

Daniel F. Hayes

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April 8, 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

Robert E. Feldman, Executive Secretary
Attention: Comments RIN 3064-AF22
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

RE: Community Reinvestment Act Regulations
OCC Docket ID OCC-2018-0008
FDIC RIN 3064-AF22

Dear OCC and FDIC,

I appreciate the opportunity to comment on the joint notice of proposed rulemaking regarding the Community Reinvestment Act (CRA). With the changes in technology over the last several decades, in particular for financial institutions, now is a great time to modernize the CRA. The CRA was first enacted to ensure that banks were meeting the credit needs of the communities they served and to promote sound lending practices in all areas of a bank's community.

As way of introduction, prior to my retirement in October, 2019, I advised the largest US financial institutions on addressing a number of consumer finance regulatory issues, including fair lending and CRA as the consumer compliance practice leader for Ernst & Young and prior to that with Treliant Risk Advisors. I am currently on the board of directors of the Reinvestment Fund, a community development financial institution. The comments included here are mine, and not those of Ernst & Young, Treliant or the Reinvestment Fund. I hope my comments help you achieve the goals of both modernization while supporting the intentions of CRA.

Use of multipliers to incentivize CRA activity

You posed a question about the use of multipliers to incentivize banks community development activity. It would seem beneficial and supportive of CRA's purpose to use higher multipliers for direct lending and investment activity, with less credit for participations and even less for investing in MBS.

As it relates to MBS, your commentary mentions the churning that takes place to meet CRA goals, which you address through a monthly averaging approach. The implication of getting credit for MBS investing is that it is needed to support CRA lending. My impression is that there is a large enough market for investing in MBS that the need for giving CRA credit for MBS investment is far less important than giving credit for direct investment. This can be addressed through your multipliers.

Similarly, you have proposed “adding a criterion for essential infrastructure, such as roads, mass transit, or water supply and distribution, that benefits or serves LMI individuals...” You go further to say: “The addition also would recognize that essential infrastructure projects are often community-wide projects for which it is not feasible to allocate the benefit to specific populations or areas.”

Although it can be viewed as beneficial to recognize that community development can take many forms, investing in infrastructure projects, to your point, will be difficult to tie to specific LMI benefits. Accordingly, a lower multiplier for such projects gives some credit, but less than direct investment or lending.

An expansion of qualifying activities without an increased use of multipliers could dilute or reduce current CRA activities taken on by financial institutions. Again, it can be beneficial to increase the amount of qualifying activities, but adding those with tangential versus direct benefit without some type of multiplier as an equalizer, or increase in the percentages needed to meet specific ratings, could allow institutions to achieve certain ratings while decreasing direct CRA activity.

Assessment areas. Deposit based assessment areas

You ask a question about defining deposits. There is a comment in the proposal about brokered deposits: “By further excluding brokered deposits, which are not associated with any individual or community, this definition would refine the Call Report definition to more accurately reflect the deposits a bank collects from identifiable individuals and communities.” My understanding of brokered deposits is that these are deposits acquired by the bank from various non-branch sources. The deposits actually are associated with individuals and communities, just not necessarily branches. For example, if Bank XYZ buys my deposit from a broker, they will now have a deposit in Ft. Washington, PA that will go into their deposit-based assessment area determination.

Without making the calculations unnecessarily complex, it seems brokered deposits could be an essential element of the evaluation of the deposit-based assessment areas while not necessarily being part of the facility-based assessment areas.

While your commentary states that you would require banks to use the smallest of the assessment options described in OCC 25.08(c)(2), the proposed reg does not state that this is a requirement.

Objective method to measure CRA performance

It is unclear to me after reading the proposal how the distribution and impact components of CRA activities for deposit-based assessment areas would be implemented. The detailed descriptions of the calculations seem to apply more directly to facility-based assessment areas. You may want to consider adding additional detail for clarity.

Data collection, recordkeeping and recording

The information banks are required to report for CRA and HMDA purposes are similar and overlap in many aspects. Rationalization of the information required for CRA and HMDA purposes, so similar data was collected and reported could lessen the reporting burden on institutions and hopefully provide more accurate information for both requirements.

Qualifying Activities Illustrative List

Regarding your illustrative list, there is an example that has received much attention: “Investment in a qualified opportunity fund, established to finance improvements to an athletic stadium in an opportunity zone that is also an LMI census tract.”

I believe an OCC official later clarified that this was meant to cover a stadium for a high school, for example, not a new stadium for an NFL team. This should be clarified when the list is finalized.

In summary, I would recommend the proposed rules:

- Use multipliers to emphasize the community development activities to those that are truly impactful for LMI communities and people, especially if increasing the list of qualifying activities,
- Consider the impact of brokered deposits on the deposit-based assessment area analysis,
- Clarify the process for assessing deposit-based assessment areas,
- Consider streamlining recordkeeping and reporting requirements, rationalizing with other requirements where possible.

Thank you for your consideration of our comments. If I can be of further assistance in this regard, please contact me at [REDACTED] or at [REDACTED].

Sincerely,

Daniel F Hayes

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