August 1, 2022

James P. Sheesley
Assistant Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429
Attention: Comments RIN 3064–AF81

Chief Counsel's Office
Office of the Comptroller of the Currency
400 7th Street SW
Suite 3E–218
Washington, DC 20219
Attention: Comment Processing, Docket ID OCC—2022-0002

Ann E. Misback
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551
Attention: Comments Docket R-1769; RIN 7100-AG29

Re: Community Reinvestment Act Regulations

Dear Madam or Sir:

Introduction

Thank you for the opportunity to provide a comment on the proposed Community Reinvestment Act (CRA) final rule. We sincerely appreciate the agencies coming together to provide a final CRA rule so that it can be issued on an interagency basis. Your leadership and hard work to draft a joint proposal as well as the opportunity to provide feedback is greatly appreciated.

Southside Bank (SSB), a community-focused financial institution has over $7 billion in assets and is headquartered in Tyler, Texas. The bank currently operates 56 full service branches with an array of available products. We offer deposit products that serve all income levels, include a Bank On certified checking account. In addition, we have developed responsive and innovative lending products designed to benefit low- and moderate-income (LMI) individuals. The bank's assessment area is spread throughout the State of Texas within the Dallas Fort Worth, Tyler, Longview, Houston, Austin and Non Metropolitan Statistical Areas.

The bank's primary regulator is the Federal Deposit Insurance Corporation (FDIC). Compliance is given full support through a top-down approach. We also place a significant value in serving our communities.

Commitment to Community

We pride ourselves on earning eight consecutive "Outstanding" Performance Evaluation ratings that spans over 20 years. A rating of "Outstanding" and one that spans this long displays a significant willingness to serve our communities that goes above and beyond. We are proven leaders within our communities by responding to CRA needs and providing responsive products and services.

SSB has a fully functioning volunteer program that provides 20 volunteer Paid Time Off (PTO) hours to each Full Time Employee (FTE) each year. We also have robust investments that benefit municipalities in and around our assessment areas. The investments assist in our community development investment ratios that far exceed those from competitor banks. Our community development lending ratios also outperform area large banks. Lastly, we develop strong partnerships with community groups, such as leading a collaboration for a financial resource center in South Dallas or providing financial literacy session each semester at a local college.

Need to Modernize

SSB supports some of the proposed changes and also opposes some of those that could be overly burdensome to the banking industry.

We agree that the CRA is in need of updating. Numerous industry changes have impacted how banks operate during the past 25 years. The primary change is centered on vast technology improvements and the preferences of consumers. The changes impact how we do business, where we do business and what avenues customers use to do their banking.

Tailoring to Reduce Burden on Small Banks

We are appreciative of the adjustment to the definition of Small, Intermediate and Large Banks. The smallest banks should not have significant changes or additional regulatory burden imposed on them. Additional requirements could reduce the value in opportunities they may bring to their communities and to the LMI individuals located in them. The caps on Small Banks and Intermediate Banks to $600 million and $2 billion, respectively, is reasonable. We agree that Small and Intermediate Banks should not have to collect and report the new data the proposal would require for Large Banks, defined as banks with assets exceeding $2 billion.

New Assessment Area Rules

There has been a differing of opinions on whether banks should be required to take only full counties for their delineated assessment area or if they should be allowed to take partial counties. It is our opinion that partial counties should be allowed if a bank feels it cannot adequately serve the full county. This should apply for all sizes of banks and not be limited based on asset size. Examiners should continue to be allowed to review assessment areas during examinations and determine if they are adequate.

Facility Based Assessment Area

The proposal generally retains the current approach of delineating assessment areas around a bank's branches and deposit-taking facilities, referred to as Facilities Based Assessment Areas (FBAAs). We are generally supportive with how FBAAs are designated since the changes are minimal when compared to the assessment area requirements.

The proposed definition of "remote service facility" and "branch" could be clarified as it does not clearly set up how a bank would handle taking deposits at a school or community organization facility. Further, it should not be a remote facility when assistance is provided on making deposits on mobile devices.

Retail Lending Assessment Areas

Since the proposal would require Large Banks to delineate a new type of assessment area, known as a Retail Lending Assessment Area (RLAA), commenting on this section is necessary. A bank would be required to delineate a RLAA in any MSA, or combined non-MSA areas of a state, where the bank has originated at least 100 home mortgage loans in each of the two preceding calendar years or at least 250 small business loans in each of the two preceding calendar years, outside of the bank's FBAAs. Once a bank meets one or both of these triggers and must delineate a RLAA, the bank would then be evaluated for its CRA performance for all of its "major product lines" in each RLAA.

