



February 2, 2021

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

Re: Notice of Proposed Rulemaking on Community Reinvestment Act Evaluation Benchmarks; Docket ID OCC-2020-0025

To Whom It May Concern,

The undersigned trade associations appreciate the opportunity to comment on the Office of the Comptroller of the Currency (OCC's) Notice of Proposed Rulemaking on Community Reinvestment Act Evaluation Benchmarks (NPR).¹ This rulemaking would establish a framework for setting the performance metrics for purposes of the agency's June 2020 CRA Rule. In conjunction with the NPR, the OCC issued an Information Collection Survey to gather bank-specific data to set the benchmarks, retail lending distribution test thresholds, and community development minimums under the June 2020 Rule.²

Our associations and members support the goals of CRA and believes banks have an affirmative obligation to help meet the credit needs of their communities, including low- and moderate-income (LMI) areas. We appreciate the OCC's efforts to modernize the regulations that implement the Community Reinvestment Act (CRA). The OCC's previous modernization efforts were driven by a desire to increase transparency and consistency, and often included thoughtful discussion and collaboration between the OCC, Federal Reserve, and Federal Deposit Insurance Corporation (FDIC). Towards these goals, and as we have emphasized previously, interagency rules that result in coordinated CRA policy will provide greater benefits to consumers and communities than a regulatory framework that is not aligned. Accordingly, we request that the OCC take the following actions in pursuit of a joint CRA rule:

- Renew the OCC's commitment to enact a joint CRA rulemaking with the Federal Reserve and FDIC which reflects the modernization of banking.

¹ 85 Fed. Reg. 78,258 (Dec. 4, 2020).

² 85 Fed. Reg. 81,270 (Dec. 15, 2020).

- In support of joint rulemaking, take action to withdraw the OCC’s June 2020 Rule or delay the compliance date for a period of at least two years.³
- Formally withdraw the CRA Information Collection Survey and the request for comment on the Paperwork Reduction Act clearance request⁴ in the spirit of the Biden Administration’s January 20, 2021 Regulatory Freeze Memo.
- Discontinue work to establish performance benchmarks for the June 2020 CRA Rule.

It is critical that the OCC take these actions immediately. To implement the June 2020 Rule in a timely manner, banks must begin preparations very soon, if have not already. As we have noted previously, the resources devoted to the implementation of the OCC’s June 2020 rule and corresponding data collection could be redirected to working with consumers and communities.

To provide additional context for our requests, we offer the following concerns and recommendations related to the Benchmarking NPR and its associated data collection.

I. The Information Collection Survey Requests Unavailable Data

Our chief concern with the information collection is the unavailability of the data that OCC seeks to collect. There are significant gaps between the data requested and the historical data that banks have—or in many cases will need to construct. As a practical matter, this will hinder the OCC’s ability to use the information collection to establish new and reliable performance metrics.

Specifically, banks lack data on how activities that will qualify for CRA consideration under the OCC’s new framework will factor into existing datasets. For example, the data collection will require that banks review non-qualifying loans under the prior CRA rule in order to determine eligibility (or partial eligibility) under the June 2020 Rule. To collect the data, banks will have to manually review books of closed loans to analyze whether the loan will receive CRA consideration under the new rules. This will require extensive hands-on review and analysis of supporting loan documentation; it is not a process that can be automated.

Banks will also be unduly tasked with working to identify eligible community development loans, especially as they review data on commercial lending. Often, this data is housed on multiple platforms within a single institution and will require banks to load data from quarterly backups for each dataset the OCC seeks. This will impose a disproportional burden, both in expense and time, for all banks responding to the information collection. The patchwork approach to collecting and collating this data can also greatly impact its reliability and consistency.

Further, banks typically do not retain the requested information related to small business and consumer loan applications. For those that do, they do not retain it for the full timeframe requested by the OCC. Moreover, historically, banks have reported loan volumes, not application

³ This will require issuance of a notice of proposed rulemaking requesting comment on extending the compliance date.

⁴ 85 Fed. Reg. 81,270.

volume, as requested by the OCC. Accordingly, this data is likely to be unavailable at most institutions.

