FDIC

June 15, 2022

RE: Community Reinvestment Act 12 CFR Part 345

GeoDataVision Comments #1

RIN 3064-AF81

To whom it may concern,

Thank you for the opportunity to express comment regarding the 2022 CRA NPR. I have been engaged in CRA consulting since 1994. I grew up in a small business family and now own my own small business. I was a community banker in the 70's and 80's and was recognized by the SBA in 1983 as the leading advocate for small businesses in Connecticut by the US Small Business Administration. Finally, I have served in public office as a state senator in Connecticut. So, I bring a 360° perspective to the Community Reinvestment Act.

I applaud the Agencies for their efforts to update the Regulation. I have much to say. So much to say that I intend to submit a series of comments on the proposal as I have done in other NPR's published by the Agencies. Today, I will focus on the Assessment Area issues and the proposed consolidation of performance factors reflecting an entire evaluation period rather than the activity in annual increments as has been the practice since 1995.

Before I address the main topics I will comment on today, I want to make comments on five other matters.

First, I am very surprised that the Agencies appear to have dropped the concept of **Deposit-based Assessment Areas** in the NPR. In light of the publication of this concept by all the Agencies in the previous NPR and ANPR it comes as shocking that such AA's are not included in the NPR. The concept, as I understand it, behind the Deposit-based AA's, was that banks had an affirmative obligation to lend back to the communities from which they derived their deposits. But the NPR focuses only on bank lending and incorporates the consideration of deposits only where a bank is lending. Consequently, it is possible for a large bank to siphon millions of dollars from a community and not lend a dime back into those outside retail lending assessment areas, and the proposed NPR will not even recognize that fact. Furthermore, even if a large bank does extend some minimal

www.GeoDataVision.com 61 North Plains Industrial Rd, PBN 174, Wallingford, CT 06492 203-237-1332

credit within those communities the impact will be very minimal based on the weighting factors proposed in the NPR.

Second, the **technical definition of "renewal" as contained in the current Rule disqualifies a significant volume of small business lending activity**. A "renewal" as defined in the Regulation requires an extension of the maturity date of the note evidencing the debt. But there are many, many small business credit accommodations in the form of lines of credit secured by UCC filings and evidenced by demand notes. UCC-secured revolving lines of credit are structured this way to protect the priory of the lien on the assets securing the loan. If time notes were used the continuity of the priority of a bank's secured position is threatened by any intervening liens. This is a safety and soundness issue. By using notes callable on demand banks are acting in a prudent way to protect their security interest. It is typical practice to "renew" these credit facilities periodically. But because the "renewal" does not involve an extension of the maturity of the note these credit facilities are not reported under CRA. So for a highly technical reason, all these revolving lines of credit are not reported thereby understating the actual volume of small business lending extended by various banks and, ipso facto, understating the true volume of small business lending in every market. So, I urge you to reconsider this issue and redefine "renewal" as it applies within the Regulation.

Third, it is common practice in small business lending to require personal guarantees from the principals and to often secure the guarantees with second mortgages on residential properties. Bankers interpret this practice as disqualifying a small business loan from reporting unless the security was taken as an abundance of caution. My understanding is that the prohibition of reporting small business loans in which liens on residential property are involved is to prevent double-counting such loans because they may be reported under HMDA. Before HMDA was revised there was an explicit Q&A that clearly stated that mortgage liens to secure a guarantee were not reportable under HMDA. Under the current HMDA, business purpose loans that are dwelling-secured are not reported unless they involve a home purchase, home improvement or refinancing. So, **there may be many small business loans that are not being reported under either HMDA or CRA resulting in a significant underreporting of small business loan volume** (and hence, and understatement of the need for

www.GeoDataVision.com 61 North Plains Industrial Rd, PBN 174, Wallingford, CT 06492 203-237-1332

small business credit in the community as evidenced by reported small business lending). I would urge you to also reconsider and include small business loans that are supported by personal guarantees secured by liens on residential property.