RLAAs could significantly impact a bank's footprint and the overall evaluation. Here are revisions we would like to see with this approach:

- If 80% by dollar and number of small business, small farm and HMDA originations are within the FBAAs, then the bank should be exempt from delineating RLAAs. This would be based on the previous two years of reported data.
- Only counties should be added to a RLAA if 50 or more Small Business/Small Farm/home mortgage loans are located in a county based on a previous year's reported data.
- Revised areas should be established by June 1st of each year.
- Discourage the requirement of taking all Non MSA counties in a state if the volume of loans is met in any portion of a Non MSA area.
- When evaluating major product lines, only evaluate the top two in the area, not all "major product lines."

RLAAs would have an impact on our bank's CRA program, but it would not be significant. We originate a vast majority of our home mortgage and small business loans within our assessment area, which would be considered a FBAA. If our institution were to grow, organically or through mergers, the RLAAs could then make a significant impact to our program as well as the resources required to comply. Currently the bank has the staff and resources to engage in the full-scale CRA activities without RLAAs, but as mentioned, with growth, this response would change.

Currently, SSB would not consider changing the lending policy to avoid having RLAAs since they would not have a significant impact, but with growth, this could change to where we become more stringent on originating loans outside a FBAA.

Regarding major product lines, the 15 percent trigger is appropriate for small business and home mortgage loans. If consumer loans are given consideration as a major product line, they should only be evaluated if they encompass at least 15 percent by dollar volume and 30 percent by number volume. The number volume has more of an impact with consumer loans verses other products.

The inclusion of auto loans as a major product line is not appropriate. If a primary product for a large bank in one of their FBAA or RLAAs is consumer lending by dollar and number volume, then consumer loans could be evaluated for geographic distribution through geocoding of addresses to locate census tracts. It is not reasonable for a bank to request and obtain income data on these loans. Requesting a bank to collect data on auto loans is also imposing a regulatory burden that is not absolutely necessary to ensure banks are serving their communities. Auto loans are a depreciating asset and including them would shift the CRA's focus away from wealth-creating lending, such as home mortgage and small business lending.

Areas for Community Development Activity

It is appropriate for a bank to delineate an area for community development activities or just allow full consideration for activities in the entire state where branches are located. This would remove the vague requirement of activities qualifying in a broader statewide or regional area.

Illustrative List of Activities

We are very supportive and appreciative that the agencies are proposing a preapproval process for qualified community development activities. Developing a list of only activities that are qualified is sufficient. A list of non-qualified activities is not necessary. A central email address or a form to complete online qualification requests would be beneficial. The requests for qualification then should be reviewed and vetted by all agencies or by individuals designated by all agencies that can make sound decisions under the regulation. A response should be received from the agency on whether an activity does or does not qualify within 60 days of submission.

Impact Review of Community Development Activities

Partial consideration should be given to other community development activities such as financing broadband infrastructure, health care facilities, and essential infrastructure such as hospitals, police and fire. If partial consideration is extended to other types of community development activities, the minimum percentage the activity that serves LMI individuals, LMI geographies, small businesses and small farms should be at least 30 percent. In order to receive full consideration, the minimum percentage benefitting LMI should be 50 percent or higher.

In regards to government programs having a "stated purpose or bona fide intent", it is reasonable to allow the program description to stand on its own for qualifying an activity. If the activities are required to meet an affordability standard, a reasonable structure would include rents not exceeding 30 percent of 80 percent of median income. Documentation using HUD's Fair Market Values for the area along with rent rolls or pro forma rent rolls should be included in the documentation. We would like to have single-family rental housing included in the proposed approach for naturally occurring affordable housing. The affordable housing should not be limited to a particular geography.

Regarding mortgage-backed securities, we agree they should be modified to ensure the activity is aligned with CRA's purpose of strengthening credit access for LMI individuals. We also believe the initial purchase of a mortgage-backed security should be considered for affordable housing.

Economic Development activities have always been complex in order to qualify as community development. We would request that business purpose loans with origination amounts over $1 million be allowed to be considered for economic development purposes until the Section 1071 rule becomes effective. The agencies should allow for a separate component for job creation, retention, and improvement for LMI individuals. Criteria that could be used to document the primary purpose could be resources such as glassdoor.com.

Disaster Recovery areas have been a critical part of community development and revitalizing an area that has been significantly impacted. A disaster recovery qualification should remain very similar to the current qualifications in that it should be based on a Federal, state or local designation. Currently, SSB only qualifies based on a federal designation since current guidance is vague. If the activity benefits infrastructure or disaster recovery efforts, it should receive credit and not be required to fall under a specific disaster plan. In addition, this includes an additional documentation burden that we think is not necessary to show revitalization is occurring. We do not think that climate activities should play a role in a disaster recovery qualification.

