



## Community Reinvestment Act Changes

Submitted by mlongacre@csbs.org on Fri, 08/05/2022 - 12:04

Benjamin W. McDonough, Chief Counsel  
Chief Counsel's Office  
Attention: Comment Processing  
Office of the Comptroller of the Currency  
400 7th Street SW, Suite 3E-218  
Washington, DC 20219  
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  
Docket No. R-1769  
RIN 7100-AG29

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

### **Re: Notice of Proposed Rulemaking - Community Reinvestment Act**

Dear Mr. McDonough, Ms. Misback, and Mr. Sheesley:

The Conference of State Bank Supervisors ("CSBS")<sup>1</sup> appreciates the opportunity to comment on behalf of state regulators regarding the Joint Notice of Proposed Rulemaking ("Proposal") on the Community Reinvestment Act ("CRA") issued by the Board of Governors of the Federal Reserve System ("Board"), the Office of the Comptroller of the Currency ("OCC"), and the Federal Deposit Insurance Corporation ("FDIC") (collectively, the "federal banking agencies" or "agencies"). State regulators support the agencies'

collaborative efforts to create a modernized CRA framework that better serves the needs of communities, including low and moderate income (“LMI”) neighborhoods. Overall, state regulators believe the Proposal provides meaningful updates to the CRA, while calibrating new or revamped aspects of the regulation based on a banking organization’s size and business model.

State regulators commend the federal banking agencies for coordinating their efforts to create a uniform and consistent CRA regulatory framework. CSBS has long maintained that the federal CRA regulatory framework should be applied consistently for banks regardless of their chosen charter or primary federal regulator.

State regulators highlight the following points regarding the proposed modernization of the CRA regulatory framework:

- To provide institutions with increased clarity, the federal banking agencies should publish an illustrative, non-exhaustive list of community development activities that qualify for CRA consideration as well as a list of those activities that do not qualify;
- The Proposal strikes an appropriate balance between minimizing new data collection, reporting, and testing requirements for small banks, and focusing reforms on large institutions, particularly by requiring large institutions over \$10 billion to report more accurate deposits data; and
- The proposed “impact review” of community development activities will help encourage banks to pursue activities with a high degree of impact on and responsiveness to the needs of LMI communities, including rural communities, but additional clarity on the factors considered and the review process is needed.

**To provide institutions with increased clarity, the federal banking agencies should publish an illustrative, non-exhaustive list of community development activities that qualify for CRA consideration as well as a list of those activities that do not qualify.**

Currently, as part of their CRA examinations, banks submit community development activities they have already performed without clear assurance whether or not these activities are eligible for CRA consideration. Bankers have expressed frustration that it is difficult to be certain that a loan or activity qualifies for CRA purposes until they undergo an examination.

State regulators support the agencies' plans to provide more upfront certainty regarding activities that qualify for CRA consideration through an illustrative, non-exhaustive list of qualifying CRA activities. Doing so will help eliminate confusion, unexpected results, and inconsistencies during the CRA examination process. Such a list may also encourage banks to participate in certain community development activities or make certain community investments that they otherwise may not have considered. To further the goals of clarity and transparency, state regulators also support the agencies maintaining a non-exhaustive list of activities that do not qualify for CRA consideration.

Nonetheless, state regulators believe the agencies should make clear that these lists do not serve to limit a bank's community development activities or investments, or stifle innovation. State regulators acknowledge that as new, less common, or more complex or innovative activities arise, examiner judgment and the use of performance contexts to determine whether an activity qualifies for CRA purposes will still be warranted.

Additionally, the agencies should provide a clearly defined process for banks seeking feedback regarding the eligibility of a certain community development activity for CRA consideration. In its current form, the Proposal lacks specificity on what the procedures and timelines for agency feedback would entail. State regulators recommend that when a request is made, only the primary federal regulator should make the determination rather than the feedback being a joint undertaking of the three agencies. However, to promote uniformity and standardization across the agencies, state regulators propose the federal banking agencies convene regularly to discuss requests made by banks and the feedback provided in response.