Fourth, there **appears to be an error in the NPR or very confusing language** from pages 590 to 594 in which the process of developing scores and conclusions for the Retail Lending Test is explained. The explanation in those pages follows 4 steps to develop a **Retail Lending Test conclusion** for each assessment area. Step 1 **converts the Borrower Distribution and Geographic Distribution "conclusions**" (that are derived from comparison of a bank's closed-end mortgage penetration rates to benchmarks) into "scores" (points) and then computes a **weighted average score** for the "Geographic Income Distribution" and then the "Borrower Income Distribution" for each major product line. Step 2 takes the weighted scores for Borrower Distribution and for Geographic Distribution and computes a simple average score for closed-end mortgages. In the example, the weighted Geographic distribution score for closed-end mortgages was 3.8 and the weighted Borrower Distribution score was 8.8. The simple average of those scores is 6.3 which is the **Closed-end Mortgages Average Performance Score** for the assessment area. This process is done for other Major Product lines, and in the example, there is an assumed **Small Business loan Average Performance Score** of 4.2. The explanation proceeds to Step 3 which is to take the Average Performance Score for each Major Product line and compute the weighted average (based on relative loan dollars of a bank's lending activity by major product line in the assessment area) score for each major product line and sum across all major product lines in the assessment area. The explanation describes this as "***the bank's geographic product average***" (page 594) which sounds very similar to "***geographic distribution average***" (page 592) and "***geographic income average***" (page 590) and is computed to be 5.46 in the example. Step 4, is to take the so-called "*geographic product average and translate it into a recommended Retail Lending Test conclusion for the relevant geographic area by rounding to the nearest conclusion score.*" (page 594)

What the term "geographic product average" apparently is intended to refer to is an assessment area (or outside assessment area) which is why the term "geographic" is in the description. But it cannot mean "geographic distribution average" (the term used on page 592) or "geographic income average" (590) which are part of the series of computations leading to the so-called "geographic product average." We suggest that this confusing wording be rewritten to **describe the final score as "*Assessment Area Product Average Score*"** to avoid the confusion. This will be converted into the **"Assessment Area Recommended Retail Lending Test Conclusion".**

Fifth, we **strongly suggest that all banks that fall into the Intermediate Bank category and larger be mandated reporters**. The Agencies have justified omitting this mandate on the grounds of "regulatory relief", but the burden of reporting is minimal and the benefits to the banks and the public is substantial. First, every bank covered by the CRA is mandated to perform its obligation to meet the credit needs of the community. *Relief from reporting is not relief from performing*. Any prudent person who is held accountable to perform under any regulation should be collecting and monitoring their performance. This means every bank should be collecting and monitoring their CRA performance. If all prudent bankers already are collecting and monitoring their CRA activity how much additional burden is it to upload that activity in an annual filing? Moreover, the Agencies make available free CRA software for the purpose of collecting, editing, monitoring, and reporting CRA lending activities. Most non-reporters probably originate no more than 2-3 loans per week, so the data entry costs are minimal, and the software is free. All banks and the public would benefit from more comprehensive coverage of reported CRA lending activity. We have always urged our community bank clients to voluntarily report their CRA data and a very high percentage of them do so because they recognize the benefits which include a better picture of the true need for residential mortgage credit and small business loans and more insight into true "peer" data. The entire market picture now is based on the activity of only large banks and the voluntary reporters. Everyone would benefit from more required reporters and the additional compliance burden would be minimal.

The Assessment Areas and Evaluation Time Period Problems within the NPR:

The NPR proposes to evaluate bank lending in the traditional **facility-based assessment areas**, newly defined **Retail Lending assessment areas** and **areas outside** those 2 assessment areas. Large banks would be required to delineate facility-based assessment areas no smaller than counties in their entirety, and

Retail Lending assessment areas no smaller than MSA's or statewide non-MSA's adjusted to eliminate a Bank's Facility-Based assessment areas within those MSA's and statewide non-MSA areas. Outside Retail Lending assessment areas are also proposed to analyze bank lending outside the two types of assessment areas proposed in the NPR. Performance evaluations would be based on a bank's lending activity compared to market and community data consolidated over the duration of evaluation period. The Agencies also intend to develop "dashboards" whereby market benchmarks will be available.

Proposed Assessment Area Delineation and Evaluation Time Periods

I have been preaching for 28 years the importance of Assessment Area delineation to banks. It is by far the most important decision a bank makes because it dictates everything else – not only the bank's performance but the "performance context" which drives performance standards. It is vitally important that a bank delineate its real market, not an arbitrarily imposed market dictated by rigid rules. Only when a realistic market has been defined will it be possible to develop an accurate picture of a bank's performance "meeting the need for credit services" within its defined community. There are elements in the assessment area component of the NPR that I find seriously problematic, but which could be corrected.