The proposed final rule discusses that banks should discern the needs of their community. While most community-minded banks have a good idea what the needs of their community are, it is always beneficial to look at better ways to find opportunities. One recommendation we have is to consider allowing banks, particularly large banks, to access the Community Contact Database. Regulators have access to a database based on Community Contact interviews conducted that provide a unique insight into the needs of various communities. If transparency is encouraged between agencies and banks, this would be a beneficial addition to the final rule.

Disaster Recovery

The disaster preparedness definition should include infrastructure for things like police, fire, hospitals, and water/road structure. The police and fire are the first to respond when a disaster occurs. Therefore, supporting them for disaster recovery purposes is appropriate.

The agencies should not include activities that promote energy efficiency. This is not an area that embodies the spirit and intent of the CRA regulation. This would fall more into the ESG guidance.

Financial Literacy

Regarding Financial Literacy, agencies should definitely provide consideration when financial guidance is given to individuals and families of all income levels. All income levels could benefit from Financial Literacy and it makes our communities stronger.

Geographic Considerations

A consideration of what would qualify an area as community development would be to have a majority of census tracts as LMI or distressed/underserved. If an activity displaces or excludes LMI, it should not receive credit. For example, if an activity benefits South Dallas as a whole, it would make sense to qualify if a majority of the census tracts in the area are LMI.

Agencies should provide consideration for essential community infrastructure that primarily benefit LMI areas or individuals. For example, a water and sewer system that is within an area where a majority of the census tracts are LMI would be able to qualify.

Agencies should include persistent poverty counties and high poverty census tracts in the impact review factors. We don't think areas with low levels of community development financing should be included.

In addition, donations should be emphasized since they come from the bank's bottom line. There is a great amount of time and effort placed into providing donations and financially supporting our community organizations. It would make sense for them to be a percentage of net income and possibly have a metric within the revised regulation.

Regarding activities within or benefitting Native land, qualified Native Land activities should not extend past the designated areas.

Small Businesses

The impact review should consider small businesses with Gross Annual Revenues of $500,000 or less.

Performance Test, Standards and Ratings

Retail Lending Test

Home Mortgage Loans - For home mortgage loans, it is best to evaluate performance by keeping all closed end originations together instead of breaking out further by occupancy. In addition, home improvement loans should be included in the product category.

Multifamily loans - We request that the agencies allow banks to continue double counting multifamily loans in the Lending Test and the Community Development Financing Test. Also, based on information that is generally made available when originating a multifamily dwelling, banks are able to determine the percent of units considered affordable. However, for our bank having it under retail lending does not add value since we do not have the volumes that would consider it a major product line. We anticipate this is the case for many financial institutions.

We agree that the small business and small farm definitions should coincide with the Section 1071 regulation. The current small business and small farm definitions should sunset when new definitions are implemented with 1071.

Purchased loans – Agree with the agencies that the purchased loans should be included but if it appears churning is occurring, then they should not count. The regulation or commentary will need to define what churning is and how to identify it.

Auto loans – It does not seem reasonable to require data collection on these loans. It is a significant resource for large banks to gather data and ensure accuracy.

Consumer Loans – Should be evaluated if at least 30 percent of loans by number volume and 15 percent by dollar volume are located within an assessment area.

Major Product Line Approach

When evaluating major product lines, 15 percent by dollar volume in an area seems reasonable. If considering a consumer product, 30 percent by number and 15 percent by dollar is reasonable. Regarding multifamily, 30 percent by dollar volume should be in the area to be considered a primary product.

Retail Lending Data

Banks should report indicators for the smallest of business loans with Gross Annual Revenues of $500,000 or less. Indicators for businesses of various sizes would also be encouraged if that is similar or the same as to how Section 1071 is structured.

Agencies should strongly reconsider the requirement to collect auto lending data. If consumer data is wanted, then general information should be required to be reported, but drilling down to a particular consumer product is too extensive and burdensome.

Banks with assets of $10 billion or less should not be required to collect community development services data in a machine readable format. Banks should maintain the data internally, but not have to report it externally. The same consideration should also be in place for the location and number of FTEs.

Retail Lending Test Evaluation

The requirement for a bank to collect accurate deposit data and report would be too burdensome. It would likely add one to two full time employees for a large financial institution. The best approach would be to use the FDIC's Summary of Deposits.

For a bank to receive "Substantial Non Compliance", the threshold should be 15 percent of the market volume instead of 30 percent. To receive a rating this low, the threshold would need to be commensurate with the rating.

