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April 9, 2020

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

Email: regs.comments@occ.treas.gov
Re: Docket ID OCC–2018–000

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

Email: comments@fdic.gov
Re: RIN 3064–AF2

Greetings,

The following comments are submitted on behalf of the Independent Bankers Association of Texas ("IBAT"), a trade association representing more than 350 independent, community banks domiciled in Texas.

Community bankers applaud the Federal Deposit Insurance Corporation ("FDIC") and the Office of Comptroller of the Currency ("OCC") for recognizing the need for modernization of the Community Reinvestment Act ("CRA"). The banking industry has changed significantly since the regulation was last updated in 1995 and laws should recognize the reality of the digital age and create new ways to measure lenders' compliance. We believe that practical changes to the CRA would better achieve the law's underlying purpose of encouraging banks to serve their communities by making the regulatory framework more objective, transparent, consistent and easy to understand.

First and foremost, the CRA should be applied equally to banks and credit unions. It simply boggles the mind that credit unions have no legal mandate to 'invest' funds received from their depositors into the communities they serve. We understand that this issue is outside the purview of the FDIC and the OCC, yet we could not help pointing out the fact that community banks feel under siege by credit unions that are not held to the same standard.

A. Clarifying and Expanding What Qualifies for CRA Credit

The proposal would (1) establish clear criteria for the type of activities that qualify for CRA credit, which generally include activities that currently qualify for CRA credit and other activities that are consistent with the purpose of CRA but may not qualify under the current CRA framework; (2) require the agencies to periodically publish a non-exhaustive, illustrative list of examples of qualifying activities; and (3) establish a process for banks to seek agency confirmation that a specific activity qualifies.

Currently, whether a bank's activities qualify for consideration generally depends not only on the characteristics of the activities but also on where the activities take place. Community banks in Texas and across the nation would appreciate a non-exhaustive list of examples of qualifying activities to be maintained on the agency websites. The list should be specific as to what qualifies – and just as importantly, what does not qualify – for CRA credit.

As any community banker who has worked in the CRA space knows, identifying and being able to explain what qualifies for CRA credit has been terribly frustrating. We strongly endorse inclusion in the final rule of a confirmation process for qualifying activities. Having the ability to reach out to a regulator to confirm if an activity qualifies for CRA credit would greatly reduce uncertainty in this area.

B. Expanding Where CRA Activity Counts

The proposal would preserve assessment areas surrounding banks' facilities and expand where CRA activity counts to help banks meet the needs of their communities. To ensure that CRA activity continues to have a local community focus where banks maintain a physical presence and conduct a substantial portion of their lending activity, banks would still be required to delineate assessment areas around their main office, branches or non-branch deposit-taking facilities, as well as the surrounding areas where banks have originated or purchased a substantial portion of their loans. These areas would be identified as 'facility-based' assessment areas. In addition, due to the evolution of modern banking (including the emergence of internet banks) and the fact that many banks receive large portions of their deposits from outside their facilities-based assessment areas – and in conformity with the CRA's intent to ensure that banks help meet credit needs where they collect deposits – the proposed rule would require banks to delineate additional, non-overlapping 'deposit- based' assessment areas where they have significant concentrations of retail domestic deposits. Specifically, a bank that receives 50 percent or more of its retail domestic deposits from geographic areas outside of its facility-based assessment areas would be required to delineate deposit-based assessment areas where it receives five percent or more of its total retail domestic deposits, based on the physical addresses of its depositors.

Commented [LG1]: lease confirm the highlighted text reads correctly.

We concur that the current approach of defining CRA assessment areas should be updated to reflect the increasing amount of activity taking place outside of physical branches and address the challenges posed to traditional community banks by 'branchless banking.' Instilling a method for requiring banks to provide some tangible benefit to zones when obtaining deposits outside of areas with a physical presence levels the playing field for community banks that do maintain a physical presence in the communities they serve. Modernization should allow CRA-eligible

activity wherever it is needed, including areas identified as underserved, while continuing to ensure banks are helping to meet local community needs in areas where they maintain a physical presence. We applaud allowing certain qualifying banks to earn CRA credit for activities outside of their assessment areas.

