



April 8, 2020

Chief Counsel's Office  
Attention: Comment Processing  
Office of the Comptroller of the Currency  
400 7<sup>th</sup> Street, SW, Suite 3E-218  
Washington, DC 20219

Robert E. Feldman, Executive Secretary  
Attention: Comments  
Federal Deposit Insurance Corporation  
550 17<sup>th</sup> Street NW  
Washington, DC 20429

Regarding: Joint Notice of Proposed Rulemaking: Request for Comment on Community Reinvestment Act Regulations – Office of Comptroller of the Currency, Docker ID OCC-2018-0008 and RIN 1557-AE34; Federal Deposit Insurance Corporation, RIN 3064-AF22

Dear Comptroller Otting and Chairman McWilliams:

The Community Bankers Association of Illinois (“CBAI”), which proudly represents 300 Illinois community banks, appreciates the opportunity to provide our observations and recommendations regarding the Office of the Comptroller of the Currency (“OCC”) and Federal Deposit Insurance Corporation (“FDIC”) Community Reinvestment Act (“CRA” or “Act”) Regulations (“Proposal”). CBAI acknowledges statements made in the Proposal that “since becoming law in 1977, the Community Reinvestment Act has encouraged insured depository institutions to invest trillions of dollars into the communities they serve”. In addition, “The regulations implementing

**CBAI is dedicated to exclusively representing the interests of Illinois community banks and thrifts through effective advocacy, outstanding education, and high-quality products. CBAI’s members hold more than \$75 billion in assets, operate 860 locations statewide, and lend to consumers, small businesses, and agriculture. For more information, please visit [www.cbai.com](http://www.cbai.com).**

the law have not been extensively revised since 1995.”

The Proposal “would generally apply to all insured depository institutions regulated by the OCC and the FDIC, including national banks, state-chartered banks that are not members of the Federal Reserve System, and federal and state savings associations”.

The OCC and FDIC (collectively “Agencies” or “Regulators”) are proposing regulations to modernize the CRA which will “(1) clarify and expand the types of activity that qualify for CRA credit; (2) update and expand the areas in which qualifying activity receive credit; (3) provide a more objective and transparent method to measure and evaluate CRA performance; and (4) revise data collection, recordkeeping, and reporting requirements and improve consistency, transparency and timeliness.”

## **Introduction and Background**

CBAI and its member community bankers support the CRA which was enacted by Congress and intended to encourage depository institutions to meet the needs of the communities in which they operate, including low- and moderate-income (“LMI”) neighborhoods consistent with safe and sound operations. The CRA requires that each insured depository institution’s record in helping meet the needs of its entire community is evaluated periodically. That record is taken into account in considering an institution’s application for deposit facilities, including mergers and acquisitions. CRA examinations are conducted by the banking regulators that are responsible for supervising depository institutions - OCC, FDIC, and the Federal Reserve Bank (“Fed”). Community banks perform exceptionally well in CRA compliance and examinations precisely because it is the mission of community banks to fairly serve all of their customers and communities.

Our members continue to tell us that the CRA makes good business sense and benefits everyone. We believe there is a need for this modernization to reflect new technologies, customer preferences in the delivery of banking services, and also it is an opportunity to highlight and retain parts of the Act, identify missed opportunities for additional credit, reduce the regulatory burden on community banks, and include for compliance other financial service providers.

## **General Observations**

### Safety and Soundness

The CRA requires community banks to help meet the credit needs of the communities they serve, including LMI areas, consistent with the bank's safe and sound operation – sound lending.

Operating in a safe and sound manner is a prudent business practice and a regulatory requirement, the lack of which is sufficient cause for regulator criticism and even enforcement actions. The creditworthiness of the borrower is the key to safe and sound lending – without it a loan cannot be made. Regulating and examining for compliance with the CRA must never lose sight of or compromise community banks' ability to operate in a safe and sound manner. **CBAI appreciates the Agencies acknowledging the need for safety and soundness and encourages the Agencies to continue to support and reinforce this requirement which must not be minimized or lost in the modernization of the CRA.**

### Overwhelmingly Positive Exam Results

CBAI questions the belief held by some that because more than 95% of banks receive *Satisfactory* or *Outstanding* CRA ratings that the Act is flawed. The overwhelming majority of banks are community banks which treat their customers and communities fairly and do not discriminate. The fact that the overwhelming majority of banks perform well in CRA compliance and examinations affirms the exemplary behavior of community banks. **CBAI urges caution when the Agencies state the Proposal will “strengthen” the regulatory framework, for fear of creating a misperception about the modernization effort. There is no reason to make the regulatory compliance requirements more rigorous, or the examination process more difficult, for community banks.**

### All Financial Service Providers Must Comply with the CRA

Credit Unions are not currently subject to the CRA because they are not defined as “covered institutions” in the regulation. The modernization of the CRA is a historic opportunity for the Agencies to help level the playing field. CBAI acknowledges that Congress must act to include other financial service providers, including credit unions, Farm Credit Services, fintechs, the OCC's Special Purpose National Bank charters, and industrial loan companies and banks, for compliance with the CRA in a comparable manner to community banks. **CBAI strongly urges**

**that all financial service providers which offer the same products and services as community banks be subject to the CRA and also urges the Regulators to strongly advocate to Congress for this change. This regulatory double standard is harming the safety and soundness of the community banks that the Agencies are responsible for regulating.**

### Joint Regulator Rulemaking

The OCC issued its ANPR without the Fed or the FDIC. Before the publication of this Proposal the Agencies, including the Fed, reviewed the roughly 1,500 comment letters. However, the Proposal was made by the OCC and the FDIC but did not include the Fed. The justification for moving forward is that these two Regulators oversee about 85% of CRA compliance, so the overwhelming majority of banking assets will be covered by this rulemaking.

