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January 19, 2018

Kipp Kranbuhl  
Deputy Assistant Secretary for Small Business,  
Community Development and Housing Policy  
United States Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, D.C. 20220

Dear Mr. Kranbuhl,

The Independent Community Bankers of America (ICBA)<sup>1</sup> thanks you for the opportunity to share community banker perspectives on the Community Reinvestment Act (CRA) with you and your colleagues on September 18, 2017. We applaud your initiative to modernize the CRA statute, harmonize regulatory oversight and reduce regulatory burdens for community banks.

As a follow up to our meeting, we would like to highlight some areas that are of particular concern to community banks. The CRA was enacted in 1977 to encourage depository institutions to help meet the credit needs of the communities in which they operate, including low- and moderate-income neighborhoods, consistent with safe and sound banking operations. Today, CRA and its implementing regulations require the bank regulators to assess the record of each bank in fulfilling its obligation to the community and to consider that record in evaluating and approving applications for charters, bank mergers, acquisitions, and branch openings.

#### Geographical Assessment Areas

The CRA and its implementing regulations state that, “a bank shall delineate one or more assessment areas within which the [agency] evaluates the bank's record of helping to meet the credit needs of its community. The [agency] does not evaluate the bank's delineation of its assessment area(s) as a separate performance criterion, but the

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<sup>1</sup> The Independent Community Bankers of America®, the nation's voice for more than 5,700 community banks of all sizes and charter types, is dedicated exclusively to representing the interests of the community banking industry and its membership through effective advocacy, best-in-class education and high-quality products and services. With 52,000 locations nationwide, community banks employ 765,000 Americans, hold \$4.9 trillion in assets, \$3.9 trillion in deposits, and \$3.3 trillion in loans to consumers, small businesses, and the agricultural community. For more information, visit ICBA's website at [www.icba.org](http://www.icba.org).

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[agency] reviews the delineation for compliance...”<sup>2</sup> There has been a growing trend recently of regulators reinterpreting geographies and redefining a bank’s assessment area for the bank during an examination, rather than – as the regulations state – deferring to the bank to delineate its own assessment area. Regulators are shifting assessment areas from low- and moderate- income areas to majority minority areas as well as from census tracts to whole counties.

Such shifts at times do not correspond to a bank’s community and create uncertainty for community banks. At a minimum, these unilateral changes from the regulators complicate CRA planning and compliance for community banks, as the bank is operating according to the assessment area it has delineated, but then may be judged during an exam according to an assessment area redefined by examiners. Assessment areas should be identified and delineated by community banks rather than the agencies so that community banks can plan accordingly.

### Consistency and Transparency

Community banks have a strong track record of meeting the credit needs of the communities in which they are located and take their CRA obligations very seriously. However, community banks are seeing an inconsistency in the examination process, which creates uncertainty and confusion for community banks. The inconsistent manner in which loans and services get CRA credit occurs between examinations within an agency as well as between agencies makes it difficult for community banks to determine how well they are meeting their CRA requirements. ICBA has heard examples from community banks in which specific documents would be required to get CRA credit for a particular loan or service during one examination, but then those documents would not be sufficient in the following examination. Similarly, a particular loan or service would receive CRA credit at one bank, but not another. Examination and supervision of CRA compliance should be consistent across exam cycles as well as across agencies.

This inconsistency makes it incredibly difficult for community banks to plan and implement their CRA requirements responsibly. ICBA urges the agencies to be more transparent during the examination process and provide more guidance to identify what loans and services get credit as well as what data and documentation are needed. This will enable community banks to plan and adjust their procedures accordingly.

Currently, examiners will not share their method for determining CRA credit. There is virtually no feedback during or following an examination until the actual performance evaluation is shared with the bank. Examiners often do not share which community development loans they accepted, their investment tests or services. Some community banks have reported that they have attempted to reconcile the agency’s evaluation report with what they submitted to learn what was included and what was excluded so that they could make adjustments going forward. However, they have yet to be able to identify what is included and excluded, despite specifically asking their examiners. ICBA recommends that guidance be issued to identify what data and documentation are

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<sup>2</sup> 12 CFR 25.41 (a), 12 CFR 228.41(a), 12 CFR 345.41(a)

accepted so that community development loans, service hours, and investments receive CRA credit.

### Asset Thresholds Should be Adjusted

The bank regulators evaluate a bank's record of helping to meet the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with safe and sound operations. The CRA regulations use a tiered approach to evaluating banks. Different evaluation methods are used based on the bank's size and how it operates. The regulations provide:

- Small banks—currently those with assets of less than \$1.252 billion—that are not intermediate small banks are assessed under a streamlined method that focuses generally on their lending performance.
- Intermediate small banks—a subset of “small banks” with assets between \$313 million and \$1.252 billion—are assessed under the small bank lending test and a community development test that evaluates community development lending, qualified investments, and the community development services they provide to their communities.
- Large retail banks are evaluated under three tests. All lending activity, including community development loans, is evaluated under the lending test. Qualified investments are evaluated under the investment test. Retail and community development services are evaluated under the service test.

Even though these asset thresholds are adjusted annually based on the Consumer Price Index, the thresholds do not reflect the extensive consolidation and growth that has occurred in the industry since 1977 when CRA was adopted. Accordingly, ICBA recommends the asset thresholds be increased to reflect the consolidation and growth of the community bank industry.

For “small banks,” we recommend increasing the asset threshold to include all banks with assets less than \$5 billion that are not “intermediate small banks.” For “intermediate small banks,” we recommend increasing the asset threshold to include banks with assets between \$1.5 billion and \$5 billion. “Large banks” would include all banks with assets of \$5 billion or more. Once changed, all of these asset thresholds should be subject to annual adjustments based on the percentage increase in total assets of all insured depository institutions.

By expanding the number of banks that fall under the definition of “small bank” and “intermediate small bank,” the regulators would significantly diminish the CRA regulatory burden for most community banks. Raising these thresholds should not impact the ability of the regulators to adequately assess community banks for their CRA performance.

### Credit Unions Should Not Be Exempt from CRA

While we understand the Treasury's initiative is to focus on potential changes to the CRA regulations, we would be remiss if we did not include community bankers' strong objection to credit unions' statutory exemption from CRA.

Credit unions, fintech companies, and any financial firm that serves consumers and small businesses should be subject to CRA in a manner comparable to, and with the same asset-size distinctions, as banks and thrifts.

Credit unions that perform “bank-like” functions and offer comparable products and services are not subject to CRA as community banks are. Additionally, the Office of the Comptroller of the Currency’s plan to adopt different CRA standards for fintech companies that may seek a national bank charter poses regulatory and consumer-protection concerns.

This uneven playing field places community banks at a competitive disadvantage and inhibits their ability to serve their customers and their communities.

ICBA will continue to strongly recommend to Congress that credit unions be required to comply with CRA requirements in the same manner, and with the same asset size distinctions, as banks and thrifts.

Thank you for your initiative to modernize CRA and to reduce regulatory burden on community banks. Please contact me if you have any questions or comments at [Lilly.Thomas@icba.org](mailto:Lilly.Thomas@icba.org) or at 202-659-8111.

Sincerely,

Lilly Thomas  
Senior Vice President and Senior Regulatory Counsel