ILLINOIS BANKERS™

November 19, 2018

Via Electronic Delivery to regs.comments@occ.treas.gov

Office of the Comptroller of the Currency
Legislative and Regulatory Activities Division
400 7th Street SW, Suite 3E-218
Washington, DC 20219

Re: **Docket ID OCC-2018-0008**; **RIN 1557-AE34**
Advance Notice of Proposed Rulemaking
Reforming the Community Reinvestment Act Regulatory Framework
83 Federal Register 45053 (September 5, 2018)

To Whom it May Concern:

The Illinois Bankers Association (IBA)[1] is writing on behalf of its members to comment on the Advance Notice of Proposed Rulemaking (ANPR) to modernize the existing Community Reinvestment Act (CRA) regulatory framework. We appreciate the OCC's efforts in the ANPR to identify and solicit input on several issues relating to the existing CRA regulations, and we are heartened by the prospect of obtaining much needed guidance and clarity for banks and examiners when interpreting and applying the CRA's requirements.

We strongly support the CRA's goals, and our members work every day to help meet the credit needs of the communities they support and rely on, particularly in low- and moderate-income geographies. But our members have seen the CRA supervisory process often work against them — potential partnerships with community groups have been stymied by uncertainty as to their potential CRA credit, bank funds have been needlessly tied up in paperwork and delays instead of working to meet community credit needs, nonbank competitors have leveraged their lack of CRA oversight to gobble up customers and lending opportunities, and more.

Our hope is that the OCC can lead in providing clear standards that incentivize banks' best efforts to support their communities by reducing supervisory ambiguity, costly delays, and unfair standards.

Reduce the opacity of CRA requirements and subjectivity in examinations. The current CRA regulations are deceptively simple, but CRA ratings seem to be based on a complex enclave of vague regulatory guidance and subjective examiner requirements. The result is an opaque, unpredictable supervisory process.

The subjectivity of CRA examinations becomes starkly apparent when banks switch regulators. Several of our members have experienced huge swings in their CRA ratings after converting from one charter to another. After the conversion, banks find themselves being examined by a new regulator and subject to very different CRA criteria — even though all regulators ostensibly are following the same CRA text, with very similar regulations. For example, one agency may choose to count a bank's services to the community based on employee hours, while another may count by total activities. One agency may count a certain investment as providing innovative community support, while another will discount the exact same investment entirely. These seemingly minor changes add up, with banks sometimes seeing their ratings

[1] The Illinois Bankers Association is a full-service trade association dedicated to creating a positive business climate that benefits the entire banking industry and the communities we serve. Founded in 1891, the IBA brings together state and national banks and savings banks of all sizes in Illinois. Over 30% of IBA members are community banks with less than $100 million in assets, and over 60% of IBA members are community banks with less than $250 million in assets. Collectively, the IBA represents nearly 90% of the assets of the Illinois banking industry, which employs more than 100,000 men and women in over 5,000 offices across the state.

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plummet from an “Outstanding” to a “Needs to Improve” in a matter of months, merely because the bank’s charter conversion resulted in a switch to new CRA examiners. Banks also have observed differences from one examiner to another within the same agency, and even when the same examiners return to the bank in subsequent examination cycles.

This uncertainty and subjectivity appear to result in part from ambiguity in the CRA regulations themselves, which provide little information about exactly how to assess a bank’s performance and leave plenty of room for individual examiners to fill the gaps. Over the years, examiners appear to have developed individualized frameworks at their own discretion. For example, one of our members recently was told that it would not receive credit for a particular activity because it had not been participating in the activity for “long enough.” Of course, there is no statutory or regulatory requirement that activities persist for a certain period of time before a bank may receive CRA credit, but examiners are provided the latitude and discretion to layer on such discretionary criteria. Other unwritten requirements apply to the use of peer comparisons, the need for banks to continually ramp up CRA activities in order to maintain a particular rating from one examination to the next, and more.

At best, these examiner-made requirements are conveyed to banks through verbal, undocumented suggestions provided on an ad hoc basis through the examination process. At worst, examiners use complex statistical methods, unreported communications with community groups, and other unstated criteria without informing banks of their methods, providing CRA ratings based on a “black box” that leaves banks in the dark.

Our members have reported that examiners are unwilling to answer even simple questions, such as general inquiries about the quantity of lending required to elevate a bank’s CRA rating. The process of making peer comparisons is particularly opaque, with examiners unwilling to explain the statistical basis for making comparisons or even the selection of a bank’s “peers,” which often appear to be dramatically different from the bank being examined (such as a bank with $1 billion in assets being compared to a bank three times its size with $3 billion in assets).

