



April 30, 2020

Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
550 17' Street, NW
Washington, DC 20429

Legislative and Regulatory Activities Division
Office of the Comptroller of the Currency
400 7th Street SW, Suite 3E-218
Washington, DC 20219
Docket ID OCC-2018-0008

Via Email: cra.reg@occ.treas.gov
comments@fdic.gov

Re: Public Comment on Proposed Rulemaking for Regulations Under the Community Reinvestment Act; Docket ID OCC-2018-0008; RIN 1557-AE34

Dear Madam or Sir:

BAC Florida Bank appreciates the opportunity to comment on the proposal by the above referenced Joint Notice of Proposed Rulemaking (Community Reinvestment Act (CRA) Proposal) in which the Office of the Comptroller of the Currency ("OCC) and Federal Deposit Insurance Corporation ("FDIC) seek comments relative to the reform of the Community Reinvestment Act of 1977 ("CRA") Regulatory Framework.

BAC Florida Bank is a state-chartered, full-service minority-owned bank headquartered in Coral Gables, Florida and as of December 31, 2019, our assets were \$2.7 billion. BAC Florida Bank and is not a typical mainstream domestic, retail bank. The bank does not routinely advertise to the retail markets, it has little to no domestic walk-in traffic, and generates much of its residential real estate lending activities through wholesale channels. BAC's primary revenues are a function of its business strategy, which is to serve the needs of foreign customers in the Americas using its extensive network of affiliates and correspondents. The bank has one branch which is located in its headquarters and does not operate any loan production offices or limited-service facilities.

We agree that the current CRA regulations and guidance do not recognize the wide diversity in business practices of banks or the changes in the financial services industry that have occurred since the CRA was enacted in 1977. While we applaud the regulatory agencies for paving the way to CRA modernize BAC Florida Bank has significant concerns about several elements of the compliance structure proposed and we would like to comment and make suggestions on several elements of the proposed new regulations. These comments are set forth to follow the order of the proposed regulations and not according to importance.

A. Clarifying and Expanding What Qualifies for CRA Credit

Lending in LMI Geographies

To maintain a focus on LMI individuals, the proposal would, for example, no longer permit a mortgage loan to a high-income individual living in a low-income census tract to qualify for CRA credit.

Somewhat concerning is the apparent exclusion of loans made to non-LMI borrowers in LMI census tracts as this appears to strike at the heart of development and revitalization in these areas for the benefit of everyone residing in such areas, particularly in our Miami-Dade County market area. This proposed change overall, seems to be somewhat short sighted. In addition, the focus on LMI individuals versus LMI census tract investments for mortgage and HEs might help avoid some gentrification but could also be detrimental to economic growth and sustainability of that area. Economic diversity is important to improving the places that LMI individuals live work and play. Those investments should carry adequate CRA weight as they are likely in high-risk low-investment areas. We feel strongly that it is important to consider all loans originated in LMI geographies, regardless of whether the loans are made to LMI individuals.

Qualifying Loans and Community Development Investments:

Qualifying loans and CD investments would be valued based on their average month-end on-balance sheet dollar value, except that qualifying retail loans originated and sold within 90 days of their origination date would be valued at 25 percent of their origination value.

Though we do not currently sell our loans to the agencies this is an issue for any bank that sells their loans and could be an obstacle for us in the future. From a safety and soundness perspective we, do not feel it is appropriate to penalize a bank by on granting 25% of the value of loans sold with 90 days. The selling of loans, particularly residential mortgages, has been a common practice for banks for decades. Many loans are structured to be sold into the secondary market under specific guidelines for affordable housing / first time home buyer programs such as FMNA Home Ready, FHLMC Home Possible, FHA, VA and USDA. To force banks to hold this paper for 90 days will impact the profitability of the loan and could interfere with a bank's strategic goal of managing its asset quality and its risk. Ultimately it would negatively impact the LMI and first-time homebuyer customers.

