NCBankers ASSOCIATION

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Since 1897

April 8, 2020

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

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

RE: OCC Docket ID OCC-2018-0008
FDIC Docket ID RIN 3064-AF22

Dear Sir or Madam,

The North Carolina Bankers Association (NCBA) appreciates the opportunity to submit the following comments in response to the Joint Notice of Proposed Rulemaking (NPR) outlining revisions to the Community Reinvestment Act (CRA).

The NCBA brings together all categories of banking institutions headquartered or operating in North Carolina. Serving the banking industry since 1897, the association has two subsidiaries, Centrant Community Capital (Centrant) and Community Bank Services (CBS). Of particular note, Centrant provides permanent debt financing for workforce apartment communities and housing across six Southeastern states. Through membership in Centrant, the member banks of the NCBA and other banks from around the nation work in partnership to finance the creation and preservation of affordable multifamily housing, consistent with the goals and mandates of CRA.

The NCBA applauds the desire of the OCC and FDIC to update the CRA regulations. We agree that it is vitally important to ensure that the requirements of CRA are clearly and explicitly stated, and that the framework needs to be updated to reflect the dramatic changes in banking that have occurred since passage of CRA in 1977. It is equally critical that the CRA evaluation process for banks is consistent, objective and predictable.

Regrettably, it is our opinion that these objectives have not been fully captured in the recently published NPR. The NCBA has joined with many of our statewide peers as a co-signer on an expansive comment letter submitted by the American Bankers Association (ABA). While we share in the broad concerns outlined in the ABA's letter, and hope that the agencies will take the full content of those comments under consideration, the NCBA respectfully offers and emphasizes the following observations and comments that have been solicited in consultation with our member financial institutions:

- ***Interagency Implementation:*** We appreciate the efforts of the OCC to begin the conversation around CRA reform, and we welcome the participation of the FDIC in the discussion. However, the long-term viability and enforceability of a revised CRA must include the equal participation of all the banking supervisory agencies. We hope that, upon further refinement and adoption, the final rule will reflect equal buy-in and implementation by the OCC, FDIC and Federal Reserve. We remain very concerned that a piecemeal approach will lead to confusion, inconsistent enforcement, reporting errors and ongoing frustration for both banks and the regulatory agencies – thereby undermining the intent and potential benefits of the CRA reform effort.

- ***CRA Performance Measure:*** The NCBA and its member banks support the desired goal of establishing a more objective measure of CRA performance. Many of our members' current concerns and frustrations with CRA revolve around a lack of clarity and the often subjective nature of the evaluation process. However, it is our belief that the performance metric as proposed in the NPR is not an appropriate solution. While the NPR attempts to create a standardized calculation, the NPR has not achieved a "one-size-fits-all" solution that can account for the many differences in institution sizes, market dynamics, business models, etc. We are not opposed to the development and adoption of such a measure; however, we request that the agencies continue to study this proposed metric through testing over a prescribed period of time, to allow further refinement as necessary, and to incorporate variations as necessary that are responsive to the needs of banks everywhere.

- ***Data Reporting:*** Closely related to the development of a proposed CRA performance metric, the proposed reforms will impose a new level of data reporting complexity that will be unwieldy and expensive for all institutions, and quite frankly, impossible for many smaller institutions. Shifting the data reporting requirement to incorporate balance sheet holdings, along with the introduction of retail and consumer lending data, is in itself a significant expansion that will result in burdensome new data collection and validation requirements requiring significant new systems and both operational and staffing changes that will be extremely costly and time-consuming. Ultimately, there is some merit in this approach, if properly developed and refined. Therefore, we request that any implementation of this proposal be postponed pending further study.

- ***Assessment Areas & CRA Consideration:*** Under the current framework, banks cannot predict with any certainty when they will receive CRA consideration for qualified activities undertaken outside of their delineated assessment areas, as there is no clear guidance as to how or when examiners may conclude that an institution has been "sufficiently responsive" to community development needs and opportunities within its assessment areas (AAs).

