FLORIDA BANKERS ASSOCIATION

ALEX SANCHEZ
PRESIDENT & CEO

August 4, 2022

Jerome Powell, Chairman
Board of Governors of the Federal Reserve System
2001 Constitution Avenue, NW
Washington, D.C. 20551

Martin J. Gruenberg, Acting Chairman
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, D.C. 20429

Michael J. Hsu, Acting Comptroller of the Currency
Office of the Comptroller of the Currency
U.S. Department of Treasury
400 7th Street, SW
Washington, D.C. 20219

Re: Proposed Changes to the Community Reinvestment Act

Dear Chairmen Powell and Gruenberg, and Acting Comptroller Hsu:

The Florida Bankers Association respectfully submits this commentary for consideration by the Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), and the Office of the Comptroller of the Currency (OCC) in response to the Notice of Proposed Rulemaking for the Community Reinvestment Act (CRA) of 1977. Thank you for your leadership in soliciting stakeholder input on ways to improve and modernize the CRA regulatory and supervisory framework.

Established in 1888, the Florida Bankers Association (FBA) has served as the voice of Florida's banking industry for over 130 years and has grown to be one of the most powerful state banking associations in the country, advocating on behalf of members in Tallahassee, Washington, D.C., and in state, regional, and national media outlets. The FBA is committed to meeting the financial needs of our customers and their communities and appreciate the opportunity to participate and

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provide input on the latest joint proposal. Additionally, we would be happy to discuss the following commentary or provide additional relevant material at your convenience.

CRA Examinations

The existing framework for CRA examinations and how ratings are determined lacks transparency, clarity, and consistency. What is considered Outstanding, Satisfactory, Needs to Improve, or Substantial Noncompliance performance is too subjective and often depends on which examiner conducts the assessment. The ratings assignment process is poorly defined, as banks have no insight on the rating process nor the reason for receiving a particular rating. Currently, 98 percent of banks pass their CRA exams on an annual basis, with 90 percent receiving a Satisfactory rating and less than 10 percent receiving an Outstanding rating, the highest classification. Neither the assessment mechanism nor the ratings themselves have any discernable metrics or thresholds and remain undefined.

The FBA supports improvements to the current CRA rule that results in a more consistent, uniform structure around examinations and provides banks with public benchmarks and more transparency. Preparing for a CRA assessment is both costly and time consuming for banks, potentially deterring new market entrants. Before beginning examinations under the new framework, agencies should publish examiner's guidance on documentation requirements and exam procedures so expectations are made known and goals can be set and measured by each bank. Additionally, guidance around expectations and target metrics for areas such as investments (percent of tier 1 capital), donations (relative to deposit market share), and branch locations (percent LMI, majority-minority) should be provided, with some flexibility based on performance context, since each bank is unique. This will alleviate some of the uncertainty created by the proposed standards.

Qualifying Activities List

For years, a major flaw of the current CRA rule has been a lack of clarity in regards to which activities qualify for CRA credit. The FBA supports the agencies' proposal to maintain a publicly available, illustrative, non-exhaustive list of eligible activities for CRA consideration as proposed, with perhaps the inclusion of startup small business funding. This approach helps illustrate loans, investments, and financial services that meet the CRA community development criteria while retaining that criteria as the determinative factor in eligibility.

Additionally, providing a list of examples helps clarify the regulatory meaning of key community development terms. Identifying that an activity previously qualified can help provide banks with certainty that similar activities are likely to receive consideration in the future. That stated, these positive outcomes are moot unless all three regulatory agencies maintain one uniform list as opposed to three separate ones. This will level the playing field and reduce subjectivity, while also reducing the burden of proof and decreasing the time and effort spent trying to defend community development activities.

Qualifying Activities Confirmation Process

Similarly, the FBA supports the proposed addition of a comprehensive process to confirm eligibility of qualifying community development activities that is open to bank participation. Under current CRA rule, banks are required submit community development activities as a part of their CRA examinations without concrete assurance that these activities are eligible for credit. Allowing banks to request confirmation from their regulator promotes increased service, lending, and investment, as it reduces uncertainty and ensures specific activities qualify for credit prior to a bank's next exam. We are seeking clarification from the agencies on what level of consideration is given to nationwide community development activities. We assume the focus will continue to be on community development activities in our Metropolitan Statistical Areas primarily, but would appreciate clarity if there is a different examination approach being considered.

Term Definitions

The FBA is supportive of the creation of a comprehensive list of term definitions that are applicable for examinations. For example, defining what constitutes a "retail deposit" provides greater clarity for banks preparing for the Retail Lending Test, while defining "automobile lending" eliminates uncertainty around direct versus indirect loan inclusion. Maintaining a uniform database of definitions will alleviate confusion and ensures that banks are correctly meeting the appropriate CRA benchmarks instead of having to rely solely on their own interpretations. Additionally, we are seeking clarification from the agencies on whether loan renewals are considered in the Bank Volume Metric, as exclusion of those renewals (historically considered under the old framework) could adversely affect the retail lending and community development tests for many banks. We are also seeking to understand if call report definitions will be updated to align with the proposed rule.

Asset Thresholds

An important concern for community banks is whether they meet the classifications to be considered a small bank, intermediate small bank (ISB), or large bank. The FBA is supportive of raising the current asset thresholds for community banks as demonstrated in the new proposal. Considering that asset categories determine the complexity of the test that regulators use to evaluate performance, this update better reflects changes in the banking industry and the regulatory burden to which banks are already subject.