CBAI appreciates that the regulatory process for modernizing the CRA is well underway, the OCC has taken a leadership position in this reform effort, and there is now full engagement in the debate on this important matter by all constituencies. While it is not unprecedented for agencies to act independently of one another, for this regulation it is not the preferred path. CBAI believes that, notwithstanding the overwhelming percentage of banking assets supervised by the OCC and the FDIC, the CRA modernization effort will greatly benefit from interagency dialogue, collaboration, and joint rulemaking culminating in a joint final CRA rule (“Final Rule”) of high quality and consistency, which will command greater respect, support, and legitimacy.

We are additionally concerned that the lack of Agency unity in CRA rulemaking will result in a further politicizing of this regulation and the threat that a future Administration, Congress, or Agency leader will reverse parts or all of Final Rule resulting in a significant swing in the regulatory pendulum. This back and forth change in regulations represent an additional unnecessary and unreasonable regulatory burden particularly on community banks. **CBAI encourages the Regulators, even at this late stage in the rulemaking process, to engage joint rulemaking and agree on a Final Rule to modernize the CRA.**

### **Specific Observations and Recommendations**

CBAI has organized its comments to conform to the five major headings in the Proposal's Section-by-Section Discussion and the questions contained in each Section.

**Qualifying Activities**

Question 1 Are the proposed criteria for determining which activities would qualify for credit under the CRA sufficiently clear and consistent with the CRA's objectives of encouraging banks to conduct CRA activity in the communities they serve?

Question 2 Are there other criteria for determining which activity would qualify for CRA credit that the Agencies should consider?

The reporting on this rulemaking, and also in the Proposal, there are references to serving and receiving CRA credit for activity in areas, census tracts, neighborhoods, targeted areas, communities and assessment areas ("Assessment Areas"). In addition, these geographies are either LMI or non-LMI and each contain both LMI and Non-LMI individuals. For the sake of clarity and to avoid confusion, CBAI encourages that the Proposal make clear to whom and where CRA credit is given or denied in all possible instances. For the purpose of this comment letter an "area" and "census tract" are interchangeable as are "community" and "Assessment Area". There are eight possible combinations which must be accounted for in assigning CRA credit.

<u>Individuals</u>	<u>Census Tracts or Areas</u>	<u>Assessment Areas or Community</u>
LMI	LMI	Within
LMI	Non-LMI	Within
LMI	LMI	Outside
LMI	Non-LMI	Outside
Non-LMI	LMI	Within
Non-LMI	Non-LMI	Within
Non-LMI	LMI	Outside
Non-LMI	Non-LMI	Outside

The Proposal states that a loan to a non-LMI individual in an LMI area within the bank's community does not qualify under the proposal for CRA credit. The justification for this decision is that it fosters "gentrification". There is a concern that the proposed criteria will create a disincentive to lend in some areas and communities, and that may limit favorable development. **CBAI encourages the Agencies to seek an acceptable compromise on this sensitive subject that provides reasonable CRA credit for all loans in LMI areas.**

The Proposal also states that a loan to a non-LMI individual in a non-LMI area within the bank's community does not qualify for CRA credit. The justification for this decision is founded in in the belief that this lending does not fulfill the mission of the CRA. The Act states a bank is required to serve its entire community. There is no mention of excluding non-LMI individuals and loans in a non-LMI area within the community. **CBAI urges the Agencies to give CRA credit for loans that serve the bank's entire community, regardless of the LMI status of the borrower or area, as required by the Act.**

While the types of loan (underlined above) deserve CRA credit they may not be eligible for the highest level or multiplier of CRA credit. Expanding on the graph presented above, **CBAI urges the Regulators to adopt a system where CRA credit is given with additional credit (i.e., a multiplier) for the highest ranking loans which will provide the most credit for the greatest commitment to LMI individuals and in LMI areas without discounting the value of lending to certain non-LMI individuals and non-LMI areas or communities. \***

<u>Individuals</u>	<u>Census Tracts or Areas</u>	<u>Assessment Areas or Community</u>	<u>CRA Credit</u>	<u>Ranking</u>
LMI	LMI	Within	Yes	Highest multiplier
LMI	Non-LMI	Within	Yes	2 <sup>nd</sup> highest
LMI	LMI	Outside	Yes	4 <sup>th</sup> or 5 <sup>th</sup>
LMI	Non-LMI	Outside	Yes	6 <sup>th</sup>
Non-LMI	LMI	Within	Yes	3 <sup>rd</sup>
Non-LMI	Non-LMI	Within	Yes	5 <sup>th</sup> or 4 <sup>th</sup>
Non-LMI	LMI	Outside	Yes	7 <sup>th</sup>
Non-LMI	Non-LMI	Outside	None	8 <sup>th</sup>

\* This graph is restated in the answer to Question 7 regarding the use of multipliers in determining CRA credit for certain types of retail loans.