Bank Geographic Distribution Metrics

The geographic distribution metrics should be expanded to include distressed/underserved census tracts. It is important to include those when evaluating Non MSA areas.

Banks should not be expected to match community benchmarks perfectly or be in line to have adequate performance. Instead, see what trends are reflected in the area and measure from there. Performance context would also need to come into play here.

Bank Borrower Distribution Metrics

A suggestion to the proposed metrics for multifamily would be to look at the percentage of LMI units and include those in the borrower distribution metrics.

Small business and small farm loans with the greatest need should be defined as those with Gross Annual Revenues of $500,000 or less.

In the benchmarks for small business and small farm loans, the community benchmark data source is a third-party provider. It's important to disclose that provider and give leniency since not all businesses report their data. For example, approximately 30 percent of businesses report Gross Annual Revenues for D&B data as Not Applicable or Not Known.

Thresholds Using Benchmarks

We suggest the following for benchmarks:

- 33% of market benchmark and 33% of community benchmark = Needs to Improve
- 65% of market benchmark and 50% of community benchmark = Low Satisfactory
- 100% of market benchmark and 75% of community benchmark = High Satisfactory
- 110% or higher of market and 100% of community benchmark = Outstanding

Retail Services and Products Tests

Credit and Deposit Product Evaluation

Agencies should provide general criteria regarding what credit products and programs may be considered responsive to the needs of the communities. Special purpose credit programs should also be included as responsive for mortgage programs or consumer lending when benefitting primarily LMI individuals.

The number of responsive deposit products compared to all consumer deposit accounts should not be a factor. Financial institutions could have a couple responsive products, for example Bank On, but they are impactful enough to where others are not needed for the Financial Institution's business model. In these instances, it is more of a qualitative factor and not quantitative.

When agencies evaluate the credit and deposit products, examiner judgment should be allowed or even encouraged. While it is nice to quantify everything, it's not feasible since every bank has a story.

Branches

The calculation in the proposal from Table 16 is reasonable for the assessment of branches and remote service facilities. We agree that allowing for branch concentrations to be compared against various comparators helps with arriving at a sound conclusion of Geographic Branch Distribution.

Branch access within communities are impacted by numerous external impacts that would be reasonable to include in a conclusion on branch distribution. It is our opinion that considering the commuting patterns and other external impacts that are difficult to quantify should be considered when evaluating limited branch access.

The "fixed" distance map (Panel A) and approach that highlighted low access census tracts is preferred to the local approach when highlighting low and very low access. It also could be beneficial to designate counties as ones with low branch access similar to how disaster areas are designated by county.

When considering the low access approaches, the locations of credit unions should be included. While credit unions are not direct competitors, they do offer similar banking products and it would not be reasonable to consider an area as a banking desert if there are credit unions located in the area.

An additional service/activity that could be considered responsive to low access areas is a deposit-taking ATM/ITM in a banking desert.

Branches in distressed/underserved census tracts should receive qualitative consideration.

Community Development Financing Test

Activities that cannot be allocated to a certain area should be considered at the highest level, whether it's a state level or institution.

When dividing out a community development activity that fits in different areas, it should be allocated to each assessment area as the activity indicates or equally to each applicable assessment area (MSA).

Facility Based Assessment Area Community Development Financing

The denominator for the bank assessment area community development financing metric should stay with the dollar amount of deposits (if required) or Summary of Deposits (SOD). The spirit of CRA includes how well we are lending compared to where we are taking deposits. We encourage agencies to utilize the SOD already in place and not enforce additional reporting requirements on financial institutions for collection of deposit data.

Agencies should publish standard metrics in performance evaluations, such as the percentage of a bank's activities that meet one or more impact criteria.

Community Development Services Test

All volunteer activities to community development organizations or those that benefit primarily LMI individuals should be considered in the community development services test regardless if a financial service or job expertise is being provided.

When considering metrics, financial institutions should be able to identify the number of FTEs in assessment areas, but these would only be in FBAAs. Agencies could also consider using the calculation of services per branch per year as a community development services metric. Additional designations or metrics for executive employees is not necessary. They should be included in the calculations as a whole or based on their locations.

Assigned Conclusion and Ratings

The weight given to the Retail Lending Test would make it harder for a bank to achieve an outstanding rating overall. The weights for the various tests are as follows for large banks:

• Retail Lending Test, 45 percent;

• Retail Services and Products Test, 15 percent;

• Community Development Financing, 30 percent; and

• Community Development Services, 10 percent.

Using these weights, a Large Bank could not achieve an overall rating of outstanding unless it receives an outstanding rating on the Retail Lending Test, regardless of how well the bank performs on the Community Development Financing Test.

