

April 8, 2020

Submitted Electronically

Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429
Attention: Comments, RIN 3064–AF22

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–2018–0008

Re: Joint Notice of Proposed Rulemaking and Request for Comment on Community Reinvestment Act Regulations, RIN 3064–AF22.

Dear Ladies and Gentlemen,

The Wisconsin Bankers Association (WBA) is the largest financial trade association in Wisconsin, representing approximately 220 state and nationally chartered banks, savings and loan associations, and savings banks. WBA appreciates the opportunity to comment on the Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation's (agencies) proposed revisions to the Community Reinvestment Act (CRA) regulations (proposed rule).

The agencies have proposed to clarify which activities qualify for CRA credit, update where activities count for CRA credit, create a new method for measuring CRA performance, and new CRA-related data collection, recordkeeping, and reporting requirements. While banks remain committed to the CRA goals, the regulation has become overly complex, unpredictable, and not kept pace with modern trends and technology. WBA appreciates the agencies' goal of revising the CRA framework to be more objective, transparent, consistent, and easy to understand, but is concerned that the revisions will create undue burden for financial institutions, potentially resulting in lower ratings that do not accurately reflect a bank's activity, and ultimately will not improve consumer access to credit.

Overall, Wisconsin banks support the vital role CRA plays in LMI communities, and have reported meaningful growth in loan activity and investments in low- and moderate-income communities since the law's enactment. CRA's objectives help banks better serve their communities and grow their core business. As such, any efforts to revise the CRA regulations must not only focus on local needs but bank input as well.

While Wisconsin banks remain committed to CRA and standby its purpose, many have expressed significant concern over the undue costs and burdens the proposed rule presents. Those banks are committed to the purpose of CRA and welcome revisions. However, as banks begin to estimate the costs to implement the proposed rule, they are finding them to be worrisome. Some examples of costs are provided in the comments below, but Wisconsin banks have reported that they anticipate the actual costs of implementation to be even higher than the estimate. WBA urges the agencies to revise the proposed rule to keep costs limited and presents the following comments as examples where changes and reduction in burden is needed.

Lastly, WBA urges all three banking agencies—the OCC, FDIC, and Federal Reserve—to develop a final CRA rule that is issued on an interagency basis. It is important that the agencies create a consistent examination across all financial institutions.

Qualifying Activities

A. Criteria for Qualifying Activities

The proposal would establish criteria activities that qualify for CRA credit, which generally would include activities that currently qualify for CRA credit and other activities that are consistent with the purpose of CRA but may not qualify under the current CRA framework. Qualifying criteria activities would include retail loans, community development loans, community development investments, and community development service. The agencies would also periodically publish a non-exhaustive, illustrative list of examples of qualifying activities, and establish a process for banks to seek agency confirmation that an activity is a qualifying activity.

WBA recommends that the proposed rule does more to promote investment in underserved rural areas. Many Wisconsin banks exist only in rural areas that are not low- and moderate-income (LMI) which would make obtaining credit difficult, despite meeting the needs of those communities. Those banks would need to rely upon performance contexts for those assessment areas which would maintain uncertainty while increasing costs and burden due to the needs to train and maintain the expertise necessary to write performance contexts.

B. Activities that Receive Partial Credit

The current framework includes a qualitative and quantitative assessment of the dollar value and number of CRA activities, but it does not set a threshold for the total dollar volume of CRA activities in evaluating CRA performance nor does it provide a uniform method for assessing banks' performance context. Under the proposed rule, banks evaluated under the general performance standards would determine their presumptive ratings at the bank level and in each assessment area by first calculating their qualifying activities values, which are the sum of the quantified dollar value of qualifying activities that receive credit. Generally, qualifying loans and community development (CD) investments would be valued based on their average month-end on-balance sheet dollar value. However, qualifying retail loans originated and sold within 90 days of their origination date would be valued at 25 percent of their origination value.

WBA is concerned with this qualification for loans sold on the secondary market and believes that originating banks should receive full credit for these loans. In these situations, it is the originating bank that performs the majority of the work, yet the proposed rule would only grant 25% credit. For example, Wisconsin banks working with the Wisconsin Housing and Economic

Development Authority (WHEDA) perform the majority of the work, but do not book the loan. WHEDA only underwrites the loan, and the originating bank would only receive 25% credit for its efforts. WBA recommends that the originating bank receive full credit.

This qualification will even result in some Wisconsin banks receiving zero credit. Because some WBA member banks do not book these loans to their system, the proposed rule would restrict them from receiving any credit at all. WHEDA's whole mission is to LMI borrowers, which aligns with CRA credit. Even still, despite the effort given by banks offering WHEDA programs which align directly with CRA's goals, because those loans are not booked, those banks would receive zero credit. The proposed rule should be adjusted to reflect the effort and service hours these banks give to LMI borrowers.

C. Confirmation Process and Illustrative List of Qualifying Activities

The proposed rule provides that the agencies would maintain a publicly available non-exhaustive, illustrative list of examples of qualifying activities that meet the criteria in the rule, as well as examples of activities that the agencies have determined, in response to specific inquiries, do not qualify. The proposal would also establish a process for a bank to submit a form through the agency's website to seek agency confirmation that an activity is a qualifying activity. WBA appreciates the agencies' efforts to provide this additional confirmation and method by which banks can obtain clarity as to whether activities count, and supports the confirmation process as proposed.