#### Mortgage Related Qualifying Activity

Community banks have different levels of expertise in originating residential mortgages. Many community banks have been forced to stop making residential mortgages because of the increased regulations required under the Dodd-Frank Act. For a bank which is active in mortgage originations, unless is able to sell those loans it will soon be loaned-up and have concentrations in those lending areas. By selling the loans, the originating bank can generate liquidity and do more residential mortgage lending.

The residential mortgage market has created an efficient way to originate, aggregate, securitize and sell loans of varying types including residential mortgage-backed securities that are eligible for CRA credit. CBAI believes that a modernization of the CRA should not inhibit that efficient market but rather it should acknowledge the value of this process in generating more CRA loans than would not be possible without the market having been developed, in place and working efficiently. **CBAI recommends that any CRA-eligible residential mortgage loan that is originated by community banks receive full CRA credit and not be subject to the either a 25% or 90-day hold limitation.**

**CBAI recommends that full CRA credit be given for banks investing in (and holding) Mortgage Backed Securities which contain residential mortgages particularly from LMI areas within the banks' Assessment Area and/or to LMI individuals. This CRA credit for community banks should be ongoing as long as the security is held by the bank and at its full dollar value.**

Many community banks choose to retain the servicing rights to residential mortgage loans that they have originated but sold, in order to maintain a closer relationship with their customers while replenishing the lending dollars which enables them to make more residential mortgage loans. A community bank servicing their loans is highly beneficial to the consumer and the community particularly in time of stress where a meeting or discussion is necessary to help resolve issues or problems with the loan. This personal interaction is highly desirable to the consumer, bank, the financial system and our economy, and proved its worth during the last mortgage and financial crisis. **CBAI recommends that the qualifying criteria include, and additional CRA credit be given for, residential mortgage servicing in addition to originating residential mortgage loans for community banks.**

Question 3 Under the Proposal, community development (“CD”) activities conducted in targeted areas would qualify for CRA credit. Should there be any additional criteria applicable to the types of CD activities that qualify for CRA credit in these areas?

Federal Home Loan Bank Membership and Activity

In its response to the OCC’s ANPR, CBAI urged additional CRA credit for membership in and all activity with a Federal Home Loan Bank (collectively “FHLBanks”). CBAI renews this recommendation in response to this Proposal and additionally recommends a method to calculate the CRA credit.

The Federal Home Loan Bank System (“FHLBSystem”) and its individual banks are government sponsored entities that were created by Congress in 1932 with a mission to provide reliable sources of funding for housing finance and community investment. The FHLBSystem contains 11 districts. The FHLB-Chicago serves Illinois and Wisconsin and its membership includes approximately 465 banks and 70 thrifts.

The FHLBanks’ membership nexus is a commitment to housing and helping to realize the dream of home ownership. The FHLBanks provide asset liability management, liquidity for members’ short-term needs, technical assistance, and access to special affordable housing and community development programs. It is essential to note that the FHLBanks are required to contribute 10% of their income before assessments to affordable housing and community development within their districts.

Currently, members may receive CRA credit for specific activities conducted with their FHLBank. These activities typically include mortgage lending through the Mortgage Partnership Finance and Mortgage Purchase (“MPF” and “MPP”) programs, letters of credit – the beneficiaries of which can be local municipalities, and participation in affordable housing (“AHP”) and community investment (“CIP”) programs.

An expansion of CRA credit will require reconsideration and/or an exception to be made, in that the *primary purpose* of the FHLBanks’ activities is serving the needs of its members and not on affordable housing and community development. None-the-less, **CBAI strongly believes an expansion is warranted and banks should receive CRA credit for membership and all activity in their FHLBanks.**



By simply belonging to their FHLBank, members must purchase capital stock, the proceeds of which together with retained earnings are invested by the FHLBanks to generate profits, a portion of which are devoted to AHP and CIP. To the extent members use any of the FHLBank products, such as advances, letters of credit or the MPF/MPP, they are also helping to generate income for the FHLBanks, and 10% of that profitability also goes towards housing and investment programs. Finally, community bank members may use any of the FHLBs' affordable housing, down payment assistance, or community development programs to help their customers and communities.

It is inconceivable, for example, that a Bank's involvement with a small community development provider that would qualify under the *primary purpose* requirement, and produces \$1,000.00 of community development benefit, would receive CRA credit; but that same bank's FHLBank membership and activities that collectively contributes billions of dollars in benefits, to hundreds of thousands of individuals (as detailed below), does not qualify simply because the *primary purpose* requirement was not met by the FHLBanks.

- The FHLBanks' AHP contributions are among the largest private sources of funding for affordable housing activities in the United States. From inception of the AHP program, the FHLBanks have awarded \$6.6 billion for the acquisition, development, or preservation of over 900,000 units of affordable owner-occupied and rental housing.
  - Of those totals, the FHLB-Chicago awarded \$697 million for 124,196 units across Illinois and Wisconsin.
- In 2019, the contribution to the AHP was \$362 million dollars.
- Also, in 2019, the FHLBanks funded nearly \$3.4 billion in affordable housing and economic development advances in local communities through the CIP.
- The Community Investment Cash Advance Program totaled \$2.9 billion in 2019 for local development.
- Sixty non-depository Community Development Financial Institutions ("CDFI") were FHLBank members in 2019.
- Outstanding advances to non-depository CDFI's rose in 2019, totaling \$262 million. A year prior, nonbank CDFI advances totaled \$222 million.