Finally, this information collection will require banks to geocode their deposits and report them at the county level. The way that banks report deposits varies, with most reporting to the branch to which deposits are assigned. Requesting this data at the county level will require banks to newly geocode this information, which is an extremely burdensome process, and for many banks will require them to implement the June 2020 Rule years ahead of the January 2023 implementation date.

As banks, consumer advocates, and regulators work toward a unified CRA framework, it would be wasteful and unproductive for banks to devote the personnel and monetary resources necessary to construct the requested historical data for purposes of implementing the OCC's June 2020 Rule. Any new CRA benchmarks or performance measures that are developed as part of the interagency process should leverage existing data as much as possible. To the extent that new data is needed to calibrate modernized CRA regulations, regulators should collect that information on a go-forward basis rather than requiring banks to engage in a labor-intensive exercise of attempting to reconstruct it.

II. The Proposed Benchmarking Methodology is Fundamentally Flawed

We have significant concerns with the proposed methodology for setting the CRA performance measures for purposes of the June 2020 Rule. First, as described above, the data submitted in response to the information collection survey will be incomplete. Relying on this data to establish benchmarks and thresholds will result in performance metrics that may not reflect the full amount or nature of CRA loans and investments made across the country.

Second, the OCC proposes to establish benchmarks that reflect the historical percentages of Outstanding and Satisfactory ratings. This approach would set arbitrary limits on ratings distributions. The June 2020 CRA Rule did not consist of minor amendments. Rather, it was a major regulatory overhaul. As a result, an appropriate approach would be to set any benchmarks, thresholds, and minimums after the OCC has relevant data from future activity. Only at that point should the OCC examine the relevant data to set peer comparisons and measure each institution's relative performance.

Third, the proposed benchmark methodology may arbitrarily punish institutions whose CRA performance has not declined. The OCC proposes that banks whose performance decrease by ten percent or more after the establishment of initial benchmarks will face the risk of having their assigned ratings adversely impacted.⁵ However, the June 2020 Rule makes significant changes to the activities that qualify for CRA credit, which will change the way OCC regulated institutions manage their CRA portfolios. By the OCC's own admission, the new framework may result in significantly different evaluations of bank performance than the current framework.⁶

⁵ NPR at 78,262.

⁶ *Id.*, stating, "The OCC recognizes that for any well-defined set of benchmarks, thresholds, minimums, and CRA presumptive ratings, the current CRA activities of some banks will fall below, while the current CRA activities of other banks will exceed, the chosen set of benchmarks, thresholds, and minimums. The former set of banks would be expected to increase CRA activities, whereas the latter set of banks could potentially decrease CRA activities

Because banks could fall below the benchmarks, the OCC should refrain from penalizing these institutions until enough time has passed to ensure benchmarks, thresholds and minimums are set properly.

Fourth, it is critical that stakeholders be provided with the opportunity to comment on the benchmarks, thresholds, and minimums that the OCC would establish based on the data that banks would submit as part of the data collection survey. CRA stakeholders have a vested interest in ensuring that the new CRA performance metrics are appropriate. Accordingly, the OCC should provide public notice and comment on any performance measures, whether it be for purposes of implementing the June 2020 Rule or for a joint rulemaking undertaken in conjunction with the Federal Reserve and the FDIC.

III. Conclusion

Once again, we reiterate our appreciation for the OCC's work to create a CRA framework that is more objective, transparent, and concise. However, we strongly urge the OCC to publicly pursue a joint CRA rulemaking with the Federal Reserve and the FDIC and to formally announce that it is discontinuing work to establish the performance metrics under the June 2020 Rule. With these requests, we reaffirm our commitment to engaging in a constructive dialogue and to engaging with the banking agencies to develop an updated CRA framework that benefits communities, banks, and regulators alike.

Sincerely,

American Bankers Association
Association of Military Banks of America
Bank Policy Institute
Community Development Bankers Association
Consumer Bankers Association
Housing Policy Council
Mortgage Bankers Association
National Association of Affordable Housing Lenders
U.S. Chamber of Commerce

while maintaining the same rating or achieving a better rating under the new benchmarks, thresholds, and minimums.”