However, the proposal would impose yet another complicated data-collection challenge on community banks. For example, *'a bank's main office and deposit-taking facility locations and retail domestic deposit data would be required to determine its assessment area delineations, its ratings, and the benchmarks associated with ratings in §§ 25.08 and 25.11 of the proposed rule.'* How often would this data have to be collected and analyzed? It seems from the proposal that 'must collect and maintain' data related to qualifying and certain non-qualifying activities between CRA exams. This is a significant, and costly, regulatory reporting burden for small community banks that wish to opt-in to the new framework.

Additionally, the proposal raises many more questions than it answers. For example, how often can or should a bank be expected to review its assessment area delineation? Would each 'deposit-based assessment area' have to pass in order for the bank to pass with a 'satisfactory'? The interjection of necessary formulas requires specific definitions and approaches to the application of that formulaic and are lacking in the proposal.

Commented [LG2]: Should there be a word after 'formulaic'?

Finally, in Section 25.10(d) there is a definition for 'average CRA evaluation measures.' This is to be performed 'separately for each assessment area.' However, in Section 25.12(c) for bank-level performance standards, the various minimum requirements are calculated for the assessment area. The reference to 'each' assessment area is missing. We need that clarified, and we prefer the overall average rather than one for each area.

C. Providing an Objective Method To Measure CRA Activity

Consistent with the current CRA framework, the proposed rule would include different performance standards applicable to banks of different sizes. Small banks, as defined under the proposed rule, would continue to be evaluated under the small bank performance standards currently applicable to small banks that are not intermediate small banks. The proposed rule also would establish new general performance standards to evaluate other banks' CRA activities and the CRA activities of small banks that opt into these standards.

The proposal would remove the 'intermediate small' category and raise the threshold for 'small' to $500 million, which seems arbitrary. In January 2020, the 'Small Institution Threshold' was adjusted to $1.305 billion. The current 'Small Institution Threshold' should continue to be adjusted annually and serve as the cut-off for small banks that wish to opt out and remain in the current framework. As an alternative, increasing the threshold to at least $1 billion would allow 88 additional Texas community banks the option to opt out of the proposed requirements and remain in the current framework.

While the CRA proposal attempts to define performance standards by size of the institution, it also seeks to establish new general performance standards under CRA as follows:

> *a) The distribution (i.e., number) of qualifying retail loans to Low- to Moderate-Income ("LMI") individuals, small farms and small businesses, and LMI geographies; and*
>
> *b) The impact of a bank's qualifying activities, measured by the value of a bank's qualifying activities relative to its retail domestic deposits.*

These 'performance standards' pose numerous challenges. First, the 'small business' limit of $1 million and the 'small farm' limit of $500,000 are both outdated and need to be increased and adjusted annually.

Second, the adoption of a single threshold to use for the metric and the application of that metric to all community banks ignores the various business models at each bank.

D. Revising Data Collection, Recordkeeping, and Reporting

The proposal would require banks evaluated under the small bank performance standards to collect and maintain, but not to report, data related to their retail domestic deposits so that the agencies could validate their deposit-based assessment area delineations, as applicable. Banks evaluated under the general performance standards would be required to collect, maintain, and report certain data related to their qualifying activities, certain non-qualifying activities, retail domestic deposits, and assessment areas. Those banks would also be required to use that information to make the calculations necessary to determine their ratings, based on the application of the performance standards in the proposal. Prior to a CRA performance evaluation, the evaluating agency would validate the data used in determining a bank's ratings. The agencies would provide additional guidance on the data that banks need to collect and maintain under the proposed rule that would standardize the information collected and help banks ensure that they meet the requirements of the rule.

Community banks – most of which would presumably be evaluated under the small bank performance standard – have numerous questions about the collection and maintenance of data and the burden that would impose. For example, 'qualifying loan data' would impose significant requirements for the collection and maintenance of data for *each* qualifying loan. Community banks struggle with HMDA data and staff hours required to collect, scrub and submit that data. We find it difficult to support a proposal that merely provides for 'additional guidance on data' when that data is the most-costly part of the proposal.

While we are appreciative of efforts to address much-needed CRA reform, this approach seems overly complicated and driven by costly data requirements imposed on community banks. In fact, the beneficiaries of the greatest relief offered under this proposal are the largest institutions.

More could certainly be done—and done cheaper with less data requirements imposed on community banks.

Sincerely,

Christopher L. Williston, CAE
President and CEO