**CBAI recommends using the average capital stock percent owned by the member multiplied by the annual AHP contribution in determining CRA credit for FHLBank members.** Using hypothetical member banks of different asset sizes, and the typical FHLBank's

annual AHP contribution of \$47 million, the chart below demonstrates the amount of CRA credit that should be earned.

<u>Example Bank</u>	<u>Asset Size</u>	<u>Average Stock Holding</u>	<u>% of Total Average Holding</u>	<u>Allocation of Annual AHP Contribution</u>
Member A	\$150 Mil	\$260,000	0.013%	\$ 6,050
Member B	\$250 Mil	\$427,000	0.021%	\$ 9,960
Member C	\$500 Mil	\$888,000	0.044%	\$20,685
Member D	\$1 Billion	\$1, 520,000	0.075%	\$35,400

**The enormous positive impact of the FHLBanks (in either a bank’s area, community, or in the broader state or region [FHLBank district]), and contributions to these beneficial programs are so significant, and made possible by all of the FHLBanks’ members, that CBAI urges a reconsideration and/or exception be made so that banks may receive CRA credit for membership and all activity with their FHLBanks.**

#### Minority Financial Institutions

Minority Depository Institutions (“MDIs”) and Community Development Financial Institutions (“CDFIs”) serve an important role in providing credit and financial services to LMI individuals and areas in both urban and rural communities. **CBAI supports activities which assist MDIs and CDFIs, including addressing their capital challenges, and recommends they be eligible for a multiplier of CRA credit.**

There are several activities where majority-owned financial institutions receive CRA credit for cooperation with minority- and women-owned financial institutions and low-income credit unions (“MWLI”). **CBAI supports all of the current eligible activities, the exploration of credit for additional activities, and recommends that deposits in MWLIs by financial institutions (of any asset size) should be retained and be eligible for a multiplier of CRA credit.**

Question 4 Under the proposal, the small business and small farm revenue 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 or should other changes be made to the revenue and loan size thresholds?

The importance of community banks in small business and small farm lending, and their honest and fair treatment of small business and small farmer borrowers, is undeniable. The FDIC published a report on the findings of its Small Business Lending Survey on October 1, 2018. In the press release the FDIC noted that “Small banks, defined in the report as those with assets of less than \$10 billion, are more likely to focus on relationship-based practices to conduct small business lending, while large banks are more likely to rely on transaction-based methods.” FDIC Chairman McWilliams stated that, “Despite holding only 13% of banking industry assets, our data shows that community banks hold 42% of small business loans.” Some would reasonably contend that percentage is actually higher.

History has proven that community banks do not need an incentive to make small business and small farm loans – it is what they do, and they do it very well, every day. Rather, the issue is their receiving the appropriate amount of credit for the vast amount of small business and small farm lending they do now and will continue to do. Unfortunately, the ability to receive appropriate CRA credit is currently limited because of outdated qualification threshold caps. The caps for CRA credit for small business and small farm lending were established more than 25 years ago at \$1 million/\$500K respectively. These thresholds were not indexed and have diminished over many years because of inflation. The result is insufficient CRA credit for community bank small business and small farm lending. Even the proposed \$2 million thresholds are insufficient because that does not properly adjust the 25 year old thresholds for inflation. **CBAI recommends expanding CRA credit for small business and small farm lending and urges an increase in the loan and revenue thresholds to a minimum of \$5 million and that these thresholds be indexed to inflation thereafter so they remain at the appropriate levels.**

In addition, and similar to use of ranking or multipliers suggested above for individuals, a version of the multiplier should also be incorporated in the Final Rule for small business and small farm loans as suggested below.

<u>Census Tracts</u> or <u>Areas</u>	<u>Assessment Areas</u> or <u>Community</u>	<u>CRA Credit</u>	<u>Ranking</u>
LMI	Yes	Yes	Highest multiplier
LMI	No	Yes	3 <sup>rd</sup> highest
Non-LMI	Yes	Yes	2 <sup>nd</sup> highest
Non-LMI	No	Yes	4 <sup>th</sup> highest

**CBAI urges the Agencies give the highest CRA credit to small business/farm loans in LMI areas within the bank's community, yet not discount the value of small business/farm loans not in either an LMI area or the banks community in recognition of the importance of this type of lending which is predominantly done by community banks and which are critically important to the nation's economy. Evidence of this importance is that 72% of all jobs are created by small businesses!**

Question 5 The Agencies plan to publish the illustrative list on their websites and to update the list on an ongoing basis and throughout the notice and comment process. How often should the list be updated?

Question 6 The proposal includes a process for updating the illustrative list on an ongoing basis through submission of a form to seek agency confirmation. What process should the agencies adopt to update the illustrative list of qualifying activity?

