



February 16, 2021

Via Electronic Delivery

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

Re: CRA Information Collection Survey, OMB Control No. 1557-0348

Ladies and Gentlemen:

The undersigned trade associations appreciate the opportunity to comment on the Office of the Comptroller of the Currency's (OCC's) request for input on the renewal under the Paperwork Reduction Act of 1995 (PRA) of the OCC's information collection titled "CRA Information Collection Survey" (Survey).¹ The OCC notes that this is a renewal of an emergency clearance issued by the Office of Management and Budget (OMB) on November 25, 2020. The OCC has issued this information collection in order to gather bank-specific data on which to base the new CRA performance benchmarks under the agency's 2020 CRA rule (2020 Rule).

Updating the CRA regulations is a priority for our respective associations—one that has become even more important as the COVID-19 pandemic has highlighted disparities in economic opportunity and accelerated existing wealth gaps, including the racial wealth gap. However, we have significant concerns with the CRA information collection survey and reiterate our request that it be withdrawn.²

Our concerns are three-fold. First, we object to the status of the PRA request as a "renewal" of an existing clearance; the information collection request submitted by the OCC on November 24, 2020 to the OMB did not meet the criteria for an emergency designation under the PRA. Second, 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. Therefore, it would be wasteful for banks to devote the personnel and monetary resources necessary to respond to this information collection

¹ 85 Fed. Reg. 81270 (December 15, 2020).

² Joint trades letters to the OCC dated January 11, 2021 and February 2, 2021.

when the OCC's new CRA regulation may never be fully implemented. Third, the information collection asks for historical data that is not available and will need to be constructed.

For these reasons, we repeat our request that the OCC take the following actions with respect to the 2020 Rule and the CRA information collection:

- Announce publicly that the OCC intends to coordinate with the Federal Reserve and FDIC on a joint CRA rulemaking.
- In support of joint rulemaking, take action to delay the compliance date of the agency's 2020 Rule for a period of at least two years.³
- Formally withdraw the information collection in the spirit of the Biden Administration's January 20, 2021 Regulatory Freeze Memo.
- Announce publicly that it is discontinuing work to establish performance benchmarks for the 2020 Rule.⁴

Background

On June 5, 2020, the OCC published in the Federal Register a new framework for analyzing the CRA performance of banks with assets of \$2.5 billion or more that are not wholesale or limited purpose banks and do not operate under an approved strategic plan. However, the final rule did not provide the CRA evaluation measure benchmarks, retail lending distribution test thresholds, and community development minimums because the OCC did not have sufficient historic data upon which to base the new performance measures. The OCC seeks to issue this Survey so that the agency has sufficient data upon which to base the new metrics.

The Paperwork Reduction Act (PRA) governs how federal agencies collect information from the American public.⁵ The PRA was designed, among other things, to "ensure the greatest possible public benefit from and maximize the utility of information created, collected, maintained, used, shared and disseminated by or for the Federal Government" and to "improve the quality and use of Federal information to strengthen decision-making, accountability, and openness in Government and society." Before requiring or requesting information from the public, the PRA requires Federal agencies to (1) seek public comment on proposed collections and (2) submit proposed collections for review and approval by OMB. OMB's Office of Information and Regulatory Affairs (OIRA) reviews agency information collection requests for approval or disapproval. In sum, the PRA aims to ensure that agencies are good stewards of the public's time and resources, do not overwhelm them with unnecessary or duplicative requests for information, and make decisions based on high-quality data.

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

⁴ February 2, 2021 joint trades letter to the OCC.

⁵ 44 U.S.C. chapter 35; see 5 CFR Part 1320.

The Emergency Clearance is Designation is Unwarranted

The PRA sets out processes designed to ensure that both the value of collecting the information and the public burden of providing that information are considered carefully. Under certain circumstances, an agency head or designee may request expedited OIRA review of an information collection request, also known as "emergency" review. OIRA may grant expedited review if the collection is essential to the mission of the agency, clearance is needed sooner than the normal timeframe, and the agency cannot reasonably comply with the PRA's normal clearance procedures because:

- Public harm is reasonably likely to result if normal clearance procedures are followed;
- An unanticipated event has occurred; or
- The use of normal clearance procedures is reasonably likely to prevent or disrupt the collection of information or is reasonably likely to cause a statutory or court ordered deadline to be missed.

Internal delays are not considered to be emergencies, and agencies are instructed to plan ahead for the PRA process.⁶

The OCC's November 24th request for emergency clearance did not meet these criteria. First, the OCC's request was not necessitated by an unanticipated event. The OCC's Supporting Statement accompanying the agency's request asserts that the ordinary clearance process would delay the agency's ability to use the information collection to complete its new regulatory framework, thereby negatively impacting the country's economic recovery from the COVID-19 pandemic. By the time the OCC requested an emergency clearance, the pandemic had been underway in the United States for nine months; at that point, the pandemic was not an "unanticipated event."⁷

Second, we note that the OCC publicly released its new CRA rule on May 20, 2020, but did not apply for an emergency clearance until November 24th—*more than 6 months later*. The need to collect the data to inform the specific thresholds, benchmarks, and minimums under the new rule was not a surprise—OCC had been working to gather this type of information since late 2019 and discussed the lack of data in the preamble to the 2020 Rule. As such, the agency had more than ample time to proceed with this data collection using standard procedures, which would have afforded stakeholders the opportunity to comment on the burdens imposed and to suggest appropriate changes to the Survey to reduce those burdens and maximize the utility of the information collected and used by the agency. It is an exaggeration to claim that normal clearance processes would have prevented or disrupted the collection of information and that public harm would result.