Qualifying activities values Under this proposed provision of the CRA regulations, the calculation of qualifying activities value requires a doubling of the dollar value of certain community development activities, including for some investments and loans. These include activities provided to, or that support, Community Development Financial Institutions (CDFIs), other community development investments, and other affordable housing-related community development loans. However, activities with CDFIs related to mortgage-backed securities (MBS), community development investments in MBS, and community development investments in

municipal bonds would not be subject to the multiplier, which has the effect of discounting the value of these CRA-qualified activities by 50 percent

The Notice of Proposed Rulemaking includes provisions under 12 CFR 25.07(a) and (c) regarding qualifying activities value and 12 CFR 25.07(b) regarding the multiplier value of certain qualifying activities that will weaken the impact of CRA, raise certain risks for banks and markets, and negatively impact the ability of LMI borrowers to access credit. The dollar value of CRA qualifying activities should not be multiplied, as proposed under 12 CFR 25.07(b). The use of the average dollar value, as described under 12 CFR 25.06(d) and (e) provides sufficient refinement to the value these activities bring to the CRA performance evaluation.

Qualifying Activities:

The Agency's suggestions to bring greater clarity and clarification to what qualifies as Community Development (CD) activities is positive and will serve to provide better guidance to financial institutions on the types of activities that qualify for CRA credit. A process by which financial institutions can submit information to their regulator to get a determination on such activities and publishing a regular list of CD activities prior to making the investment will be beneficial. The list should be updated on a more frequent basis than indicated in the NPR, ideally monthly but at the most annually.

Definition of Retail Domestic Deposit:

We suggest that the definition of "retail domestic deposit" be broadened to include deposits by all entities and not just individuals, partnerships and corporations. For example, LLC and trust deposits at a bank should also be included. This is likely the intent, but as written the definition seems to exclude many deposits that, in the spirit of the CRA, should be included.

We also suggest that the definition of "retail deposits" be clarified to state clearly that retail domestic deposits do not include deposits from foreign persons or entities. The majority of BAC Florida Bank's depositor customer base are foreign nationals with home addresses located outside the United States of America. The United States is viewed as a safe haven to deposit money for foreign persons who are transparent about their identity and source of funds. The deposits do not come from a bank's assessment area, so their inclusion is not required by the goal of the CRA to return community money to the community.

B. Expanding Where CRA Activity Counts

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.

Preservation of the traditional assessment areas surrounding banks facilities and expanding where CRA activity counts to help banks meet the needs of their communities is critical. However, the additional requirement to establish a deposit-based assessment area creates additional regulatory and reporting burden that may be perhaps unwarranted for a vast majority of the community banks in the country. The concept of deposit-based assessment areas taken in conjunction with the additional proposed reporting may adversely affect CRA performance and ratings based on certain lines of business and growth strategies. To effectively determine the 5% of retail deposits will be difficult to monitor and maintain on an ongoing basis. Considering that due to internet banking an institution could possibly have accounts in every state and deposit accounts could rotate in short periodic terms deposit-based assessment areas are not delineated communities. Additional consideration around this potential adverse effect on CRA Performance Evaluations should be addressed prior to finalization of this concept.

In our view, supporting the communities where we live and serve is part of our mission and preserving the importance of branches is vital and should be weighted even more heavily than deposit-based assessment areas.

C. Proposed Data Collection, Recordkeeping, and Reporting:

Based on the CRA Proposal, 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. 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. The proposal would impose significant recordkeeping requirements requiring the collection and maintenance of essentially all data supporting the bank's performance on the three evaluation measures. On an annual basis, a bank subject to the three evaluation measures would need to report, among other things, the quantified value of its qualifying retail loans, CD loans, CD investments, and CD services for the annual period, and the agencies would make this data public. While this approach would potentially bring greater predictability to agency actions the benefit is not likely to offset the significant regulatory burden placed on financial institutions to collect this information and perform the proposed calculations. The potential costs of gathering the exhaustive list of required data points- not only once, but on an ongoing basis- are troubling. The process would require constant monitoring by bank staff to both create the reports and scrub for errors.