A list of pre-approved qualifying activity is important for guidance, planning and transparency purposes for community banks, in their exploration of creative alternatives to qualify for CRA credit. The proposed process for seeking confirmation for CRA credit includes aggregating, publishing and seeking formal comments for qualifying activity is too formal and too lengthy. The process should be less formal and uncomplicated, and the response by the Agencies should be timely. **CBAI recommends the responsibility be for consideration and decisions be assigned to a diverse but workable-sized joint Agency group to include - on a case-by-case basis - a representative from the originating district or regional office. Such a group will assure timeliness and consistency in approvals/denials, and local representation. This process should also include a way for an applicant to promptly appeal a denial of CRA qualifying activity.**

The more current the list and timelier the decisions - the better. Delaying this information to an annual or semiannual update would unnecessarily deprive community bankers with timely information that would give them direction in their compliance with the CRA. **CBAI urges the list of activities be updated and posted on the FDIC's website as new opportunities for CRA credit are approved or denied.**

Question 7 Are certain types of retail loans more valuable to LMI individuals and geographies than other types? For examples, could multipliers be used to recognize those differences and provide incentives for banks to engage in activities that are scarce but highly needed?

At the risk of generalizing the loans needed most by LMI individuals, and of the greatest benefit to areas and the community, perhaps those services that provide basic and lasting benefits which help lower unemployment, increase the standard of living, promote higher education, and lower crime rates should receive the greatest CRA credit. Examples of these types of loans would include residential mortgage loans which support homeownership, vehicle loans which support transportation to and from employment, responsible debt consolidation to reduce the interest rate and accelerate the payoff of consumer debt, (responsible) student loans to promote education, entry level credit cards to help build a positive credit history. These are several but not an exhaustive list of examples to consider for a multiple of CRA credit.

In addition to types of loans that should receive the greatest and a multiplier of CRA credit is to whom and where those loans are made. In response to Question 2, **CBAI urged the Agencies to use this ranking or multiple of CRA credit which will provide the most credit for the greatest commitment to LMI individuals and in LMI areas, without discounting the value of certain lending to non-LMI individuals in non-LMI areas, or the community.**

<u>Individuals</u>	<u>Census Tracts</u> or <u>Areas</u>	<u>Assessment Areas or</u> <u>Community</u>	<u>CRA Credit</u>	<u>Ranking</u>
LMI	LMI	Within	Yes	Highest multiplier
LMI	Non-LMI	Within	Yes	2 <sup>nd</sup> highest
LMI	LMI	Outside	Yes	4 <sup>th</sup> or 5 <sup>th</sup>
LMI	Non-LMI	Outside	Yes	6 <sup>th</sup>
Non-LMI	LMI	Within	Yes	3 <sup>rd</sup>
Non-LMI	Non-LMI	Within	Yes	5 <sup>th</sup> or 4 <sup>th</sup>
Non-LMI	LMI	Outside	Yes	7 <sup>th</sup>
Non-LMI	Non-LMI	Outside	None	8 <sup>th</sup>

Question 8 The use of multipliers is intended to incentivize banks to engage in activities that benefit LMI individuals and areas; however, multipliers may cause banks to conduct a smaller value of impactful activity because they will receive additional credit for those activities. Are there ways to ensure multipliers encourage activities that benefit while preventing the potential for decreased dollar volume of activity?

CBAI strongly believes that financial service activity that is directed to LMI individuals and LMI areas be incentivized with sufficient CRA credit to deliver maximum benefit to both the community bank and the individuals and areas in greatest need while also giving appropriate credit for serving the needs of the entire community including non-LMI individuals and areas.

Given their exemplary service to their customers and communities, the use of multipliers is a legitimate way to more completely recognize the enormity of the benefit community banks provide the community and not an opportunity to for them “game the system” to their advantage. Also, the lending limits for community banks are low enough, and the abundance of small business and small farm lending opportunities plentiful enough, that this should additionally ensure that this is not a problem the Agencies should be concerned about with community banks.

However, here as in other areas in the CRA modernization effort, where the changes in the regulation are more significant than minor modifications, there will be both positive and negative unintended consequences. **CBAI recommends the Agencies commit to a formal review including public comment on the actual versus planned impact of the Final Rule to assess and promptly correct any legitimate problems that are subsequently discovered.**

Question 9 How should the Agencies quantify the value of CD services?

There will likely be some disconnect between the value of the individual rendering the service and the value of that service being performed to the CD organization. For example, should an executive’s service hours be valued at a food service worker’s salary for volunteering at a food kitchen, or should a clerical worker’s service hours be valued at an executive salary for heading a community service organization?

There is also going to be a record keeping burden in tracking and calculating the service hours in addition to potential for disagreement on the appropriate value of the service hours even if the standard used is a recognized standard such as the Bureau of Labor Statistics calculation of the

hourly wage for that type of work. For simplicity purposes, and because it is a reasonable measure of CD services, **CBAI recommends that a standard dollar rate per hour (\$36.00) be used to calculate the value of CD services and that an appropriate multiplier is needed to reflect the value of the services within the modernization proposal.**

**In addition, all banks' community services hours should be eligible for CRA credit if they are performed in the Assessment Area regardless of whether the service was performed in an LMI area or not, including services hours in geographies that are broader than but include the Assessment Area.**

**CBAI also recommends that banks evaluated under the small bank performance standard continue to have the option of requesting positive consideration for these types of CRA activities during an examination.**

Question 10 Should a range of retail banking services provided be considered under the proposal? If so, how should they be quantified?

