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**Sent Via Electronic Delivery:** [comments@fdic.gov](mailto:comments@fdic.gov), <http://regulations.gov>, [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov)

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**Attn: Comments RIN 3064-AF81**

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**Attn: Comment Process, Docket ID OCC 2022-0002**

**Re: Proposed Community Reinvestment Act Regulations**

To Whom It May Concern:

On behalf of the Oregon Bankers Association ("OBA") and our membership of state and nationally-chartered banks doing business in Oregon, we appreciate the opportunity to comment on the above-referenced rulemaking ("Rules") modernizing the Community Reinvestment Act ("CRA"). We commend the Office of the Comptroller of the Currency, the Federal Reserve and the Federal Deposit Insurance Corporation (collectively "Agencies") for coordinating the issuance of the proposed Rules. We support several improvements to CRA that are included in the Rules. We also have concerns with some of the proposed provisions. We urge the Agencies to consider the following comments when finalizing the Rules.

#### **General Comments**

Banks in Oregon 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 laws. They understand that economically healthy and vibrant communities are important for individuals and businesses to thrive.

The nature of banking has evolved over the years. Like their counterparts across the country, Oregon's banks are 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. In fact, today, the majority of depository banks serving Oregon are not headquartered in Oregon. In contrast, 25 years ago 90% of depository banks doing business in Oregon were headquartered in our state. Throughout this change, banks

have remained committed to meeting the financial services needs of their customers and communities and have done so in accordance with CRA.

Recognizing that the financial services landscape has changed, OBA and our member banks support CRA modernization. CRA regulation and compliance has become overly complex, at times unpredictable, and has failed to keep up with the way consumers use technology to access financial products and services. Current CRA regulations need increased objectivity, transparency and fairness while maintaining flexibility to accommodate the unique business models of banks across the country.

We commend the Agencies for your work on these issues. That said, CRA modernization should not exchange one set of unclear and problematic rules for another. As highlighted below, some of the proposed changes will cause uncertainty, additional compliance burdens and increased costs for banks. Such changes should be modified or abandoned.

With these general comments in mind, below is a summary of feedback received from various banks doing business in Oregon. The comments are not a point-by-point, exhaustive response to the Rules; they reflect input provided by banks on aspects of the proposal. Many of the comments below will be consistent with comments you receive from other banks and banking associations.

In formatting our feedback, we have grouped our comments into the following categories:

- Tailoring of Rules to Reduce Burden
- Qualifying Activities
- Retail Lending Assessment Areas
- Retail Lending Test, Community Development Financing Test
- Data Collection Implementation
- Miscellaneous Issues

### **Specific Comments**

#### **Tailoring of Rules to Reduce Burden**

We appreciate the efforts of the Agencies in trying to tailor the Rules to avoid imposing unnecessary burden on the smallest banks, which generally have limited staff to task with CRA responsibilities. While we encourage the Agencies to consider higher thresholds, we support the modification of the definitions of a small bank to a bank with assets under \$600 million, and an intermediate bank to a bank with at least \$600 million but less than \$2 billion in assets. We also appreciate that the Rules call for small banks to continue to be evaluated under the small bank lending test unless they opt into the Retail Lending Test (“RLT”). Finally, we applaud the Agencies’ decision that small and intermediate banks would not have to collect and report new data that the Rules would require of large banks.

In addition to these changes, the Agencies should be mindful of the burden data collection and reporting places on all banks and, where possible, lessen that burden on all banks. A new CRA regulatory framework should consider more than just the size of a bank. It should also consider the bank’s business model, areas of specialization and communities served.

## Qualifying Activities

Banks have long called for greater CRA transparency, especially in terms of those activities that qualify for CRA credit. The proposed Rules are a positive step in this direction. The Rules would require the Agencies to publish and maintain a publicly available, illustrative non-exhaustive list of activities eligible for CRA consideration. We strongly support this change. OBA member banks have made the following recommendations regarding such a list of eligible activity:

