

April 7, 2020

Comptroller Joseph M. Otting  
Comptroller of the Currency  
Comp 400 7<sup>th</sup> Street, SW  
Washington, D.C. 20219

Chair Jelena McWilliams  
Federal Deposit Insurance Corporation  
550 17th Street, NW  
Washington, DC 20429

Docket No. OCC-2018-0008

Dear Comptroller Otting & Chair McWilliams:

Central Pacific Bank submits these comments in response to the OCC/FDIC's Notice of Proposed Rulemaking (the "Proposal") regarding the Community Reinvestment Act (CRA).

Central Pacific Financial Corp. is a Hawaii-based bank holding company with approximately \$6.0 billion in assets. Central Pacific Bank, its primary subsidiary, operates 35 branches and 77 ATMs in the state of Hawaii, as of December 31, 2019. Central Pacific Financial Corp. is traded on the New York Stock Exchange (NYSE) under the symbol "CPF".

Founded by a small group of World War II veterans in 1954 to help immigrant families build a life away from the plantations, Central Pacific Bank has grown to serve the financial needs of all families and small businesses in the Islands. We are a leading force in supporting homeownership and small businesses in Hawaii as a market leader in residential mortgage and SBA loan originations.

The bank and its employees also have a long and proud history of giving back to the communities in which we work, live and raise our families. Our values and sensibilities are local and focused on our customers and community, allowing us to help create a better life for everyone throughout the Hawaiian Islands.

#### DATA COLLECTION, MAINTENANCE AND REPORTING

Federal Register / Vol. 85, No. 6 / Thursday, January 9, 2020 / Proposed Rules: Q20. The proposed rules would require banks to collect and report additional data. Are there impediments to acquiring this additional data? If so, what are the impediments?

Federal Register / Vol. 85, No. 6 / Thursday, January 9, 2020 / Proposed Rules: Q21. What burdens, if any, would be added by the proposed data collection, record keeping, and reporting requirements? What system changes would be needed to implement these requirements? What are the estimated costs of implementing these requirements?

#### Retail Domestic Deposits

The intent to modernize CRA under the proposal seeks to make CRA reporting more transparent and timelier, yet the proposed rules for retail domestic deposits would substantially increase the cost of compliance for banks and would create additional burdens on consumers.

While banks collect physical addresses of each retail domestic depositor as a regular course of business, it is unclear, how banks would update addresses on the last day of each quarter without creating undue

burden to consumers to comply with 12 CFR, Part 25, Subpart E §25.19 (8). Short of eliminating this collection and reporting burden for both the bank and consumers, alternatives and solutions should be more specifically delineated and re-issued for public comment.

#### Qualifying Retail Loans and Community Development Investments

The intent to modernize CRA under the proposal seeks to make CRA reporting more transparent and timelier, yet the proposed rules for qualifying retail loans and community development investments would substantially increase the cost of compliance for banks and create increased business disruption with no commensurate community development impact.

While banks collect many data elements for each retail loan and community development investments as a regular course of business, it is a huge burden to revisit loan and investment records as of the close of business on the last day of the month, for each month that the loan is on-balance sheet, for CRA purposes as proposed under 12 CFR, Part 25, Subpart E §25.19 (1)(vi) and (6)(iv).

The current practice of collecting and maintaining retail loans and community development investments at the time of origination is a reasonable approach to evaluating a bank's record of meeting the credit needs of its community. Requiring banks to collect outstanding dollar values on a monthly basis would raise the overall cost of originating such commitments and would effectively increase the costs of offering such loans and investments. This increase in the cost of deploying retail loans and community development investments will have a negative community development impact in the cost and availability of community development tools in our lower-income and distressed communities.

Short of eliminating this collection and reporting burden for banks, alternatives and solutions should be more specifically delineated and re-issued for public comment.

#### Modification of the Economic Development "Hook"

Under the current rule, banks receive CRA credit for activities that promote economic development by financing, either directly, or through an intermediary, businesses or farms that meet both a "size" and "purpose" test. The "purpose" test is satisfied if the activities support:

- Permanent job creation, retention, and/or improvement:
  - for low- or moderate-income persons;
  - in low- or moderate-income geographies;
  - in areas targeted for redevelopment by Federal, state, local, or tribal governments;
  - by financing intermediaries that lend to, invest in, or provide technical assistance to start-ups or recently formed small businesses or small farms; or
  - through technical assistance or supportive services for small businesses or farms, such as shared space, technology, or administrative assistance; or
- Federal, state, local, or tribal economic development initiatives that include provisions for creating or improving access by low- or moderate-income persons to jobs or to job training or workforce development programs.
- The agencies will presume that any loan or service to or investment in a SBDC, SBIC, Rural Business Investment Company, New Markets Venture Capital Company, New Markets Tax Credit-

eligible Community Development Entity, or Community Development Financial Institution that finances small businesses or small farms, promotes economic development.<sup>1</sup>