Small & Intermediate Small Bank (ISB) Opt-In

The FBA supports the agencies' proposal to allow small banks and ISBs the option to either opt-in to any new CRA evaluation framework or continue to be evaluated under the current lending and community development tests. It is our stance that requiring small banks and ISBs to completely overhaul their compliance management systems and retrain staff to comply with new requirements within the regulatory timeline puts an undue burden on small financial institutions. Implementing the revised framework will be a significant financial challenge, taking away vital community bank resources that could be better used serving their communities. In comparison, allowing small banks and ISBs to have the ability to opt-in to the updated standards minimizes any negative economic consequences and provides flexibility for banks to meet the needs of LMI borrowers.

Location of Deposits

Under the proposal, large banks with assets of over $10 billion will be required to collect and maintain deposits data. The FBA opposes this change and contends that brick-and-mortar banks of any size should be exempt from tracking deposit location and delineating deposit-based assessment areas. As touched upon in the proposal, this approach could potentially result in metrics and weights that do not accurately reflect the geographic location of a bank's deposit base, e.g. banks with foreign customers and multi-state presence. Additionally, use of depository summary reports where depositor data is grouped by branch of domicile could adversely be affected if correspondent banking relationships exist.

Banks that wish to voluntarily collect and maintain deposits data for the sake of ensuring accurate metrics and weights may do so on their own accord, but it should not be a requirement for the CRA examination. This proposed change places an undue financial burden on banks who serve their communities through traditional, physical branches, and if geocoding is required of all depositor information, large banks would have to dedicate time and resources to clean up geocoding errors. Perhaps requiring this data collection from digital banks without a brick-and-mortar presence would be more appropriate, as it helps regulators understand where their depository concentrations are since they do not have physical branches.

Dollar-Based Metrics

Implementing a dollar-based community development financing metric and benchmarks as an evaluation measure disproportionately favors large loans and investments over more numerous small dollar loans to smaller businesses that could arguably have more of a direct impact to the community. In addition, the value of certain small-dollar community development activities are routinely undervalued by a dollar-based measure. While the FBA recognizes the inclusion of qualitative assessments as a supplement to these dollar-based metrics, ultimately, we oppose this series of changes and instead recommend utilizing the number of loans and investments and considering their overall impact.

Community Development Services

Currently, the existing service test accounts for 25 percent of an examination score for large banks (including both retail and community development services). The FBA is concerned that lowering the Community Development Services Test to a weight of 10 percent from 25 percent could potentially hurt relationships between banks and their community partners and regulators should consider all potentially negative consequences of this proposal before implementation.

Retail Lending Assessment Area

Assigning a threshold of 100 loans for retail lending is too low and may lead to loan production offices closing, inadvertently negatively affecting rural or distressed/underserved communities where banks may not have branches but instead loan production offices. Indirect lending may also be adversely affected, with less banks pursuing those partnerships if it means additional tracking and reporting. The FBA supports either increasing the consumer loan threshold to a minimum of 250 loans or just requiring the participation of non-brick and mortar institutions. We also support an increase for small businesses from 250 to 500 loans. This increase may require additional headcount and resource allocation.

Community Development Financial Institution (CDFI) Ratings

Community Development Financial Institution's (CDFI) play a unique role in generating economic growth in our most disadvantaged communities. Considering that their lending is already reviewed annually by the CDFI Fund and that they are required to maintain 60 percent of their deposits and loans in defined CDFI census tracts (which closely overlap with LMI tracts), the FBA supports a separate exam structure when compared to other financial institutions.

The agencies' proposed changes would create an undue burden on these smaller community institutions and may limit resources that could otherwise be directed towards providing access to financial products and services for local residents and businesses.

Transition Time

Finally, considering the complexity and depth of these new regulations, the proposed applicability date of approximately 12 months after publication of a final rule for bank activities is an insufficient amount of time to implement all proposed changes. Many community banks are concerned that the proposed regulatory framework is too complex to update and align their systems by working with third party vendors to develop, test, and train staff within only a year's time. Additional consideration should be given around the final rule and implementation date of Dodd-Frank Act section 1071, and its impact on the same resources responsible for CRA implementation, along with budgetary considerations for two significant regulatory changes in such a short period of time. Some US census data may not be released until August 2023, which can affect the geocoding and determination of low- or moderate-income tracts, and may inadvertently skew some of the banks' metrics.

The FBA supports extending that implementation date by at least an additional 24 months for an applicability date of at least 36 months from the effective date of the regulation. Another alternative is to adopt a phased implementation whereby each bank can elect to undergo their next scheduled exam under the old framework so exams are not partially based on the old rating scale and partially based on the new rating scale. This would also allow time for the regulatory agencies to gather at least 24 months of aggregate benchmarking data and publish it publicly so expectations are clear and allow adequate time for economic volatility to normalize.

The FBA supports the Board, FDIC, and OCC on their efforts to modernize and update CRA regulations to better reflect the changes to the banking industry that have occurred since 1995. Again, we greatly appreciate the consideration of our commentary. We look forward to continued discussion and participation in the drafting process.

Sincerely,

Alex Sanchez
President and CEO
Florida Bankers Association