Finally, the agencies should consider how state laws, including some states' CRA laws, interact with the federal CRA regulations. For institutions subject to both state and federal CRA regimes, state regulators request that the agencies grant CRA consideration for activities that satisfy state CRA requirements. In general, state and federal CRA frameworks share very similar objectives. For example, under New York's CRA and its regulations, banking institutions that finance certain climate resiliency activities that revitalize or stabilize LMI and underserved areas may receive CRA credit,<sup>2</sup> and the agencies' Proposal contemplates providing CRA credit for similar activities. However, it is critical that institutions have upfront clarity that state CRA activities will receive consideration under federal CRA as well. Additionally, state regulators request that as the agencies work with banks seeking guidance on a particular activity, they ensure the activity in question does not create conflicts with state law, including state permissible investments laws. As new types of CRA activities arise and state and federal CRA requirements continue to evolve, it is even more important for the state and federal

banking agencies to coordinate on CRA.

In sum, state regulators support the agencies publishing illustrative, non-exhaustive lists of both qualifying and non-qualifying community development activities. The agencies should also ensure that the process for institutions receiving feedback is clear and timely, provides appropriate consideration for state CRA activity, and avoids conflicts with state law.

**The Proposal strikes an appropriate balance between minimizing new data collection, reporting, and testing requirements for small banks, and focusing reforms on large institutions, particularly by requiring large institutions over \$10 billion to report more accurate deposits data.**

In general, state regulators believe the Proposal takes the right approach in leveraging existing data collections and established CRA testing methodologies for small banks. These institutions' local geographic focus and limited resources justify minimal changes to their CRA framework, and state regulators support the agencies' efforts to right-size CRA regulations for small, relationship-based community banks.

State regulators wish to highlight a particular data issue discussed in the Proposal, namely deposits data upon which numerous aspects of both current CRA regulations and the Proposal rely. Current CRA regulations utilize the FDIC's Summary of Deposits ("SOD") data for institutions of all sizes, which results in defining assessment areas based on the location of the bank branch to which the deposits are assigned rather than where a bank's depositors actually reside. State regulators believe the SOD reporting methodology produces data with limited value and reliability, and its serious shortcomings limit its effectiveness in conducting more meaningful CRA evaluations. Unfortunately, the SOD's shortcomings undermine other important federal and state regulatory frameworks and processes, including bank merger or branching applications and evaluations, as well as nationwide and statewide deposit concentration limits.

Given the SOD's inherent limitations, state regulators support the agencies' proposed requirement that large banks over \$10 billion collect and maintain county-level deposits data based on the counties in which their depositors' addresses are located. While the proposed deposits data reporting requirement would apply to only 162 banks (or roughly 3 percent of all U.S. banks), it would result in capturing and reporting approximately 85 percent of all U.S. bank deposits more accurately.

In addition, state regulators request the agencies publish this new, more accurate county-level deposits data in the form of a dataset that can be utilized by state regulators and the public. Moreover, comprehensively reforming the SOD itself would be worthwhile not only for CRA purposes, but also for other regulatory schemes that would benefit from more accurate deposits data.

**The proposed “impact review” of community development activities will help encourage banks to pursue activities with a high degree of impact on and responsiveness to the needs of LMI communities, including rural communities, but additional clarity on the factors considered and the review process is needed.**

Currently, a qualitative assessment of a bank’s community development performance considers the extent to which a bank’s community development activities are innovative, complex, and responsive to a community’s needs. Certain activities may be considered more responsive than others, but there are no clear standards or criteria for how these activities are measured, and as a result, the evaluation relies almost entirely on an examiner’s judgment.

