August 5, 2022

Ann E. Misback, Secretary
Board of Governors of the Federal Reserve System
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James P. Sheesley, Assistant Executive Secretary
Attention: Comments RIN 3064-AF81
Federal Deposit Insurance Corporation
550 17th Street NW
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Chief Counsel's Office
Attention: Comment Processing
Office of the Comptroller of the Currency
400 7th Street, SW, suite 3E-218
Washington, DC 2021

Submitted electronically via regulations.gov
Re: Community Reinvestment Act, Docket ID OCC-2022-0002

To whom it may concern,

I am writing to you regarding the Notice of Proposed Rulemaking (NPR)-Community Reinvestment Act (CRA) (Regulation BB). The following items represent potential issues found in the NPR regarding specifically small to intermediate bank implementation of the regulation.

<u>NPR Goal to Downgrade More Banks - The High Percentage of Satisfactory Ratings</u>
The premise behind the NPR and the need for reform is the idea that current examination standards are inappropriate because too many banks are passing the exam. The NPR's solution to this supposed problem is to completely reinvent the examination standards with recategorizations and complicated rating formulas. Our communities would be better served by keeping it simple for the agencies, examiners, and bankers to receive CRA credit by expanding the community development (CD) definitions and CD illustrative examples. This will ultimately better achieve the intent and purpose of the existing regulation, to "encourage certain insured depository institutions to help meet the credit needs of the communities in which they are chartered, including low- and moderate-income (LMI) neighborhoods, consistent with the safe and sound operation of such institutions." Why is there a high percentage of satisfactorily rated banks? Likely due to the following reasons: 1) There is no regulatory incentive to achieve more than a satisfactory rating; 2) Credit is not given where it is due; thereby, denying banks a potential 'outstanding' rating; and 3) Banks are motivated by the fear of CRA failure and the high rate of satisfactory ratings reflects their efforts to fulfill their CRA responsibilities - not grade inflation as claimed by critics.

This NPR and the existing regulation don't provide any special consideration in exchange for an outstanding rating. So, what then is the motivation to expend finite time and resources for more than a satisfactory rating? Small and intermediate banks truly do have limited staff and monetary resources that don't warrant spending additional funds to achieve an outstanding rating in a healthy economy much less an inflationary recessionary economic environment. Therefore, time, personnel, and monetary resources must be budgeted and prioritized. The goal of achieving a satisfactory rating is very often the best solution to simultaneously serve our communities, pass the exam, and be a competent steward of the bank's resources. Community institutions in particular bear a heavy burden when the level of regulatory comments, opinions, supervisory initiatives, notices, exam manual updates, blog posts, public speech comments, and new task forces are unceasing. This makes the above-mentioned regulatory communications difficult to track, review, respond, interpret, and prepare for proper handling. Again, finite resources must be spent to train, prepare staff, software, and disclosures for the regulatory changes, test the new requirements after implementation, hire audit firms to review for compliance, and the ongoing costs to ensure the bank continues to meet the regulatory requirements at all times. It's poor logic to conclude small to intermediate satisfactory rated banks are actually lacking when you consider the obstacles banks face and manage to overcome while still providing a hand up to those in need in our communities and meeting their credit needs.

This NPR and a commenter suggest that satisfactory small and intermediate bank performance is commonly weak or mediocre. This is an incorrect assumption. In fact, small to intermediate bankers are typically extremely involved in their communities. They are often the boots on the ground providing meals and sometimes paying for them out of their own pockets to their local shut ins, mentoring in sports or other youth programs, building homes for the needy, or volunteering at food pantries, homeless shelters, and animal rescues. However, under the current regulation these things do NOT count toward CRA CD service hours. You can instead be a board member for your local homeless shelter to meet about the operation of the shelter, but the time you then spend helping in the shelter does not count for CRA CD service hours even if it far outweighs the time commitment and immediate benefit to those in need. This hurts our community organizations when bank volunteers have to sacrifice their time serving those in need to instead sit in a board meeting or not serve at all, because a board position is not available.

Additionally, the prevalence of the satisfactory rating is proof of a bank's fear of public failure and scrutiny. The regulatory arm of the federal government is vast and strong. Banks have lost public fund deposits and other relationships because of a "Needs to Improve," CRA rating even though the CRA rating is not illustrative of how banks manage public fund deposits or other relationships. It's simply a rating metric that is supposed to tell local communities, "This bank is or is not meeting the credit needs of its communities." However, because it's a public rating, it's used as a generalized "good" or "bad" labelling of the bank as a whole, which can prove detrimental to the bank. Banks also fear the enormous costs incurred defending their institutions should they fail a CRA exam. Therefore, the satisfactory ratings which have been necessary for continued growth and operations, are in fact appropriate. Banks desperately need a satisfactory rating, at minimum, to thrive.

Based upon the current constraints of regulation, lack of recognition for legitimate community services provided by the bank, and fear of misplaced public scrutiny, satisfactory ratings are a best-case scenario in a tenuous relationship between small to intermediate banks and the federal regulatory strong arm. A beneficial solution for our communities would be to adopt the

OCC's list of qualifying activities from the now rescinded June 2020 Rule, expand upon it further, and establish a simple method for banks to receive written approval for activities that may not be covered in illustrative examples so that banks deservedly receive credit for its community services thus creating an accurate public rating and ensuring continued community support.

Banks should also have the option to comment on the exam process and have those comments included in the public final report to clarify any nuances that may not have been addressed by the exam.