The proposal would raise the bar for performance on the Retail Lending Test for Large Banks. As a result of the proposal, a Large Bank would have to exceed its past performance in order to attain the same

CRA rating that it received on a prior exam. Regulators believe that these heightened performance standards would incentivize banks to increase lending to underserved communities.

In particular, the proposed performance benchmarks for the Retail Lending Test may be unachievable.

According to the proposal, 34% of banks would fail the Retail Lending Test in their RLAAs and 39% would receive a Low Satisfactory rating on the test.

The weightings of the retail lending activity should be lowered to the 40 percent so that the weighting of the community development services test can be increased from 10 percent to 15 percent. If agencies do not put enough emphasis or weight on the services there is a concern that community involvement may decline. In summary we would like to see the weightings revised to Retail Lending = 40%, CD Financing = 30%, and Services = 30%.

While we are supportive of increasing opportunities and service to LMI families, if the proposed weighting would decrease our rating (a bank that has **earned** eight consecutive "Outstanding" ratings) from an "Outstanding" to something lower, it would indicate these are not appropriate.

Bank volume metrics and distribution bank metrics should be calculated from bank data covering only the years for which that reported data was available.

The borrower distribution and geographic distribution should be weighted equally.

Loan count should be used in conjunction with dollar volume for consumer non real estate lending.

Agree that the assessment area and outside retail lending conclusions should be weighted by an average of the bank's percentage of loans and deposits. However, a different calculation should be developed when FDIC's Summary of Deposits is used instead of penalizing a Financial Institution for not having this reported data available.

Performance Context

We think the Community Contact Database would be a good resource to determine some of the performance context in various geographical locations.

The threshold for a "Needs to Improve" should be 50 percent or more of assessment areas passing in order to receive a favorable rating regardless of the number of assessment areas in a bank's footprint. Examiner judgment and performance context should also be allowed to move the overall conclusions from Needs to Improve to Satisfactory.

Regarding discriminatory or illegal practices, this should only apply to credit products and should not be expanded to deposit products. ECOA and Fair Lending violations apply to credit products and not deposit.

Effect of CRA Performance on Applications

The current policies for considering CRA performance for applications is sufficient.

Data Collection, Reporting and Disclosure

We agree that the larger financial institutions are more capable of collecting and reporting deposit data, but they should at least have an additional 12 months to comply with this part of the rule. It should also be made optional for banks with assets of $10 billion or less. If data is collected for the larger banks, then it could be reasonable to report. Agencies should also continue to see if the FDIC's SOD could be used without the added requirement to collect deposit data.

We do not agree on the additional requirement to collect and report data on consumer auto loans. We believe this request should be modified to only include geographic (census tract) data on consumer non real estate loans or remove the requirement to collect data on consumer loans completely.

We strongly oppose disclosing the HMDA data by race and ethnicity in large bank performance evaluations since this is not the spirit and intent of CRA. This is more closely aligned with the spirit and intent of ECOA.

Public File, Notice and Engagement

Public Engagement

We don't have recommendations of ways agencies could encourage more public comments related to CRA exams. We do think it is a good approach to ask for public comment about community credit needs in geographies. The comments should be added into the Community Contact Database with financial institutions having access.

Transition

Since the agencies propose to incorporate a transition period comprised of multiple "applicability dates" for the most burdensome aspects of the proposal (including RLAAs, new performance tests, standards, and ratings, and data collection and reporting requirements), the agencies currently propose a transition period of one year. However, twelve months is insufficient to implement the proposed changes for a rulemaking this comprehensive and complex.

In order to implement this proposal it would require a considerable amount of time. First, we would need to evaluate our performance based on available data from prior reporting requirements. Additional proposed reporting would require at a minimum new software. This alone could add an additional $20,000 - $40,000 per year and would require an addition of 1 to 2 full time employees in a currently two person department.

As our financial institution grows, the addition of RLAAs would add pressure to ensure the areas are being adequately served even though we do not have FTEs located in these areas. As with any Compliance Program, change management will be implemented, new policies and procedures, training, monitoring of data and oversight throughout the institution to gauge performance. CRA and Compliance are very important to our bank; therefore, ensuring we are implementing requirements correctly will demand significant resources being added to the CRA Program.

We request that the start date for new tests are at least one full calendar year after the proposed reporting or gathering of data under the new rules.

We also request that the timing of a change to the proposed small business and small farm definitions coincide with the changes from the CFPB on Section 1071.

Respectfully,

Brooke Mott

Senior Vice President, Fair & Responsible Banking Officer