- Banks should continue to receive credit for economic development, workforce development and job-creation activities. Moreover, the means by which banks receive credit for these activities should be incorporated into the CRA performance framework.
- Consideration should be given to more community development activities that serve a lower percentage of low to moderate-income (“LMI”) individuals or geographies but still have a high impact on LMI individuals or geographies served. Examples include financing broadband infrastructure, health care facilities or other essential infrastructure and community facilities. Limiting consideration to a majority or express purpose criteria could cause some high-impact activities to be passed over in favor of less impactful activities that would receive more favorable CRA credit.
- The Rules should include financial education activities benefiting individuals and families of all income levels. Increasing financial literacy helps empower individuals for financial success.
- Activities supporting community development financial institutions, minority deposit institutions and women-owned financial institutions should be qualified activities. Likewise, the list of qualifying activities should include loans to nonprofit organizations.
- Volunteer activities unrelated to the provision of financial services should be considered in all areas. Some job functions make it more difficult to find volunteer activities that utilize that volunteer’s area of expertise. Allowing volunteer services assisting LMI individuals outside of financial services activity would better recognize the full impact of a bank’s volunteerism. Similarly, due to the unique nature of rural communities and the small number of community organizations typically present in those communities, banks should receive consideration for volunteer activities unrelated to the provision of financial services in rural assessment areas.
- The Agencies should recognize activities that increase access to credit through small dollar lending, direct deposit advances, secured credit cards, small business start-up funds and other such programs.
- Place-based activities should not be limited to those conducted in conjunction with a government plan, program or initiative. Banks should be able to receive CRA credit when they recognize a need and undertake an activity before a government body acts.
- Activities on tribal lands should be included in the list of explicitly qualified activities.

The Rules propose a process for periodically modifying the list of approved activities as well as a process for banks to confirm whether a particular activity qualifies as a community development activity. We support these efforts and encourage the Agencies to move quickly in updating and approving qualified activities.

Several banks also suggested the Agencies maintain a non-exhaustive list of activities that do not qualify for CRA consideration.

Over the years, banks have expressed frustration with not knowing what activities are or are not eligible for CRA credit. The proposed Rules would help address this longstanding concern.

## Retail Lending Assessment Areas

The proposed Rules retain Facilities Based Assessment Areas (“FBAA”) around a bank's branches and deposit-taking facilities. The Rules, however, would require large banks to also identify a new type of assessment area known as a Retail Lending Assessment Area (“RLAA”). A bank would be required to delineate a RLAA in any metropolitan statistical area (“MSA”), or combined non-MSA areas of a state, where the bank has originated at least 100 home mortgage loans in each of the two preceding calendar years or at least 250 small business loans in each of the two preceding calendar years outside of the bank's FBAA's. Once a bank meets one or both triggers, the bank would be evaluated for its CRA performance for all its “major product lines” in the RLAA.

Our member banks have expressed concern about the proposed RLAA requirement. While RLAAs were proposed to better evaluate activity outside of the bank branch footprint, requiring RLAAs will make CRA compliance more complex and burdensome. Banks will be required to add a considerable number of new assessment areas. Moreover, the thresholds set forth for evaluating RLAAs – 100 home mortgage loans and 250 small business loans – is far too low, requiring performance evaluation in areas with comparatively low activity.

Consequences could also result from the RLAA approach that would not benefit consumers. For example, a bank might scale back lending to minimize the creation of new RLAAs. It could also divert a bank's focus away from areas in which the bank could make a difference for LMI individuals and communities.

Evaluating out-of-footprint lending at the institution level could help satisfy the Agencies' goals of evaluating lending beyond FBAA's without the need to add RLAAs. Alternatively, a significant adjustment of the mortgage and small business loan thresholds, while not ideal, could also help. We urge the Agencies to reconsider its use of RLAAs in the proposed Rules.

## Retail Lending Test

As we understand it, the new RLT, applicable to large banks and intermediate banks, as well as small banks that opt into the RLT, would evaluate whether the bank's retail lending activities meet the needs of LMI individuals and communities. The test would focus on the following major product lines, if a product line makes up at least 15 percent of the bank's retail lending by dollar volume in the assessment area: 1) closed-end home mortgage; 2) open-end home mortgage; 3) multifamily; 4) small business loans; and 5) small farm loans. Additionally, auto loans would be considered a major product line if they amount to at least 15 percent of the bank's retail lending by both dollar volume and number of loans. Under the proposed Rules the RLT would constitute 45 percent of a large bank's CRA rating.

