Board of Governors of the Federal Reserve System

Re: **Docket No. R-1769 – RIN 7100-AG29** August 4, 2022

Community Reinvestment Act GeoDataVision Comments #5

We submit our fifth set of comments regarding the CRA NPR. As we have said in previous comments there are many good ideas in the proposed Rule that we support. However, we believe there are certain aspects of the proposed Rule that are seriously flawed and that will undermine the effectiveness, if not the integrity, of the ratings derived therefrom. These comments will focus on the major flaws in the proposed Rule. In several of our previously submitted comments we addressed some of the very good ideas in the NPR. If we had more time, we would have liked to have elaborated more completely about some of those very good improvements. But we feel the priority should be to address and correct the major flaws in the proposed Rule.

Our concerns are focused on the proliferation of the new “Retail Lending Assessment Areas” and the “Outside Retail Lending Areas” as well as enormous number of steps and computations required under the Retail Lending Test and the consolidation of the data over an undefined “evaluation period”.

The OCC just distributed a Retail Lending Test Info Graphic that presents an oversimplified version of all the steps and calculations that must be done. It creates the impression that only a few steps need to be taken to compute a bank's performance. But it omits some very important steps and calculations.

For example, the first thing a bank must determine is what qualifies as a major product line which can vary from market to market and year to year. The graphic assumes that already has been done. The graphic also glosses over the fact that it depicts computations for only a single Assessment Area. The computations must be repeated for each and every facility-based and retail-lending assessment area and then for potentially thousands of loans in hundreds of "outside retail lending areas" to be computed at the "institution level". It also omits that results must be accumulated at the state level and multi-state MSA level before getting to the

"Institution Level" at which point the conclusions-to-scores-to-AA-Major-Retail-Lending Products-scores and then AA Major Retail Lending conclusions converted back to scores again which are finally accumulated at the Institution Level to arrive at a Retail Lending Test performance rating. Does that sound confusing? Well, it's a recitation of the various steps needed to compute Retail Lending Test performance as explained in more detail below.

Even the steps depicted in the graphic appear to be misleadingly simple. In the example, it is assumed that there are 6 major retail lending product lines. So, step 1 involves (a) gathering the benchmarks, (b) computing the calibrated conclusion ranges, and then (c) comparing a bank's penetration rates to the "calibrated" standards. This means 4 comparisons (low- and moderate-income borrower metrics and low- and moderate-income geographic metrics for consumer loans as well as borrower and geographic metrics for small business and small farm loans) for each of the 5 major product lines and 2 comparisons (only LMI geographics) for the multifamily mortgage line. That adds up to 22 determinations of "conclusions" each of which must then be converted to a "score" (22 more comparisons). Having computed a score for each major product line for each metric, each score must then be weighted by a demographic variable (22 more computations). Then the weighted scores for the borrower and geographic metric must be converted to a simple average product line score for each of the 5 major product lines by taking the weighted geographic and a weighted borrower score and applying a simple average (the multifamily mortgage score is done only at the geographic level so there is no need to compute a simple average. The next step would be to take all the simple average product line scores (6 in the example) and weigh them by applying the relative volumes (based on dollars) in a given assessment area. This means 6 more computations to arrive at the score (another computation) that will be the basis for converting (another computation by comparing to the table "Conclusions derived from scores" in the example) to the "Recommended Retail Lending Test Conclusion" for all the bank's major product lines in a given assessment area.

Can someone add up all the steps and calculations just for one assessment area?

And the foregoing must be repeated for potentially hundreds of facility-based and retail lending assessment areas and then for any MSA or statewide non-MSA in the *entire country* that is *outside the retail lending areas* where a bank extends any major product line loans (no minimum threshold). This last step could involve hundreds of computations accumulated to the "institution level". Not only that, but the concept of Outside Retail Lending Areas means a single major product line loan extended in a given MSA (or statewide non-MSA) would be compared to the "tailored benchmarks" derived from an entire MSA! So, a single loan in a middle-income tract in Los Angeles, County could result in a substantial non-compliance conclusion in that MSA. That is not only lacking common sense, but it could also create seriously misleading "conclusions". Why mandate all the extra work for a relatively small volume of loans (the NPR cites that only 10% of mortgages and 16% of small business loans are generated in what would be considered as "outside retail lending areas")?

This all means that even modestly large banks may have thousands and thousands of computations. The ABA in testimony sent to the House Financial Services Committee cited a community bank with 3 facility-based assessment areas that will have 60 retail lending assessment areas: 20-fold increase in the assessment areas to be individually evaluated!

Now add to the foregoing that the computations are to be done on a consolidated basis over an undefined and open-ended "evaluation period" which could be any number of years. Then consider what happens when demographics change in the middle of an evaluation period!

How can any large bank manage its CRA risk under such a system? And if bankers will have trouble implementing and understanding the system how much more confusing will it be to the general public?

How can all these concerns be addressed?

