233 South 13th Street, Suite 700
Lincoln, Nebraska 68508
Phone: (402) 474-1555
Fax: (402) 474-2946
www.nebankers.org

Extraordinary Service for Extraordinary Members

November 19, 2018

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

Re: Reforming the Community Reinvestment Act Regulatory Framework
Docket ID OCC–2018–0008

Dear Madam or Sir:

I write on behalf of the Nebraska Bankers Association (NBA) to submit comments on the Advanced Notice of Proposed Rulemaking to solicit ideas for building a new framework to transform or modernize the regulations that implement the Community Reinvestment Act of 1977 (CRA). The NBA is a trade association that represents 172 of the 180 commercial banks and seven savings institutions in the state of Nebraska.

On behalf of our members, we commend the OCC for its leadership in seeking input from the banking industry regarding ways to modernize CRA regulation and supervision. While our members remain committed to the goals of the CRA in meeting the credit and financial services needs of their customers and communities, CRA regulation and supervision has become overly complex, unpredictable, lacks transparency, and has not kept up with the manner in which our members customers expect to use technology to access financial products and services. In fact, CRA regulations may be restricting loans and investments in the very communities the law is intended to benefit, while imposing unnecessary and nonproductive compliance burdens on banks.

A. METRICS

The OCC has proposed that a metric be established by which regulators would measure a bank's CRA performance. Under this approach, a metric-based performance measurement system would contain benchmarks corresponding to the four statutory CRA rating categories. A metric-based system could very well be beneficial in helping banks manage and attain their CRA goals and objectives. Such a system would certainly have the potential to provide additional predictability and transparency to CRA regulation and supervision.

However, we do not believe that a "one size fits all" metric system would be appropriate, due to the variations in bank business models, size and type and geographical differences. A universal ratio would not take into consideration differences in a bank's customer base, local economies, or non-bank competition within the bank's market area. As a result, if consideration is to be given to establishing a metric-based system, we would suggest that multiple metric systems be created based on institution type, size business model, and regional differentiation.

B. ASSESMENT AREAS

The manner in which "assessment areas" are determined is in need of modernization. The current rules are inflexible and outdated. Since the concept of "assessment areas" is not a creature of statute, regulators have the flexibility to make necessary changes in this area of the regulation. While brick and mortar branches will continue to play an important role in delivering financial products and services, due recognition and CRA consideration should be given to alternative delivery channels.

While branches have traditionally been the predominant outlet for delivery of financial products and services, this is no longer the case. Branch utilization is waning as customers utilize direct deposits, remote deposit capture, and mobile/online banking for deposit-related transactions. On the loan side, customers need not set foot inside a branch facility as they submit loan applications and receive loan approvals through the use of online lending platforms.

A bank's size, strategy and business model dictate the parameters of its CRA programs and its Assessment Area. However, the bank, and not an examiner, should determine its Assessment Area based on the market that it can reasonably serve.

Due to the manner in which customers demand to have financial products and services delivered, banks should receive credit for making loans without having to have a physical structure within an assessment area in order for that assessment area to be part of the bank's primary service area. Small business loans to entities meeting the Small Business Administration standards for small businesses should receive credit, regardless of the bank's assessment area, or if they are made in low- and moderate-income areas.

As long as a bank has received a satisfactory or better rating on their previous CRA performance evaluation, the bank should receive positive CRA consideration for community development lending activities outside of their assessment area. While not requiring banks to engage in community development activities outside of their designated assessment areas, efforts by banks to provide funding in areas that have a demonstrated need should be recognized and rewarded.

C. EVALUATION THRESHOLDS

We would strongly recommend that the OCC consider raising the thresholds applicable to Small Banks and Intermediate-Small Banks. Banks exceeding the existing asset threshold to become an Intermediate-Small Bank encounter a much more robust set of regulation guidelines. With increasing consolidation within the industry and banks getting larger, the remaining "small" banks would benefit from a more streamlined CRA regulatory framework, that would result from an increase in the threshold levels for Small Banks and Intermediate-Small Banks.

D. SMALL BUSINESS/FARM LOAN CAPS

The Community Reinvestment Act should give greater consideration to bank small-business lending activities. The $1 million origination and $1 million gross revenue income caps exclude many loans to small businesses from being considered in CRA performance evaluations. As a result, these caps should be increased. We would also recommend additional flexibility in removing the exclusion from small business lending for lending secured by residential real estate. This change would recognize the fact that banks regularly accept residential real estate as collateral to secure small business loans.

Likewise, the $500,000 small farm loan limits are inadequate in light of the escalating size of farms and the cost involved in the acquisition of expensive farm machinery and equipment which are financed by our member banks and which frequently exceed the cap for small farm loans. Financing a tractor, planter and combine easily exceed the current small farm loan cap. Accordingly, the small farm loan cap should be increased, as well.