The proposed rule, however, “does not include the more general aspect of economic development that involved a bank having to demonstrate that its activities that finance businesses or farms that met the size test support job creation, retention, and improvement for LMI individuals, LMI census tracts, and other areas targeted for redevelopment by Federal, state, local, or tribal governments.” The Agencies did not articulate a legal or policy reason for excluding these aspects of economic development other than noting that the agencies *could not identify an objective method for demonstrating job creation, retention, or improvement for LMI individuals or census tracts or other targeted geographies, other than by determining if the activity would create additional low-wage jobs*” (emphasis added).<sup>2</sup>

Central Pacific Bank believes that removing this aspect of economic development from CRA consideration would discount a key part of many banks’ community reinvestment plans.

### Community Development Services

The intent to modernize CRA under the proposal seeks to measure CRA Performance more objectively, the proposed rules for community development services creates a burden, would substantially increase the cost of compliance for banks and create increased business disruption with no commensurate community development impact.

While banks collect many data elements for each community development service, it is onerous to collect and maintain community development service quantified dollar values as of the last day of each month to then on a monthly and annual basis as proposed under 12 CFR, Part 25, Subpart E §25.19 (c)(7) and Subpart E §25.23 (c). The current practice of collecting and maintaining community development services at the time of service is a reasonable approach to evaluating a bank’s record of meeting the community development needs of lower-income people and distressed communities.

Requiring banks to delineate and assign an estimated value based on “compensation for services” as proposed in 12 CFR, Part 25, Subpart E §25.06 does not guarantee standardized values across similarly situated banks in various markets and does not create an indicator of community development impact.

This subjective and onerous process would raise the overall cost of complying with CRA on a permanent basis and will affect the ability for a bank to deploying essential services and ultimately the availability of community development tools in our lower-income and distressed communities.

Short of eliminating this collection and reporting burden for banks, alternatives and solutions should be more specifically delineated and re-issued for public comment.

### DATA INTEGRITY/CRA EXAMINATION PROCESS

The proposed rules remain unclear about the process and scope of data integrity reviews and annual filing requirements. Intent and details should be delineated and re-issued for public comment to enable

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<sup>1</sup> § \_\_.12(g)(3)—1

<sup>2</sup> 85 FR 1213.

financial institutions the courtesy to comment since this CRA data collection, maintenance and reporting provisions as proposed will have a huge impact on the cost of compliance with the CRA.

#### DEFINITION OF SMALL BUSINESS/SMALL FARM LOAN

*Federal Register / Vol. 85, No. 6 / Thursday, January 9, 2020 / Proposed Rules: Q4. Under the proposal, the small business and small farm revenue thresholds and the size thresholds for a small loan to a business and a small loan to a farm would increase to \$2 million. Do these increases appropriately incentivize banks to engage in small business and small farm lending activities, or should other changes be made to the revenue and loan size thresholds?*

The CRA regulations contain multiple definitions of loans to small businesses. These inconsistencies add unnecessary complexity and should be toned to the Call Report for determining the definition of a loan to a small business or a loan to a small farm. A small business loan is defined as a loan included in “loans to small businesses” as defined in the instructions for preparation of the Call Report. The Call Report defines such loans as loans with an original amount of \$1 million or less.<sup>3</sup>

Deviating from the standard Call Report reporting process would increase the complexity and confusion around CRA data collection, maintenance and reporting, without a commensurate increase in community reinvestment impact.

The definition of small business loans was intended to be straightforward and easy to calculate. Banks typically treat small business lending differently from their commercial loans and often employ a separate department/division that focuses on small business lending. Their thresholds for the product varies to suit their business model and their product offerings. Therefore, rather than forcing banks to adopt a uniform definition, the CRA regulation employs a proxy that is modeled on the call reports and treats loans of under \$1 million as small business loans and loans under \$500 million for small farms. The proposed increase to \$2 million would not necessarily incentivize banks to further engage in small business and small farm lending activities, as they are focused on serving the credit needs of their community regardless of loan amount.

This metric is still a reasonable proxy for small business lending, notwithstanding the passage of time since it was adopted.

#### DEFINITION OF A SMALL BUSINESS/SMALL FARM

*Federal Register / Vol. 85, No. 6 / Thursday, January 9, 2020 / Proposed Rules: Q4. Under the proposal, the small business and small farm revenue thresholds and the size thresholds for a small loan to a business and a small loan to a farm would increase to \$2 million. Do these increases appropriately incentivize banks to engage in small business and small farm lending activities, or should other changes be made to the revenue and loan size thresholds?*

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<sup>3</sup> Schedule RC-C, Part II. Loans to Small Businesses and Small Farms, collected pursuant to Section 122 of the Federal Deposit Insurance Corporation Improvement Act of 1991.