  As a result, many banks are reluctant to pursue otherwise noteworthy activities out of a concern that the activities will not be acceptable. Another unintended consequence is that there is disproportionate demand for CRA-qualified activities in competitive market "hot spots," while the community development needs of rural and secondary markets often remain unmet. Furthermore, it is important to recognize that some banks must go outside of their AAs in order to identify viable community development activities, while other banks purposefully seek an impact upon a wide geographic area.

Even though the proposed rule does appear to permit a bank to receive CRA credit for activities conducted outside of its AAs when calculating the bank-level CRA rating, our reading suggests that the proposed regulatory text still does not explicitly: a) clarify that all CRA-qualified activities would be included in the bank-level calculation, regardless of location, or b) address whether or not there is a particular threshold of required activity within a bank's AAs that must be met before consideration of qualifying activities outside of its AAs. Left unaddressed, this is a fundamental concern with the current CRA framework that will remain a source of frustration for all parties in the future.

For simplicity, and to encourage banks to undertake the broadest range of community development activities, we request that the agencies consider providing CRA credit for all qualifying community development activities, regardless of location, so long as an institution retains an overall CRA rating of Satisfactory or better. This approach would preserve a bank's focus on its local community, while enabling activity elsewhere to be recognized.

- ***Small Bank Threshold:*** The CRA NPR permits institutions with assets of $500 million or less to "opt out" of the proposed General Performance Standards, and instead elect to remain under the existing CRA Small Bank performance standards. Given banks' significant concerns over the anticipated cost and reporting burdens that will result from the proposed framework, this asset threshold is too low. At a minimum, we suggest that the opt-out threshold be raised to a level that is comparable with the current $1.305 billion asset size applicable today for defining eligibility for the Intermediate Small Bank test.

- ***Qualifying Activities:*** We strongly support the proposed effort to establish a publicly available list of CRA-qualified activities. With that in mind, we would encourage the following:

    - Develop and publish a single list, applicable to all banks and all banking supervisory agencies;
    - Clarify that the list is intended to be for illustrative purposes only, and not mandatory, comprehensive, or exclusive for evaluation purposes;
    - Ensure that the list remains a living document, updated regularly and with certainty.

  We also strongly support the proposal to allow a "preapproval" process, allowing banks to proceed with certainty when contemplating a proposed activity. This will encourage creativity, responsiveness and certainty as banks respond to the community development needs of their markets. Our only suggestion is that the proposed 6-month agency review and response period is too long to be practical and will undermine banks' ability to react when an opportunity arises. We respectfully request that this pre-approval period extend to no more than 30 days.

- ***Volunteer Activities:*** While we support the continued recognition of the importance of community service in an institution's overall CRA strategy, we are concerned that the methodology outlined to monetize volunteer services for CRA reporting purposes will be very burdensome for our member banks, and it may have the unintended consequence of creating a disincentive for employees to engage in and report community service activities. If it is perceived as easier to invest in and hold an asset, rather than take the time to encourage and report hands-on volunteer activities, banks are less likely to continue important hands-on volunteer activities. Ultimately, this undercuts the purpose of service activities, and has a negative impact upon low- to moderate-income communities and the network of nonprofit entities that serve them. As an alternative, we join with the recommendation of the ABA that the agencies adopt a median hourly compensation value for the banking industry, to simplify this reporting process and support on-going community service efforts by bank employees.

- ***Timing of Implementation:*** As of the date of this letter, the nation is engulfed in the depths of the COVID-19 pandemic, and our member banks are literally on the economic front lines, working around the clock to assist individuals and small business customers by deploying the financial resources approved under the CARES Act. While we all hope that the health crisis will soon subside, and that the economic impact will be relatively short-lived, it is simply too soon to determine whether this will be the case.

  While we respect that the OCC and FDIC hope to keep this process moving forward without delay, we respectfully – but strongly – request that the agencies consider the potential impact of adopting such a new, untested and comprehensive change to CRA amid so much uncertainty.

Thank you again for the opportunity to provide these comments. We appreciate and support the desired – and long overdue – goal of modernizing CRA to reflect the current realities of the banking industry. We hope that these comments are constructive, and we remain optimistic about the long-term viability of this effort. We welcome the opportunity to provide additional information and input as the reform effort proceeds. Should you have any questions regarding our comments, please do not hesitate to contact me directly.

Sincerely,

Peter Gwaltney
President & CEO