Modernization

The NPR seeks to achieve modernization with a new and more complicated evaluation framework that will essentially change a bank's assessment areas. For example, by comparing a bank's non-MSA assessment area performance against all statewide non-MSA performance; banks in non-MSA areas will understandably conclude that the entire state should be their assessment area. Additionally, the Outside Retail Lending Areas evaluation in the NPR would use benchmarks to measure the bank's lending activity in all MSA's and non-MSA's where the bank made only 1 or 2 loans. With that few loans, the bank won't meet the benchmarks and will simply cease to make loans outside their assessment areas to avoid criticism. This doesn't benefit those communities or modernize the CRA.

Modernization is necessary to reflect the changing financial industry. Most notably is the advent of internet banks to include FinTech's, credit card banks, non-bank lending companies and branchless banks which didn't exist respectively when the CRA was established in 1977 and revised in 1995. Credit unions and non-bank mortgage companies need to see some playing time in the CRA arena as well and should be expected to perform at the same level as traditional banks. All of these players make up a significant portion of the financial industry. This will ensure there are more resources available to our communities instead of placing the legal burden of community support, assistance, and development only on the shoulders of a portion of the financial industry. Those currently excluded institutions should be expected to perform by all the same regulatory standards. Adopting the 5% rule from the rescinded OCC 2020 Rule would sufficiently address the inclusion of the Internet Banks into this regulatory requirement. No longer exempting credit unions and non-bank mortgage companies would address the latter. Especially taking into the consideration the fact that credit unions are being allowed to purchase banks. The CRA is losing players in the game and not replacing them.

Retail Lending Assessment Areas

During the comment review period, **a beta test of the NPR retail lending test should be conducted by veteran and new examiners across the agencies** using data from banks with existing satisfactory, outstanding, and needs improvement ratings in various MSAs across the country. The real life experience of attempting these calculations with real data and real examiners will likely prove daunting and concretely express the complexity of this mathematical exercise that will then produce no benefit to local communities. A detailed comparison of the time, costs, new software or tools, and final results of the beta test and existing examination method should be made public.

Other commentors have thoughtfully articulated the ever multiplying possible issues with using the NPR retail lending assessment areas derived from delineation rules, new dashboards for every MSA and statewide non-MSA, benchmark comparisons to banks' outside lending areas, consolidated evaluation periods….How is any examiner supposed to create, any bank proactively review data for an examination, or community group supposed to understand the data that was compiled and analyzed to come to the final conclusions contained in a CRA Public Disclosure to broadly label the bank good or bad? The number of factors, the potential frequency of these factors changing will render the data useless and meaningless, but still publicly brand a bank with a rating.

The Retail Lending Infographic is an oversimplification of a very complex process, issued 5 business days prior to the comment period deadline.

<u>Cost of Compliance</u>
The estimated cost burden of $114 per hour and 80 hours per year appears very low. $140 per hour seems a more appropriate estimate. The rule is complex and therefore will require a significant time investment to train multiple areas of the bank, prepare program management key pieces and will likely necessitate additional software solutions or upgrades. Currently proposed CRA compliance cost estimates consists of $5,000 analysis software, $3,000 training and consulting costs, $10,000 tracking software and an estimated 160 hours to manage the CRA program annually. **I believe implementation of the new rule will require another 500 hours minimum.** Additional compliance costs impact banks' ability to hire additional compliance staff and prioritize existing compliance requirements. These costs and hours don't include banks' time and money already expended for community service hours and donations.

<u>Timing, Comment Period, and Possible Implementation Deadline</u>
The 679 page, 180 question proposal was issued with a 90-day comment period and a subsequent denied request for extended comment period. Compare this to the 200 page, 2020 OCC CRA NPR that did grant an extended comment period for a proposal only 1/3 the size of the current NPR. **There are too numerous and far ranging changes for such a short comment period.** The OCC issued CRA NPR Infographics on July 29, 2022; 5 business days before the comment period deadline. **The infographics appear to acknowledge the need to further clarify the NPR**; however, presenting new materials so close to the deadline is not sufficient for thorough review. Due to the length and complexity of this NPR; the comment period should be extended 180 days from August 5, 2022.

With 40 year record high inflation threatening America's economy, individuals' income for basic needs, and financial institutions' (FI) ability to navigate these uncertainties while still being deemed sound by federal regulators in regard to the FI's overall credit risk, liquidity, assets, management and regulatory compliance; is this the appropriate time to exacerbate the strain on FIs? Be aware that the decision of this interagency effort may ruin a "satisfactory" institution that may be meeting the basic needs of its community and may leave a void where one previously did not exist.

The Section 1071 Small Business Data Collection final rule timing should be considered when establishing deadlines so that the CRA final rule implementation deadline does not overlap; causing, a hardship to the exam, bank, and software vendor communities.

<u>Definition of Small Business and Small Farm</u>
The proposal to make these definitions consistent with Section 1071 of the Dodd-Frank Act is a positive suggestion.

Purpose and Intent of the CRA

Finally, the 679 page, 180 question proposal is so drastic, it gives the appearance of essentially creating a new regulation under an old name. Which brings to **question the authority to implement these changes in contradiction to the legislative intent and purpose of the existing regulation.** Should this instead be presented as a new regulation submitted through the existing proper channels instead of expedient non-legislative reforms? This warrants review to ensure the integrity of the legislative process and that the CRA will still “encourage certain insured depository institutions to help meet the credit needs of the communities in which they are chartered, including low- and moderate-income (LMI) neighborhoods, consistent with the safe and sound operation of such institutions.”

Thank for your time and consideration of these issues.