WBA members with limited branch networks have also expressed concerns as to the limitation on investments that would qualify under the proposal. Specifically, banks are concerned as to whether purchased investments such as mortgage-backed securities (MBS) or municipal bonds would qualify. The proposed rule indicates that the quantified value of qualifying activities to CDFIs, other CD investments (not including MBS and municipal bonds), and other affordable-housing related CD loans would be adjusted upward by a multiple of two. Section __.07(b)(1) of the rule provides double credit for activities provided to, or that support, Community Development Financial Institutions, except activities related to MBS. WBA requests clarity as to the credit for MBS. At a minimum, MBS should receive credit, and WBA recommends that MBS should not be excluded from double credit. Institutions with limited branch networks are not in a significant urban area, and thus, a community bank would have a difficult time making investment in a safe and secure manner under the proposal without credit for MBS.

Assessment Areas

The proposed rule would require banks to delineate one or more assessment areas. These areas would comprise of a facility-based assessment area encompassing each location where the bank maintains a main office, a branch, or a non-branch deposit-taking facility as well as the surrounding locations in which the bank has originated or purchased a substantial portion of its qualifying retail loans. Additionally, a bank that receives 50 percent or more of its retail domestic deposits from geographic areas outside of its facility-based assessment areas must delineate separate, non-overlapping assessment areas in the smallest geographic area where it receives 5 percent or more of its retail domestic deposits.

WBA requests clarity on the definition of substantial portion. The agencies have indicated an objective of creating an affirmative obligation for banks to conduct CRA activity in the communities where they operate, conduct a substantial portion of their lending, or collect a substantial portion of their deposits. In meeting this objectives, banks would benefit from a

specific definition of substantial portion. For example, does substantial portion consider activity based upon the dollar amount of a loan or the loan volume?

Separately, WBA institutions have reported that one of the more challenging aspects of the proposed rule would be taking the time to properly designate facility-based assessment areas and deposit-based assessment areas. Significant time and resources would be required to ensure institutions have the assessment areas properly designated in order to meet the performance thresholds and maintain a satisfactory or greater rating. Many banks are still working on specific numbers as to how much time and additional resources would be required to collect and maintain records on all qualifying and non-qualifying retail loans, assessment area lists, qualifying activities date, and the location of retail loans, and retail domestic deposit data, but it is clear that it will be significant.

In addition, the proposed rule would significantly reduce assessment areas in some cases. Some Wisconsin banks will suffer under the facility based assessment area's limitations to the county of the main office and branch locations, as well as deposit taking ATM locations. For example, one institution with a limited branch network and reliance on brokered deposits would create a significant restriction as they have limited areas with more than 5% domestic deposits. Because of this institution's limited branch model and geographic location, they are also limited in terms of counted activity, as they have few branches in LMI census tracts and distressed areas which would compound their difficulties under the proposed rule.

Performance Measurement

Under the proposed rule the agencies would set a bank-level presumptive rating and assessment area presumptive rating by evaluating whether a bank has met all the performance standards associated with a given rating category, at the bank level and in each assessment area. This presumptive rating would be developed based upon an evaluation of three measures.

Overall, WBA is concerned that the proposed approach will result in lower ratings. WBA recommends that the agencies, re-evaluate the performance measures by performing an assessment, together with the Federal Reserve, as to how the proposed rule would impact ratings.

WBA also has concerns regarding the performance context and recommends that the rule consider the economic factors of individual towns. Because not every MSA is the same, in order for the context to be effective, an objective look at the true needs of a community is required. WBA recommends more granularity in the performance context in order for banks to plan and be able to address the needs to the community without having to justify how those areas are banked. Wisconsin banks have also expressed concern that they may not know how the performance context will be viewed until evaluation. If the bank is required to prove the economic factors of each tract, the burden is increased exponentially, to the point where banks would require a full-time CRA expert dedicated to this purpose.

The retail lending distribution test also presents concerns. The retail lending distribution tests would evaluate the bank's originations in each assessment area during the review period using both a geographic distribution test and a borrower distribution test for small loans to businesses and small loans to farms and a borrower distribution test for home mortgage and consumer lending. To pass both the geographic and borrower distribution components a bank must meet or exceed the associated demographic comparator or the borrower peer comparator. This will require banks to capture peer bank lending data and correctly identify who the agencies deem

as peers. WBA recommends that the agencies provide peer data and make that data publicly available in order to help institutions meet the needs of the retail lending distribution test.

WBA members have also reported they will face challenges under the proposed retail lending distribution test as consumer loans (not mortgage loans) would be evaluated. For example, one institution's business model has changed and it is not their focus to dedicate resources and time to the retail product line. Ag and Small Business lending evaluation would pose additional issues for this institution as they would be evaluated to a standard that measures success based on equaling or exceeding either the demographic or peer benchmark, limited to its now more narrowly defined assessment area. This institution's statewide lending efforts, ag niche, lack of fully developed consumer lending, as well as its branch-lite model are not aligned with success under the new CRA rules, despite the fact that it has supported the ag industry through the most difficult times.