The mission of the CRA is for banks to serve their entire community including LMI individuals and areas. The financial services need of a community include the full range of services not just lending. The offering of a comprehensive number of consumer and commercial / deposit and lending service (either directly or in some cases with the assistance of a vendor) will be indicative of a financial institution that is truly serving its entire community. **CBAI recommends that the list of financial services offered should be provided during an examination and fairly deemed reasonable as part of the examination.**

The use of a CRA credit multiplier can be used to give greater weight for basic financial services and those that are targeted to LMI individuals and areas. An example of a consumer deposit service specifically targeted to an LMI individual would be a low cost or no-minimum balance checking account, and an example of a commercial deposit service would be an account specifically designed to be attractive to small businesses. Other financial related services which should receive CRA include youth savings accounts to encourage savings beginning at a young age, college savings plans to advance higher education, health savings accounts to promote health and wellbeing, and 401K or retirement accounts to encourage planning and savings for retirement.

## Assessment Areas

Question 11 Are the proposed methods for delineating assessment areas clear, simple, and transparent?

Assessment Areas must accurately reflect the communities within which the bank operates. CBAI questions the belief by some that expanding the Assessment Areas would simply make it easier for banks to get CRA credit. Assessment Areas need to reflect the business realities of banking models in gathering deposits and making loans in traditional ways as well as ways that were not present at the inception of the CRA. **CBAI urges Assessment Area revisions in the CRA should reflect how modern technology is being used in product design and service delivery. Assessment Areas must also be drawn by the community banks and not by the Regulators.**

Community banks have traditionally defined their footprint around their brick and mortar home office and branch locations, including automated teller machines (“ATMs”) for the convenience of their customers and to augment their ability to serve their communities. A digital footprint or only ATMs, however, is a significantly different and lesser commitment to an area or community than the more traditional methods of delivering the full range of banking services.

A modernization of the CRA should reinforce and not deemphasize the importance and value of face-to-face interaction with individuals and small businesses which is a hallmark of community banks and how they serve their communities. When addressing this issue, **CBAI recommends that Agencies view the non-traditional delivery of financial services as an additional (incremental) but not superior method versus brick and mortar home office and branch locations. Digital access and ATM machines are a way to conveniently deliver banking services but they do not provide a full range of services, they are not a substitute for brick and mortar home offices or branch locations, and should not receive CRA credit that is near to that received for facilities that do provide a full range of banking services. CBAI recommends the weighting of a financial institution’s presence in an area or community with a home office receiving the greatest CRA credit, branches should be next, following that – ATMs, and then a digital-only presence which should receive the least amount of CRA credit.**



Questions 12 and 13 Is the 50% /5% for the deposit-based Assessment Areas reasonable? Does the framework provide sufficient incentives for banks to conduct qualifying activity in less populous areas?

The Assessment Area changes in the Proposal are significant enough, with the certainty of both positive and unintended consequences, so that the impact on CRA compliance cannot be known with certainty for some time. CBAI acknowledges that it is an attempt to accomplish the objectives of the Proposal for both those banks that will be subject to and opting-in to the general performance standard as well as those subject to the small bank performance standard. **In a reasonable effort to minimize the regulatory burden and potential negative unintended consequences on community banks for this component of the Proposal, CBAI recommends the 50%/5% levels be increased to 80%/10%.**

**CBAI recommends that if the Agencies adopt these provisions that the Agencies commit to a formal review including public comment on the actual versus planned impact of the Final Rule to assess and promptly correct any legitimate problems that are subsequently discovered.**

### **Objective Method to Measure CRA Performance**

The goal of the Proposal is to provide a “regulatory framework [that is] more objective consistent and easy to understand.” The Proposal is critical that the CRA “is at times opaque, complex and inconsistent” and that “important terms in the parameters are undefined and the process unspecified.” While CBAI agrees with the goals of the Proposal, we urge caution regarding how these criticisms are addressed.

There is a needed, acceptable and positive discretionary middle ground in CRA compliance and examination, between the completely arbitrary and the overly prescriptive, that we urge be maintained. This Proposal is an opportunity to modernize the CRA while not stifling necessary and beneficial examiner discretion (and even joint banker and examiner creativity.) The important caveat regarding examiner discretion is that it be exercised prudently, and if not, the community bank must be able to quickly and decisively challenge and have overruled an examiner’s unreasonable use of his/her discretion.

### Metric Scoring System

A single metric-based [mathematical] scoring system for CRA ratings for those banks subject to the general performance standard remains an intriguing idea for its potential to provide more clear and established thresholds and benchmarks, but it represents a sea change in how CRA compliance and examinations are currently being conducted – and there-in lies potential problems. A single metric-based system indicates a very high level of precision and little room for discretion, yet the CRA encompass activities some of which are not precisely measurable (particularly dollar versus unit impact) and some deserve greater weight than others (subject to disagreement and compromise). There will always be dynamic tension between flexibility and prescription in the CRA compliance and examination process because the results are a blend of quantitative and qualitative factors. A metrics-based system may likely have the unintended consequence of an additional regulatory burden without an improvement in the CRA compliance and examination process. **CBAI urges caution in the implementation of metric-based system and that if adopted the Agencies commit to a formal review including public comment on the actual versus planned impact of the Final Rule to assess and promptly correct any legitimate problems that are subsequently discovered.**

### Improving the timeliness of CRA examination ratings

The lack of timeliness between the end of the examination and receipt of the Performance Evaluations has not been stated as a significant issue by our community bank members. However, the April 3, 2018 Memorandum from the U.S. Department of the Treasury cites in its' June 2017 report to the President, a timeliness issue – a process that has sometimes taken regulators years to complete.