Problem #1: The fact that Retail Lending Assessment Areas ("RLAA's") for a bank will be adjusted to remove the Facility-Based Assessment Areas ("FBAA's") means an extremely large number of potential permutations of the potential RLAA's for any Large Bank. This will make the development and publication of the dashboards extremely challenging and cumbersome if not unpracticable. Perhaps a dashboard could be created without much problem if it is limited to facility-based assessment areas, but beyond that the adjustment of Retail Lending areas to eliminate Facility-Based Assessment Areas within them and then the adjustments to the outside retail lending assessment areas for Facility-Based AA's to prevent double-counting activities already considered in that type of assessment area presents a complicated situation to say the least. A generic dashboard for the MSA's and statewide non-MSA's will be useless in many cases because many banks will maintain county based FBAA's within those areas which renders those MSA or statewide non-MSA benchmarks meaningless for the

www.GeoDataVision.com 61 North Plains Industrial Rd, PBN 174, Wallingford, CT 06492 203-237-1332

RLAA's of those banks in those areas unless those community and market benchmarks are adjusted with an almost limitless number of combinations (The New York, Newark, Jersey City MSA has 23 counties so the benchmarks for FBAA's and RLAA's within that MSA would be hundreds of permutations!). A customized dashboard that would adjust the RLAA benchmarks would need to be developed for each and every bank. Moreover, that dashboard would need to be modified anytime a large bank changes any of its FBAA's because those changes could impact the delineation of the RLAA's for that bank.

Problem #2: The Agencies appear to have adopted the new Assessment Area delineation rules so that dashboards can be developed for every MSA and statewide non-MSA. The thinking is based on a false assumption that artificial and rigid geographic parameters must be imposed to develop the dashboards. This will force arbitrarily defined markets on banks that will lead to potentially unrealistic and misleading performance conclusions. How can a bank that operates in Southern California be forced to annex all the counties in that state's entire non-MSA areas including counties hundreds of miles away from not only the bank's branch network, but from any of its significant lending activity? For example, a large bank that extends 100 home mortgages in Inyo County California would have its performance context affected by the demographics and market in Del Norte County California 560 miles distant. How do "tailored" benchmarks developed based on a rigid requirement to include the entire statewide non-MSA contribute to an accurate understanding of a bank fulfilling its CRA responsibilities?

Problem #3: The Agencies propose to develop benchmarks for the "evaluation period". This is counter to the long-term practice of evaluating performance on an annual basis and presents serious problems. First, not all evaluation periods are 3 years. When a bank receives a less than satisfactory performance rating the practice has been to shorten the evaluation period to 2 years or even 1 year. Moreover, evaluation periods can extend beyond the standard 3-year term. This means the Agencies would need to develop multiple rolling evaluation period benchmarks for every MSA and statewide non-MSA in the country for evaluations that cover 1, 2, 3 and 4 or more years. This compounds Problem #1 and the difficulty developing meaningful and timely benchmarks. It also makes understanding the data much more complicated. Ironically, the Agencies propose

www.GeoDataVision.com 61 North Plains Industrial Rd, PBN 174, Wallingford, CT 06492 203-237-1332

distinguishing low- and moderate-income distribution metrics to develop a more refined understanding of a bank's lending activity to those communities, but then propose the consolidated evaluation period approach by relying on blended data and benchmarks over multiple years. In the process, discerning lending trends and understanding underlying performance and changing market and demographic dynamics will be more difficult.

Problem #4: During any given year the income classification of tracts is subject to change. The decennial census establishes the initial demographic base every 10 years. But the agencies now adjust demographics using the 5-year ACS. Moreover, whenever OMB adds or modifies MSA's (which can happen any year) the tract income classifications are subject to change, not only in those MSA's but in the statewide non-MSA's as well. This means that during any evaluation period significant changes in important demographics can happen. How do the Agencies propose addressing the impact of those changes when they happen during any evaluation period? Perhaps the Agencies would consider establishing the demographic benchmarks at the beginning of the evaluation period (a concept considered in the NPR). But this would mean that a bank may be given credit for lending in low- or moderate-income tracts that became middle- or upper-income tracts during the evaluation period. The opposite could also happen. This would be a complete contradiction of the intent of CRA and could lead to seriously detrimental lending practices.

Problem #5: The Agencies propose that all Large Banks defined Facility-Based AA's consist of counties as the minimum geographic area. There are many large banks for which this mandates an unrealistic assessment area impossible to serve. For example, the 2021 SOD for Los Angeles County shows there are 99 banks operating 1,634 branches in the county. Of those banks, 17 exceed the proposed $2 billion threshold for "large" banks and operate 3 or fewer branches in the county. Los Angeles County now consists of 2,498 census tracts. How can banks with 3 or fewer (8 operate only 1 branch) in the county be expected to serve and compete in such a large market based on benchmarks derived from the entire county? Unrealistic Assessment Areas create unrealistic benchmarks and unrealistic conclusions. No one benefits from that situation. We suggest returning to the flexibility in the current language or increasing the size threshold for large banks to $5 billion.

www.GeoDataVision.com 61 North Plains Industrial Rd, PBN 174, Wallingford, CT 06492 203-237-1332

The NPR suggests that county minimums would help discourage potential redlining. But for decades CRA exams have been conducted which include an examiner review of Assessment Area delineation for potential discrimination. How many on site detailed assessment area reviews conducted by examiners discovered redlining among the tens of thousands of examinations in the 28 years since the last major revision to CRA? We suggest the old saying, "*If it ain't broke, don't fix it*" may apply here insofar as redlining is considered.