WBA members have also expressed concern with the CD minimums. Under the proposed rule, the quantified value of CD loans and investments divided by the average quarterly value of the bank's retail domestic deposits as of the close of business on the last day of each quarter of the evaluation period must meet or exceed 2 percent. In rural areas, with no LMI, or areas with no need of CD funding, banks will struggle to meet this minimum, requiring difficult adjustments in order to receive credit.

Data Collection, Recordkeeping & Reporting

Under the proposed rule, banks subject to the general performance standards must collect and maintain significant amounts of data and supporting documentation for all qualifying activities and certain non-qualifying activities conducted by the bank until the completion of its next CRA evaluation, including:

- A unique number or alpha-numeric symbol to identify the relevant loan file;
- Loan type;
- Date of (as applicable) origination, purchase, or sale if the loan is a retail loan and sold by the bank within 90 days of origination;
- An indicator of whether the loan was originated or purchased;
- Loan amount at origination or purchase;
- Outstanding dollar amount of the loan, as of the close of business on the last day of the month, for each month that the loan is on balance sheet;
- Loan location and associated FIPS code for the MSA, state, county or county equivalent, and census tract;
- Income or revenue of the borrower; and
- The qualifying activities criteria in the regulation that the loan satisfies or that it is on the illustrative list and whether it serves a particular assessment area, if applicable.

A bank must also collect and maintain data and supporting documentation for non-qualifying home mortgage loans and consumer loans:

- A unique identification number or symbol,
- The loan type,
- The origination date,
- The loan amount at origination,
- The loan location, and

- The income of the borrower.

For each community development investment, a bank would also be required to collect and maintain:

- A unique identification number or similar mechanism;
- Investment type;
- Date of investment;
- Outstanding dollar value of the investment as of the close of business on the last day of each month that the investment is on-balance sheet;
- The value of the monetary or in-kind donation;
- The investment location, and
- The qualifying criteria that the investment satisfies or that it is on the illustrative list and whether it serves a particular assessment area, if applicable.

For each qualifying community development service, a bank would be required to collect and maintain:

- The dollar value of the services,
- A description of the qualifying activity,
- The date the service was performed,
- The service location and the associated FIPS code for the MSA, state, county or county equivalent, and census tract, and
- The qualifying activity criteria that the service satisfies or that it is on the illustrative list.

Additionally, banks would be required to collect and maintain results of the borrower distribution and geographic distribution tests for each major retail lending product lines and the value of each retail domestic deposit account and the physical address of each depositor as of the close of business on the last day of each quarter during the examination period.

WBA anticipates that the recordkeeping and reporting requirements will impose significant burdens upon the majority of Wisconsin banks. Member banks have presented WBA with some minimum implementations they will be required to make in order to meet the proposed rule's recordkeeping requirements. These banks have overwhelmingly stated that these are estimates, and they expect them to increase:

- Add to staff,
 - One WBA member reported a specific estimate of costs as follows:
 - At least one more full-time equivalent employee at roughly \$100,000 per year based upon expertise necessary (for example, for performance context expertise could be in excess of \$100,000),
 - Training for geo-coding deposits, mapping errors, compilation of data at \$5,000, and
 - Redefining assessment areas through consultants at \$8,000.
- Increase software for data monitoring,
- Huge training costs and call report updates,
 - This cost and difficulty here is amplified due to the fact that the CRA reporting does not align with HMDA. Banks are concerned on how to utilize staff if there is less emphasis on HMDA for CRA purposes. To that extend, WBA recommends

the agencies use HMDA data instead of call report and utilize an ongoing, quarterly report balance.

- Data collection, audit, checkpoints, and accuracy testing.

The geocoding requirements for deposit accounts alone presents an enormous task in order to maintain a list. For example, it is common for customers have a P.O. box and nothing else. While the Bank Secrecy Act and Customer Identification Procedures (CIP) generally require an address, many Wisconsin banks have long-standing customers with account relationships from before CIP requirements were enacted. These banks are concerned with how to gather address and geocoding information in situations such as these and others, such as when an address changes, resulting in further data integrity review and costs.

WBA also recommends that consumer loan data collection remain optional, as it is under the current rule. This collection requirement will have a huge impact and banks should not have to collect and maintain a huge list of unnecessary reporting value that may serve no value for CRA purposes. WBA recommends that this requirement remain optional so that an institution might report when the information would be of value.

Conclusion

WBA supports the agencies efforts to modernize the CRA rules and reports success in achieving CRA goals amongst Wisconsin banks. However, WBA is concerned that the proposed rule will impose unreasonable burdens upon financial institutions. Costs, as discussed in greater detail above, include technology needs including significant system updates and possibly overhauls, special reporting software, and employee hours. WBA also emphasizes the need for the agencies to work together to issue a united rule.

WBA appreciates the opportunity to comment on the agencies' proposed rulemaking.

Sincerely,



Rose Oswald Poels
President/CEO