Notwithstanding the positive experience of community banks, CBAI highlights a glaringly apparent flaw in the system regarding a Wells Fargo CRA examination. The final release of Wells Fargo's 2012 CRA examination result (in our opinion a generous *Needs to Improve* rating versus *Substantial Non-Compliance* for reportedly committing fraud against more than 5,000,000 of its customers) was delayed for four years until 2016. It is inconceivable how this decision could have been delayed for that length of time. We are not aware of any similarly long delays for community banks – nor should there be delays for that length of time for any bank. **CBAI recommends changes in an examination and appeals process that allows for such a lengthy**

**a delay in an examination rating, particularly an unfavorable CRA rating for one of the largest banks in the country.**

Questions 14 – 17 The definition of domestic deposits, qualifying activity that benefits LMI individuals, retail lending distribution, and deposit/assessment thresholds

The Proposal is recommending such sea changes in the way Assessment Areas are determined, and how precisely (i.e., percentages) the requirements for CRA credit are stated, that we will not know the results until well after they are implemented. Here, as in the answers to other questions in this Proposal, **CBAI recommends the Agencies commit to a formal review including public comment on the actual versus planned impact of the Final Rule to assess and promptly correct any legitimate problems that are subsequently discovered.**

The Proposal defines “domestic deposits according to Call Report Schedule RC-E, item 1, but exclude brokered deposits” and also, “exclude municipal deposits”. The reason given for excluding the former is the belief that these deposits are “not associated with any individual or community” and for the later there is a vague statement that doing so would be “more reflective of the bank’s ability to engage in qualifying CRA activities.”

Brokered deposits can in many instances be specifically identifiable to individuals and communities. Reciprocal deposits for example are often misperceived as brokered deposits yet these deposits are gathered from the area and community. Through an established exchange process with other financial institutions to maintain deposit insurance, the entire amount of that remains with the bank, and is available for the bank to use to serve the area and community. **CBAI urges the Agencies to include brokered deposits in the definition of domestic deposits if the bank can justify that the deposit comes from the area and community they serve.**

CBAI does not comprehend the reason stated in the Proposal, and strongly disagrees with, excluding municipal deposit from domestic deposits. For a community bank, the local municipality may be one of its largest customers, and along with the community bank is at the very heart of the area and the community. **CBAI urges the Agencies to include municipal deposits in the definition of domestic deposits.**

Question 18 Under the proposal, banks that have assets of \$500 million or less in each of the previous four calendar quarters would be considered small banks and evaluated under the small bank performance standard, unless these banks opt-in to being evaluated under the general performance standards. Is \$500 million the appropriate threshold for these banks? Should the threshold be \$1 billion instead?

The current interagency CRA evaluates financial institutions in three separate categories which are determined by an institution's asset size: small bank, intermediate small bank and large bank. Annually, the Agencies adjust the asset-size thresholds based on the change in the Consumer Price Index for Urban Wage Earners and Clerical Workers. Additionally, the Agencies have established intervals between CRA examinations for banks which have attained certain ratings. **CBAI strongly supports asset tiering in the CRA and other regulations.**

Each of the Agencies have acknowledged the need to tailor regulations to an individual bank size and/or business model. Happily, the CRA reflected a tailoring earlier than many regulations by adding the intermediate small bank category to the then existing small and large bank categories and indexing for inflation. The current asset thresholds for small banks is under \$1.305 billion, the threshold for intermediate small banks is between \$326 million and \$1.305 billion, and for large banks the asset threshold is over \$1.305 billion. Other examples of tiered bank regulations include, but are not limited to, HMDA reporting thresholds, the Dodd-Frank Acts' enhanced regulations for banks at different asset thresholds, and there are numerous other precedents to adapt regulations for banks of different sizes and types.

In its response to the OCC's ANPR, CBAI encouraged raising these asset thresholds to reflect industry trends, particularly the consolidation among smaller institutions. Notwithstanding our deep and legitimate concerns about financial industry consolidation, these acquiring institutions are typically other community banks with similarly strong histories of service in their communities and positive CRA ratings. CBAI has supported increasing these asset thresholds, believing it will provide significant regulatory relief to small and well-rated institutions which are particularly impacted by the increase in regulatory burden while still allowing the Agencies to adequately assess community banks for CRA compliance. Increasing these thresholds will also free-up resources to allow the Agencies to focus their efforts on the largest banks and those that are not performing at least satisfactorily on CRA compliance and examinations.

The Proposal recommends setting the asset threshold for small banks at \$500 million, there is no intermediate asset category, but rather an immediate leap to a large bank which will include all of the requirements for compliance and examination under the general performance standards. CBAI has two primary concerns with this element of the Proposal. First, a lack of a transitional tier from small bank to large bank effectively requires a community bank of \$501 million in assets to be subject to the same CRA regulatory structure, requirements and burdens as CHASE Bank with assets of \$2.74 trillion – or 5,480 times larger than the just-over half-billion in asset community bank. It is an indisputable fact that regulatory burden falls disproportionately hard on community banks with their lack of resources and fewer customers to spread the cost of compliance. The low proposed small bank asset threshold in the Proposal, and lack of an intermediate asset category, places a significantly increased regulatory burden on even more community banks than the current existing framework.