Instead of being subject to ambiguous regulations and unwritten examiner-made criteria, banks should be able to read the CRA regulations and gain a clear picture of how they will be evaluated and the methods used for the evaluations. Currently, banks are left to cobble this information together after poring over agency FAQs and guidance, studying other banks’ public performance evaluations for clues, and hiring expensive third party consultants. Regulations that provide clear criteria with measurable goals for each CRA rating would alleviate much of this uncertainty and subjectivity, and would help banks to better understand how they can achieve the CRA’s goals and support their communities.

Create certainty for community groups and banks when making charitable grants and donations. A particular problem created by supervisory uncertainty and subjectivity is that banks cannot predict when their charitable grants and donations will receive CRA credit. For purposes of such investments, the definition of “community development” is narrow and complex, and examiners cannot provide firm answers to banks seeking guidance on which investments might earn CRA credit. Banks often are blindsided when substantial donations benefiting low- and moderate-income individuals receive no or little CRA credit for the dollars invested.

Community organizations wishing to encourage partnerships with banks often promote the availability of CRA credit for monetary grants and donations, but experience has shown that these representations are unreliable, because the ultimate decision on CRA credit is not defined by clear rules and is instead left to examiner discretion. Clear criteria for these charitable grants and donations would benefit banks and encourage more productive investments beneficial to community organizations.

Help banks spend their time and resources in the community, not on excessive CRA documentation and examination preparation. Banks find themselves spending inordinate staff time and resources conducting due diligence, analysis, and documentation to prove that their activities and investments should receive CRA credit. When making investments, banks must obtain and compile complex economic information to prove that their investments meet the “community development” definition, and investments must continuously be tracked to document exactly where each dollar goes.

When seeking credit for volunteer activities, banks must maintain and monitor employee activity logs or diaries. To compile context information for examination purposes, banks must gather economic, demographic and other community information from several disparate resources. All the time and money spent in such documentation and paperwork instead should be deployed in banks' communities, through lending and investments, marketing to low- and moderate-communities, and promoting financial literacy and other worthy causes.

Rein in costly application processing delays. A significant contributor to the costs of CRA supervision is the potential for causing major delays to the processing of bank merger, consolidation, and other types of supervisory applications. The filing of just one nonsubstantive protest by one group can result in multiple months of delays in the processing of an application. In one case involving one of our members, such a delay resulted in losses of millions of dollars for an institution that had an “Outstanding” CRA rating.

While our members have entered into productive partnerships with many community organizations, we also have seen a small number of community groups leveraging the threat of such regulatory delays to demand certain investments from banks operating in their territories. We do not believe that the CRA's goals are met when banks are forced into making unwise loans or donations on such a basis, which ultimately serves only to skew charitable giving and move dollars from more worthy organizations and causes.

At the very least, banks that have achieved a top rating of “Outstanding” should be granted some immunity from such unsavory tactics. Applications from “Outstanding” banks should be subject to community input, but they should not be delayed merely due to the filing of a single, unsubstantiated protest.

Tailor CRA requirements for small banks and banks operating in rural areas. Many smaller banks, and particularly those operating in rural areas, have unique challenges. Applying the same CRA expectations to these banks can be unrealistic and counterproductive. For example, a bank in a rural area that does not technically include a mapped low- and moderate-income geography can make the majority of its loans to low- and moderate-income individuals, small businesses and farms — without receiving any CRA credit for that lending.

Additionally, small and rural banks are subject to intense competition from a number of financial service providers that are not subject to CRA requirements, from credit unions and Farm Credit institutions to Fintech companies with slick apps and nationwide marketing campaigns. Without the need to spend employee time and dollars on CRA supervision, these entities have a substantial advantage over banks and deploy large marketing budgets to gobble up investment opportunities and eat up banks' market share of low- and moderate-income customers in rural areas.

Modernize the thresholds. The CRA regulations include several thresholds that are ripe for modernization. The $1 million threshold for qualification as a small business loan is particularly out of date; if this amount had been adjusted for inflation since the CRA's enactment in 1977, it would currently stand at over $4 million. A similar adjustment should be made for the current threshold of $500,000 for small farm loans.

Additionally, the threshold for consideration as a “small” bank is very low, causing a bank with just over $1.2 billion in assets to be examined as a “large” bank, and a bank with just over $313 million in assets to be examined as an “intermediate small” bank. These thresholds also are ripe for modernization, and possibly should be replaced by examination standards based on business models and risk profiles rather than pure asset thresholds.

Thank you for your consideration of our comments, and please let us know if you have any questions.

Very truly yours,

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