The Agencies' thoughts appear to be that a heightened performance standard would incentivize banks to increase lending to underserved communities. The proposed 45 percent benchmark, however, assigns too much weight to the RLT and would make it hard for a bank to achieve an Outstanding rating overall, regardless of how well the bank performs on the Community Development Financing Test (“CDFT”). If there is a perception that an Outstanding rating is unattainable, banks may no longer strive for an Outstanding rating and aim for a Satisfactory rating. Weighting the RLT at 45 percent would also disadvantage bank business models that deemphasize retail lending overall or in particular geographies. Further, the change could have the unintended consequence of incentivizing riskier lending practices in an attempt to achieve an Outstanding rating. CRA performance benchmarks should be rigorous, yet achievable.

OBA member banks also expressed concerns related to the major product lines. The following input highlights those concerns:

- With respect to mortgage lending, purchased loans should be included. These are an important part of community reinvestment. They are a source of liquidity to the mortgage market and should be treated the same as originations for CRA purposes.
- Including auto lending is a concern. The inclusion of auto lending, especially indirect auto lending, may cause banks to step back from that business, leaving it to non-banks that are not regulated and not covered under CRA. Banks have little control in how dealers present banks as a financing option or which lender a purchaser chooses. This kind of lending also applies to a depreciating asset, as opposed to assets that build wealth, which CRA was meant to address. The final regulation should permit, but not require, the inclusion of auto lending in the RLT.
- The determination of what constitutes a major product line should be made at the institutional level rather than the assessment area level. Otherwise, this creates unnecessary burden on banks.

### Community Development Financing Test

As noted above, Oregon's banks were pleased with several changes related to the CDFT and qualified activities. We appreciate the Agencies' proposal to combine community development loans and investments. This will reduce complexity and the reporting burden on financial institutions. We are also supportive, as stated above, of the Agencies' establishing a preapproval process by which banks can receive advance confirmation that an activity will receive CRA credit, as well as the mandate to create a list of qualifying CRA activities. These steps increase transparency and help remove unnecessary guesswork as to which activities qualify for CRA credit.

### Data Collection

The Rules include additional data collection and reporting requirements for larger banks. This will add considerable burden on those banks. The Agencies should consider ways to mitigate that burden. Two suggestions we've heard are that (A) information should be reported annually, and (B) reporting should begin at the beginning of the calendar year with no partial-year reporting requirement. We encourage the Agencies to reconsider data collection and reporting requirements with a goal of lessening the considerable additional burden placed on larger banks.

### Implementation

The Agencies propose multiple transition dates to implement new Rules. For the most burdensome aspects of the proposal (e.g., RLAAs, new performance tests, standards, ratings and data collection and reporting requirements), the Rules provide a one-year transition period. Twelve months is insufficient to implement the proposed changes for Rules this comprehensive and complex.

Many of the actions called for in the Rules are substantial changes from existing regulation and will require a considerable outlay of time and resources to implement. This will include system changes, which may involve identifying and retaining third-party vendors, along with hiring additional employees, training existing employees, devising new administrative oversight for the program, and implementing new data collection, recordkeeping and reporting mechanisms. These and other steps must be taken to fully operationalize the Rules.

The Agencies need to provide a transition period of at least two years to allow banks to effectively implement the changes required by the Rules.

## Miscellaneous Issues

Question 126 of the Rules asked, "How can the Agencies encourage greater consistency and clarity for the impact review of bank activities?" We encourage the Agencies to create internal policies and practices to determine if examiners are evaluating banks equally in how they carry out their examinations. Examination transparency and consistency is important; Agencies should create examination policies that are clear and provide for consistency among examiners and examinations.

We would be remiss if we did not add that *all financial institutions* should be subject to the same CRA requirements as banks. Credit unions, especially those that are generally indistinguishable from banks in the services they provide, as well as fintech companies, should be held to the same standards of community reinvestment. While we acknowledge that action to this end must be taken by Congress, the Agencies have a role to play in educating lawmakers about the present disparity.

## Conclusion

Thank you again for your efforts to modernize CRA regulation. Meeting the financial and credit needs of their communities is at the core of what banks do every day. Moreover, such activity is crucial for a healthy and vibrant economy. A modernized CRA regime should support this fundamental activity without creating unnecessary additional regulatory burden. We encourage the Agencies to fine tune the Rules based on our feedback and that of other banks and banking associations across the country. We stand ready to assist you in this effort.

Thank you for the opportunity to comment on the above-referenced Rules. If you have any questions, please feel free to contact me.

Very best regards,



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