E. ACTIVITIES ELIGIBLE FOR CRA CREDIT

An overarching goal of CRA modernization should be to improve predictability. Allowing banks to know what will count for CRA credit is absolutely critical. Our member banks have cited many examples (volunteer activities by employees, contributions to nonprofit organizations, etc.) in which a particular activity counts for CRA credit during one exam period, with the same activity being disregarded during an ensuing exam period.

Banks, particularly those in the rural areas of our state, routinely engage in a multitude of financing and investment activities that are not eligible for CRA credit because they are not “targeted” to low- and moderate-income populations. (This narrow interpretation discounts many areas in which banks are contributing to the vitality of their communities, which indirectly benefit all citizens of their community, including low- and moderate-income individuals, by creating an environment in which businesses locate and grow, and providing valuable job opportunities for all individuals in the community). Consideration should also be given to providing CRA credit for loans and investments made by banks in rural areas suffering from population declines or in which incomes fall below state averages.

1. INFRASTRUCTURE

Areas in which bank lending and investment activities benefit the broader community and help their communities thrive without specifically targeting low- and moderate-income individuals include financing the construction of a local hospital or medical clinic. Our members have indicated that this type of activity has been disregarded for CRA credit because it benefits too many individuals in higher income levels and is not specially targeted to low- and moderate-income individuals. It can hardly be argued that the construction of, or improvements to, existing hospitals or medical facilities do not provide a significant, positive benefit to low- and moderate-income individuals in the community.

Similarly, providing financing for transportation facilities which necessarily benefit the entire community, but also provide valuable and economical transportation to employment and ride programs for seniors also benefit low- and moderate-income individuals within the communities. Typically, it is this group, seniors or low- and moderate-income individuals, that tend to rely on transportation facilities.

Large scale projects such as financing expansion after broadband, roads and infrastructure in the community, either through direct loans or through the purchase of municipal bonds, provide meaningful benefits to low- and moderate-income individuals while also benefitting the entire community. Banks, as one of the principal investors in local bond issues should receive credit for these investments.

2. WORFORCE DEVELOPMENT/WORKFORCE HOUSING

While receiving CRA credit for activities relating to low-income housing, banks should also be recognized with CRA credit for actions which promote community and economic development in rural states, such as investments in workforce development and job training, not simply those targeted to low- and moderate-income individuals and loans for workforce housing, both of which benefit low- and moderate-income individuals, as well as the community at large. Regionally, and even nationally, development of workforce and workforce housing, have become critical touchpoints for community development, particularly in the more rural portions of our country.

3. VOLUNTEER ACTIVITIES

Credit should be given for community activities in which banks invest, not only financially, but perhaps more importantly, through the involvement and engagement of its employees. These activities, such as supporting local school activities, sponsoring “Teach Children to Save” other financial literacy events and activities contribute to the vitality of their communities and provide both direct and indirect benefits to low- and moderate-income individuals.

4. NONPROFIT ORGANIZATIONS

Donations to many worthy local nonprofit organizations, which “serve” but do not “target” low- and moderate-individuals benefit the entire community and should receive CRA credit, accordingly. In addition, our member banks address their customer’s needs, particularly those low- and moderate-customers by making small-dollar loans that add little or nothing to the bank’s “bottom line,” which should be worthy of receiving CRA consideration.

5. FINANCIAL LITERACY EDUCATION ACTIVITIES

All financial literacy education activities should receive CRA credit, not just those activities directed at low- and moderate-income individuals or schools in which more than 50 percent of the students qualify for free or reduced-priced meals. This limitation is particularly unworkable in rural areas, which many only have a single high school and which draw students from across the demographic spectrum.

Many children, irrespective of their station in life, lack adequate training to manage their finances. Current CRA regulations do not properly recognize the efforts of banks in participating with local schools on financial literacy education.

A prime example of bank/local school collaboration involves the sponsorship by a number NBA member banks of the EverFi program in individual school districts, which provides students with interactive, innovative, financial education tools through which they acquire knowledge about basic financial skills to prepare them for the real world.

6. PRE-APPROVED CRA ACTIVITIES

We would recommend that regulators establish and provide an "including, but not limited to" list of pre-approved CRA activities (e.g. loan modifications, community development renewals and refinancing, loans in opportunity zones, small-dollar loans, community service activities, investments in local bonds, financial literacy education, etc.). In addition, the development of a review process for advance approval of innovative community development projects would also enhance predictability for the banking industry and encourage innovation that benefits the general community.

F. CONCLUSION

Technology has changed how banks do business and how they deliver products and services to their customers. The need to modernize CRA has existed for many years and technology is only accelerating this need for change. We applaud the OCC for reaching out to the banking industry for input on this issue of importance to our member banks and the customers they serve.

Very truly yours,

Richard J. Baier
President & CEO

/jsh