Second, the goal of achieving transparency and consistency was often stated in the Proposal as highly desirable outcomes of this rulemaking. However, nowhere in the Proposal is there any adequate justification for the \$500 million asset threshold. Thus, there was no *transparency* about this threshold decision and certainly no *consistency* because the Proposal is not even following the existing interagency compliance and examination guideline threshold for small banks.

**In response to the OCC’s ANPR and here again, CBAI urges the Regulators increase the asset thresholds to less than \$5 billion, between \$1.5 and \$5 billion, and greater than \$5 billion respectively for small, intermediate and large banks. If the Agencies are unwilling to approve these increases, and are determined to remove the intermediate small bank category, CBAI urges that at an absolute minimum an increase in the small bank asset threshold to where it is now (\$1.305 billion) and for the asset level to continue to be indexed to inflation.**

CBAI acknowledges that “the proposal would exempt banks with assets of \$500 million or less in each of the prior four quarters (small banks) from the general performance standard. These banks would be required to comply with the current CRA small bank performance standards, new qualifying activity criteria, new assessment area delineation, and new data collection and recordkeeping requirements related to deposits.” **CBAI appreciates the ability of small banks to benefit from the new qualifying activity criteria, but we have concerns with and recommend the new Assessment Area delineation, and new data collection and**

**recordkeeping requirements related to deposits not be imposed on small banks. (Please see the next section.)**

Currently there are interagency requirements to examine banks for CRA compliance at certain intervals. The Proposal recommends a five year interval for banks that receive an “Outstanding” rating. **CBAI supports the five year interval for banks that achieve the highest CRA rating.**

However, the Proposal was silent on the intervals for other rating categories. When a bank achieves a “Satisfactory” rating they have, as stated in the regulations, “a satisfactory record of ascertaining and helping to meet the credit needs of its delineated community, including low- and moderate-income neighborhoods, in a manner consistent with its resources and capabilities.” The successful fulfillment of these regulatory expectations warrants a reasonably long interval between examinations. **CBAI urges the Agencies to include in the Final Rule an examination interval of four years for banks that achieve a “Satisfactory” CRA rating.**

### **Data Collection, Recordkeeping and Reporting**

Question 20 - 21 Impediments to acquiring data, system change requirements, costs of implementation, small bank burden

It bears repeating that it is an indisputable fact that regulatory burden falls disproportionately hard on community banks with their lack of resources and fewer customers to spread the cost of compliance. The requirement for a \$501 million asset bank to perform the similar data collection, record keeping and reporting as CHASE Bank with assets of \$2.74 trillion – or 5,480 times larger than the half-billion in asset community bank – is not a reasonable requirement. Perhaps the largest institutions will experience a modest (for them) upfront and reduced ongoing costs and which (for them) the benefits will outweigh the costs. However, for community banks which are much less automated, that will not be the case and the unreasonable burden will be upfront and ongoing.

**CBAI believe that for banks evaluated under the small bank performance standard the frequency of the data collection and the recordkeeping and reporting requirements are an unreasonable and unnecessary regulatory burden. The information that is currently being collected is sufficient for all concerned parties (e.g., regulators and communities) to evaluate their CRA performance.**

We are hearing from our members that the current method of delivering the CRA public file, namely a printed version available to hand someone when they visit the bank to request a copy, is outdated and an unnecessary regulatory burden. **CBAI recommends (at a community a bank's option) that it be allowed to provide access to the public file containing the required information electronically on the bank's website, so that customers do not have to visit the bank or wait for a copy to be delivered.** If a customer does come into the bank to request the public file, then it can be printed at any of the bank's locations.

### **Effective Date and Compliance Date**

CBAI acknowledges the various compliance dates for those banks subject to the general and small bank performance standards. While these timeframes may have seemed appropriate several months ago, the stresses current faced by all banks, but particularly for small banks, from the impact of the coronavirus, the originally proposed timeframes are no longer sufficient. **CBAI urges the Agencies to either formally extend these implementation timeframes and/or leave sufficient flexibility in the Final Rule to extend the extended timeframes if they prove not to be practical and reasonable.**

### **Summary and Conclusion**

CBAI strongly encourages the Agencies to consider these observations and recommendations in joint rulemaking. This is a historic opportunity to modernize the CRA in a manner that makes it relevant and properly focused now, and in the future, without increasing the regulatory burden on community banks in recognition of their exemplary performance in serving their customers and communities – fairly and honestly. It has been proven time and time again that community reinvestment is what community banks do best. It is their mission and it is paramount to their ability to thrive and survive, so the first goal of Regulators should be to do no harm to community banks while modernizing a clearly outdated CRA.

Thank you for considering our observations and recommendations on the modernization of the CRA. If you have any questions or require any additional information, please contact me at [davids@cbai.com](mailto:davids@cbai.com) or (847) 909-8341.

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Sincerely,



David G. Schroeder  
Senior Vice President  
Federal Governmental Relations