and certainty to banks.

Thank you again for the opportunity to comment on the Rules. If you have any questions, please feel free to contact any of us.

Very best regards,

[redacted]

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