Given these critical CRA performance measures, data collection requirements, and documentation requirements, it will be extremely valuable for banks to be assured that the exacting documentation standards they have relied upon for the last twenty plus years will continue to be accepted under the revised regulations.

D. Proposed 'One Ratio Formal

First and foremost, we are concerned that a uniformed monetary ratio will not be responsive to localized community needs as well as have the potential unintended consequence

of limiting smaller financing activities, such as residential home lending and small business loans. In a January 08, 2020 speech,¹ Federal Reserve Board Governor Lael Brainard remarked "After analyzing ways to use metrics across the board, we concluded that the value of retail services and community development services to a local community do not lend themselves easily to a monetary value metric comparable to the monetary value of loans and investments. The value of these services may vary greatly from community to community. It is difficult to monetize this value in a consistent way relative to the value of lending and investment, thus introducing the risk of skewing incentives inadvertently."(1) We concur with Governor Brainerd position and encourage the OCC and FDIC to revisit this policy to incorporate a more diverse set of metrics to evaluate CRA efforts. With this said we have the following comments on the proposed ratings mechanics:

Concerning the methodology for determining a bank's rating under the proposed framework; regarding the Retail Lending Distribution Measure under both the "borrower distribution test" and the "geographic distribution test" the proposal offers an option (b) which alludes to "65 percent of the percentage of peer banks' loans in the category. Somewhat concerning for BAC Florida Bank is the definition of "peer banks". Are these the banks that appear in the Aggregate Lending HMDA reports? BAC Florida Bank is a large bank by asset size, we have one branch, and the bank's customer base is unique. We have been repeatedly told by the agencies that we have no peer comparisons. Therefore, the definition of "peer banks" requires further explanation.

The proposal focuses on quantifying qualifying activities that benefit LMI individuals and areas and quantifies a bank's distribution of branches by increasing a bank's quantified value of qualifying activities divided by retail domestic deposits (a bank's

CRA evaluation measure), expressed as a percentage, by up to one percentage point based on the percent of a bank's branches that are in specified areas of need. Banks with no branches in these areas will not receive any CRA credit for their branch distribution under this method, even if there are very few specified areas of need in the areas they serve.

As previously mentioned, BAC Florida Bank has one branch in an upper income census tract, which is located in its headquarters and does not operate any loan production offices or limited-service facilities. We have operated as a one branch institution since 1972 and at the present time, we have no plans to open any additional branch offices. BAC Florida Bank is considered a leader in providing CD services to LMI communities through our assessment area. The CRA proposed does not account for one branch organizations and seems to put organizations with similar structures at a disadvantage.

E. CRA Elements that warrant additional consideration and thought:

CRA Requirements should be applied to Credit Unions and Non-Bank Entities:

Federally chartered credit unions are not covered by the Community Reinvestment Act

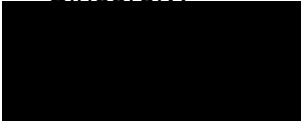
¹. Speech by Governor Brainard on strengthening the Community Reinvestment Act by staying true to its core purpose. (2020).

Retrieved from <https://www.federalreserve.gov/newsevents/speech/brainard20200108a.htm>

and have no legal mandate to return funds received from their depositors to the neighborhoods in which they are located. In a marketplace as highly competitive and diverse as Miami, credit unions have become larger and larger financial institutions, and the original "common bond" requirements for credit union membership continue to fade away. Because of this, it is increasingly important to subject these financial institutions to the requirements of CRA.

We sincerely thank the FDIC, our primary bank regulator and the OCC, for this opportunity to comment on the CRA Proposal and appreciate the FDIC's and the OCC's leadership in soliciting suggestions on modernizing the CRA.

Sincerely,



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