The Proposal states that the agencies would consider whether a loan or investment should be given additional credit and potentially increase a bank’s community development financing or services ratings based on several impact factors, for example, whether activities serve persistent poverty counties, geographies with low levels of community development financing, low-income individuals, small businesses or farms with gross annual revenues of \$250,000 or less, or Native Land Areas.

State regulators agree that banks would benefit from knowing upfront which types of activities are considered to be more responsive or impactful for the purposes of satisfying the requirements of the Community Development Financing Test and the Community Development Services Test. Accordingly, state regulators support the agencies incorporating an impact review of community development activities and believe that incorporating specific impact review factors and providing more structure to a highly subjective review will result in a more standardized application of qualitative factors compared to current practices. Similar to providing a list of qualifying and non-qualifying activities, the impact review factors will also promote greater transparency and consistency in the CRA evaluations.

The new impact review process, which gives additional consideration to certain activities, will help recognize instances where a bank makes a lower dollar amount loan or

investment that has a high impact in supporting the needs of a community even though the activity is not as innovative or complex.

Nonetheless, state regulators would appreciate more clarity on this new process as the agencies work to define and refine the list of impact review factors and develop guidelines for how examiners would be expected to incorporate these factors during the CRA examination.

States charter and supervise 79 percent of all banks in the United States, which accounts for over 3,800 banks with \$8.5 trillion in combined assets. Most of these institutions are small community banks, some of which represent the sole banking presence in local markets, particularly in rural areas. These community banks help reduce the emergence of banking deserts and contribute significantly to local economies throughout the country by providing access to credit, including a wide array of customized loan services to aid in community development.

The Community Development Financing and Services Test only applies to the Large Banks and Intermediate Banks that elect to be evaluated under this new test; however, state regulators believe that smaller banks should also have the option to have their community development services evaluated if they choose to demonstrate how they are further serving LMI, underserved areas, or rural communities, and if doing so could improve their overall rating.<sup>3</sup> As the agencies appropriately suggest, this process should be entirely voluntary, and the agencies should ensure that this option does not create new data collection or reporting requirements for small banks or result in a rating downgrade.

## **Conclusion**

In conclusion, state regulators support the modernization of the Community Reinvestment Act and the agencies working together to create a uniform CRA federal regulatory framework. We remind the federal banking agencies that state regulators play a critical role in the regulation and supervision of banks subject to the CRA regulatory framework and thus, have a significant stake in its future implementation. State regulators believe that taking into account the above considerations regarding qualifying activities, data collection and reporting from the largest institutions (\$10 billion and above), and impact reviews will enhance the effectiveness of the federal CRA framework going forward. CSBS and state regulators look forward to consulting with the agencies regarding any points highlighted in this letter as the agencies continue the CRA modernization effort.

Sincerely,

James Cooper  
President & CEO

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## Footnotes

1: CSBS is the nationwide organization of state banking and financial regulators from all 50 states, American Samoa, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands. CSBS supports the state banking agencies by serving as a forum for policy and supervisory process development, by facilitating regulatory coordination on a state-to-state and state-to-federal basis, and by facilitating state implementation of policy through training, educational programs, and exam resource development.

2: See New York State Department of Financial Services, “Industry Letter: CRA Consideration for Activities that Contribute to Climate Mitigation and Adaptation” (February 21, 2021). Available [here](#).

3: 87 Fed. Reg. 33989 (June 3, 2022). The agencies propose that a small bank may request additional consideration for activities that qualify for consideration under the Retail Services and Products Test, Community Development Financing Test, or Community Development Services Test in proposed appendix D. In these cases, the agencies may consider, based on the additional activities, whether to increase the bank’s rating from a “Satisfactory” to an “Outstanding” at the institution level. An adjustment would not occur if a small bank’s respective rating, without consideration of the additional activities, is “Needs to Improve” or “Substantial Noncompliance.” The agencies believe that it is appropriate to emphasize retail lending performance, and that electing to conduct other activities does not compensate for poor retail lending performance.

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