Again, the CRA regulations contain multiple definitions of small businesses. These inconsistencies add unnecessary complexity, and should be toned to the Small Business Administration's (SBA) size standards with respect to defining a small business or small farm within the CRA.<sup>4</sup>

The Interagency Questions and Answers Regarding Community Reinvestment (guidance, 81 Fed. Reg. at 48,533 (citing § \_\_ 12(v)) also defines small business in the context of community development activities include "activities that promote economic development by financing businesses or farms that meet the certain eligibility standards established by the Small Business Administration, (13 C.F.R. § 121.301) *or* that have *gross annual revenues* of \$1 million or less." Many financial institutions chose to use the SBA size thresholds as they more specifically match to the true definition of a small business per specific industries described in the North American Industry Classification System (NAICS), as modified by the Office of Management and Budget. The size standards are, for the most part, expressed in either millions of dollars (those preceded by "\$") or number of employees (those without the "\$"). A size standard is the largest that an entity can be and still qualify as a small business for Federal Government programs. For the most part, size standards are the average annual receipts or the average employment of a firm.

Deviating from the standard SBA size standards and definitions would increase the complexity and confusion around CRA data collection, maintenance and reporting, without a commensurate increase in community reinvestment impact.

#### REVOLVING LINES AND LETTERS OF CREDIT

Footnote 28 to the preamble of the proposed rule states that banks would continue to receive CRA credit for the funded portions of lines of credit but generally would not receive CRA credit for other legally binding commitments to lend, such as revolving credit lines and letters of credit.

When the Bank issues a letter of credit, the Bank is legally bound to it. Moreover, in the capital context, banks must hold capital against unconditionally cancellable lines. Therefore, the Bank urges the Agencies to continue giving CRA consideration to revolving credit lines and letters of credit.

#### ASSESSMENT AREAS

Under the proposed rule, the following metrics would be calculated separately for each assessment area: (1) the CRA Evaluation Measure, (2) the Retail Lending Distribution Test, and (3) the 2 percent Community Development Minimum (collectively, the General Performance Standards), resulting in a presumptive CRA rating. Central Pacific Bank supports the agencies' desire to establish standard, quantifiable metrics to evaluate CRA performance, however this method could be very detrimental for financial institutions with few assessment areas. The Retail Lending Distribution test, comprised of a geographic distribution test and borrower distribution test, is pass/fail, and a bank would not be able to achieve a "Satisfactory" rating or better without obtaining at least a "Satisfactory" rating "in a *significant* portion of its assessment areas and in those assessment areas where it holds a significant amount of deposits."<sup>5</sup> As a result, banks with a limited number of assessment areas will have a smaller margin for error as compared to banks with many assessment areas. If "significant" is defined as 70%, Central Pacific Bank would receive a "Needs to Improve," rating if one Retail Lending Distribution Test in one assessment area was failed, since the Bank has a total of three assessment areas. However, a bank with five assessment areas that failed the Retail

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<sup>4</sup> Authority: 15 U.S.C. 632, 634(b)(6), 662, and 694a(9). Subpart A—Size Eligibility Provisions and Standards, Provisions of General Applicability, §121.101 SBA size standards  
<sup>5</sup> Proposed Rule. \_\_.12(c) p. 1246.

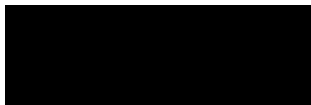
Lending Distribution Test in one assessment area would pass the exam at the bank-level level, assuming that the bank met all other performance benchmarks. These metrics seem to be detrimental to banks with fewer assessment areas.

TIMING AND INTERAGENCY ACTION

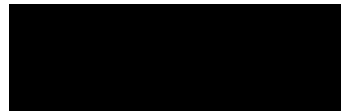
Thank you for the opportunity to submit feedback on the regulations that implement the Community Reinvestment Act. Bankers and community development stakeholders across the nation look forward to reviewing and commenting on the next iteration of the proposed rule given the abundance of feedback, timing constraints and unclear impacts of the January 9, 2020 proposed rule. Interagency collaboration and coordination on a future joint proposal is also critical to reduce market confusion and inefficiencies in regulatory policy and oversight.

Should you have any questions, please contact the undersigned at (808) 544-3657 or (808) 544-1363.

Sincerely,



Riley Angell  
CRA Officer



Alan Nakamura  
Deputy CRA Officer