Problem #6: What is the point of analyzing a bank's loan data outside its assessment areas? The NPR quotes that only 11% of home mortgages and 16% of small business loans are extended outside the 2 types of assessment areas. The primary purpose of CRA is to require banks to serve the credit needs of the communities in which they are chartered. The establishment of Outside Assessment Areas is not only inconsistent with that requirement it actually would seem to contradict it and distract attention from where it should be focused, on the communities where banks gather their primary deposits and have the branches to meet the need for banking services of their market. By definition, a bank's minimal lending activity in the outside retail lending areas would have insignificant impact on its CRA performance. A cost-benefit analysis would suggest that the insights obtained from analyzing activity in areas of minimal lending by a bank are not worth the extra effort.

Potential solution: There is a possible solution to the inflexibility in assessment area delineation rules for large banks proposed within the NPR so that dashboards may be created. In a paradoxical way, a much more refined and flexible framework can be developed by the Agencies that would avoid artificial and rigid constraints on assessment area delineation and allow for realistic assessment areas to be declared by banks and viewed by the public. At GeoDataVision we developed special maps (using commercially available GIS software – we do not sell software) that allows for the real time computation of a bank's lending tests results and comparison to Performance Context benchmarks instantaneously for any combination of census tracts in the entire country. We have been using this technology and technique for years because it allows us to show our bank clients the many Assessment Area configurations that are available and to determine what option fits best for them in light of their resources and market realities. We simply open up an electronic map and select combinations of tracts to instantly identify the performance standards for any combination of census tracts. Aside from being able to play various "what if" scenarios based on a bank's de facto lending and market and demographic benchmarks we incorporate branch accessibility measures such as "drive-times" to determine the practical service area for any bank. There is no reason why the Agencies with their resources cannot adopt a similar ultra-sophisticated but simple approach. This does not require banks to adopt whole counties or MSA's to determine market-driven benchmarks and bank performance against those benchmarks. We urge the Agencies to seriously consider the option of developing mapping applications for assessment area delineation purposes.

We also suggest that if the Agencies implement the concept of Retail Lending Assessment Areas the benchmarks be modified to reflect the competitive disadvantages for large banks in those markets. Locally based banks have tremendous advantages compared to banks without branches in a market. The Retail Lending AA benchmarks should be "tailored" to reflect that reality. Of course, that would create an already complicated "framework" and make it even more so. Again, we express our surprise about this proposed concept which would seem to take the focus off a bank's performance in its local community.

Intermediate Bank Retail Lending Test: Loan Volume adequacy

The NPR mandates that Intermediate Banks be subject to an analysis of their lending outside their Facility-Based Assessment Areas if more than 50% of their lending activity is outside their defined communities. There appears to be no thresholds regarding concentrations of a bank's activity in these areas outside of the FBAA's and RLAA's. If a bank extends a single loan in a MSA, that single loan would appear to be included in the performance metrics as described in the NPR. Do the Agencies intend to introduce a threshold of loan count or X% of a bank's outside AA lending activity for loans in MSA's or statewide non-MSA's to count in the evaluation of outside AA activity?

We have a client that extends a very substantial volume of lending outside their Assessment Areas, funding that activity with sales into the secondary market. The extremely low AA ratio created the appearance of inadequate lending within their AA's. But when we looked at those markets, we found they far outperformed (in terms of lending volume) almost all the other banks that maintained deposit-taking facilities in the AA's. The underlying assumption, that lending is a zero-sum game with loans outside the AA reducing a bank's lending within its AA's, is outdated with the advent of secondary markets as this case proved. The AA ratio can be used as a flag for *potentially* inadequate lending in an AA, but the second step should be to compare the bank to the volume of all other banks that maintain depositories within the defined communities. The metric could be to compare loans in the AA to deposits in the AA and a comparison could be made similar to the loan-to-deposit ratio in the UBPR.

We don't mean to be overly critical. There are some very good ideas in the NPR, such as the proposed process to determine if an activity qualifies as community development (although the details in the proposal do not specify a time frame for response from the Agencies) for which we thank the Agencies and will comment upon soon.

We intend to submit more comments before August 5.

Respectfully,

[redacted]

Leonard F. Suzio Jr., President

GeoDataVision
Changing the Way You View Data

Make your job easier - save time and improve your performance!

(203)-237-1332