First, eliminate the concept of retail lending areas and outside retail lending areas. This will save an enormous number of calculations. Furthermore, the focus of the Community Reinvestment Act always has been on the local communities where banks are chartered to do business, and which for 45 years has been interpreted by all the Agencies to mean where banks maintain deposit-taking facilities. If the Agencies are concerned that banks may be taking deposits from communities far removed from their local branches, then perhaps deposit-based assessment areas could be justified (as had been proposed by all 3 Agencies in previous proposed rules in recent years). But the Agencies have never published information or cited any anecdotal evidence suggesting that such phenomena exist (except for Internet banks and Credit Card banks). The dozens of banks whose deposit geographic distribution we studied in 2021 averaged more than 85% of their depositors located within 10 miles of their branch systems.

Aside from the inconsistency of the new AA's with historic practice the adoption of these new AA's ought to cause much concern in local communities where banks do have their branches. The mandated new AA's will distract a bank's focus on its local community and will dilute the importance of serving local communities by coercing banks into putting time and resources into communities remote to their branch footprint.

<u>Second, eliminate the distinction between lending in low-income and moderate-income communities and low- and moderate-income borrowers</u>. Again, this will substantially reduce the number of calculations to determine a performance conclusion and performance ratings. It is not necessary to be so granular.

<u>Third, make CRA scores based on the Retail Lending Test reportable annually and publish those scores while eliminating the concept of multi-year evaluation periods</u>. This will avoid the complications of ever-changing demographics that are incompatible with consolidating performance over multiple years. We recognize that the OCC has been using the multiyear Evaluation Period model for some time, but when a demographic changes the practice in the field has been to break the Evaluation Period into separate periods. The problem is that when there are multiple Assessment Areas some areas may have changes in demographics when others don't (for example, when OPM changes MSA delineations, only the counties in those MSA's and statewide non-MSA's where those MSA's are located change). This means that there can be different Evaluation Periods for different Assessment Areas for a bank. Performance evaluations should be done on annual

results to assure appropriate demographics and market data are matched on a timely basis against a bank's performance.

Fourth, eliminate the Major Product Line concept. In previous comments we pointed out that the implementation of this concept may eliminate CRA evaluation of the leading small business lenders in some areas. We substantiated this observation with examples based on the 2020 HMDA and CRA A&D data revealing that very major small business lenders in various counties would not have their small business lending activity in those counties qualified as a "major product line" using the proposed 15% rule.

Our company, GeoDataVision, reviewed the 2020 HMDA and the 2020 CRA Disclosure data and identified the Top 10 Small Business lenders in each and every county in the USA and Puerto Rico. We then captured the HMDA-reported lending activity of those banks in the same counties and combined the HMDA mortgage dollars and Small Business loan dollars extended by those same institutions to establish the value of each bank's retail lending activity in each county. Following that we computed the 15% threshold for each Top Ten Small Business lender in each county. Finally, we compared each Top Ten Bank's small business loan volume ($) to the 15% threshold, and ***we determined that in 1,332 counties there were 2,189 Top Ten Small Business lenders (i.e., the leading sources of small business credit in each county) whose small business loan volume in those counties was not sufficient to meet the 15% criteria in the Proposed Rule. This means in thousands of cases the leading small business lenders would not have their small business lending activity subject to CRA examination!***

In some markets the small business loan volume of even the Top Ten lenders is quite small. But in other markets, the disqualified (from the Retail Lending Test due to failing to meet the "Major Product Line" standard) small business lending activity is shockingly large. For example, in Los Angeles California, JPMorgan Chase extended $1.9 billion of small business loans during 2020 and was ranked #2 for Small Business loan volume in LA County that year, but that activity falls short of the 15% standard to qualify as a Major Product Line for the Bank (JPMorgan originated $13.4 billion of HMDA-reported mortgages in Los Angeles

County that same year). This means in that market JPMorgan's small business lending activity is potentially not subject to CRA examination under the proposed Rule.

This would be a total contradiction of what CRA has stood for during the last 45 years. Community leaders and bankers should express their objections to the concept of major product line. If a bank is subject to CRA examination all its retail product line loans should be evaluated and weighted based on the relative dollar volume of activity. When a bank has minimal activity of a certain retail credit product its impact on the bank's composite performance rating would be minimal (as per the weighting of performance conclusions to derive the "Major Product Line Average Score").

The concept of major product line as proposed also creates the potential for some products qualifying in some years and not in other years. This makes it very difficult for a bank to manage its CRA responsibilities because, until the "evaluation period" is defined, it won't be possible to determine with certainty which loans in which communities may qualify for recognition as major product line loans.

Fifth, the Retail Lending Screen is too complicated and compromised by the nature of the deposit data that includes some geocoded deposits combined with SOD data. The old fashion 50% rule should continue to be applied. If a bank fails that standard, then the fallback benchmark should be a bank's retail loans relative to retail deposits (SOD) compared to all institutions that maintain deposit-taking branches within the Assessment Area.

Respectfully,

Len Suzio

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GeoDataVision
Changing the Way You View Data
Compliance Tools for Compliance Professionals
Make your job easier - save time and improve your performance!