Over the past 2 ½ years, the OCC has invested tremendous time and effort in modernizing its CRA regulations. As a result, we appreciate the agency's desire to collect the data necessary to complete rulemaking associated with the new CRA regulatory framework. However, it is critical that policymakers adhere to the criteria established in the PRA for granting emergency clearances; compliance with this statute

⁶ See <https://pra.digital.gov/clearance-types/>.

⁷ On March 13, 2020, President Trump declared COVID-19 a national emergency, and within a week, states began issuing stay-at-home orders mandating that residents stay at home except to go to an essential job or shop for essential needs.

should not evolve into a check-the-box exercise that circumvents the statute’s requirement that agencies consider the costs and burdens of their data requests.

Finally, we are concerned by the OCC’s communications with banks about the Survey. Initially, the OCC informed banks that they were required to respond to the Survey by May 31, 2021, yet made no mention of the public notice and comment process that was underway—or that the Survey may be revised following the public comment process. While we are pleased that the agency subsequently has stated that responses will not be required by the May 31st deadline, we have serious concerns with the lack of transparency in the OCC’s communications and compliance with the PRA.

Focus on a Unified Rule, Not an Unproductive Information Collection

In addition to not meeting the criteria for an emergency clearance, the information collection would be wasteful. As we have emphasized throughout the CRA modernization process, it is imperative that the bank regulatory agencies update the CRA framework on an interagency basis. Indeed, a joint rule is a priority for *all* CRA stakeholders. As banks, consumer advocates, and regulators work toward a unified CRA framework, it would be imprudent to require that banks devote resources to construct the historical data necessary for the OCC to finalize a regulatory framework that may never be fully implemented.

The 2020 Rule overhauls CRA data collection and reporting and will require banks to implement significant procedural, operational, and technological changes in order to access and report the required data. Recognizing the magnitude of the work required, the OCC gave banks until January 2023 to comply fully with the 2020 Rule. Yet, as a practical matter, responding to the Survey is the equivalent of requiring banks to implement the new data reporting elements *before* the new rule’s compliance date. It will require substantial investment of resources that should be dedicated to helping customers and responding to the COVID-19 pandemic, not constructing data to comply with a regulation that both banks and community advocates believe should be replaced with an interagency rule.

We also note that responding to this information request would be particularly burdensome for community banks with assets above the \$2.5B threshold that are considered “large” banks subject to the data collection. Many of these institutions have only one or two staff dedicated to CRA compliance, data analysis, and programming. These individuals work across multiple business lines and deal with multiple data systems. For these banks, the information collection would be especially costly and counterproductive.

The Information Collection Survey Requests Unavailable Data

In addition to having significant concerns regarding the utility of the Survey and its approval under an emergency clearance, we have a number of substantive concerns regarding the data that the OCC seeks to collect. Our chief concern is that much of the information requested is incompatible with the manner in which bank systems are structured, which creates significant gaps between the data requested and the data that banks have.

As noted previously, the PRA requires agencies (and OIRA) to consider the need for and utility of each individual paperwork requirement, to accurately assess the costs of each paperwork burden, to balance these

costs and benefits, and to minimize the overall burden of the request. To assist the OCC with this assessment, we offer the following input collected from our members:

First, banks will have to construct much of the requested data, which means that data governance teams will need to scrutinize bank responses in a manner that will add significantly to the time and personnel required to respond to the OCC's request. Moreover, we are very concerned that basing performance metrics on constructed data will hinder the OCC's ability to use the information collection to appropriately calibrate performance metrics for the 2020 CRA Rule.

Banks will need to manually review the books of closed loans to analyze whether the loan will receive CRA consideration (or partial consideration) under the 2020 Rule. This will require extensive hands-on review and analysis of supporting loan documentation; it is not a process that can be automated. Identifying eligible community development loans will be especially challenging. Most banks do not identify community development loans as such in their commercial loan systems, which means that banks will have to manually identify community development loans in each commercial loan platform. Importantly, many banks have multiple systems to support commercial lending, meaning that this manual review process would need to be repeated for each of those platforms in order to identify all loans that would qualify for community development credit under the 2020 Rule. For example, some banks book small business loans of over \$1M on a small business platform. Other banks also have separate systems for commercial real estate. In sum, banks book community development loans on multiple systems across the bank and those loans are not identified as such for CRA purposes. The seemingly simple task of identifying and classifying community development loans will, in reality, be highly manual and complicated, which could impact the data's reliability for purposes of calibrating the 2020 Rule's performance measures.

Second, in addition to identifying all CRA eligible loans, the Survey would require a bank to report quarter-end balance information for CRA-qualified loans at the county level. Banks cannot simply pull this information from their core processor with a few key strokes. Rather, to obtain balance information beyond the current quarter, a bank would have to use quarterly backups to reload the entire data set of loans, identify such loans as CRA-eligible, determine the quarterly balance for such loans, and conduct the requisite geocoding in order to report data at the county level. A bank would have to take these steps for each quarter and for each of the data sets that the OCC requests—a highly laborious and expensive process in the midst of maintaining business as usual during a pandemic.

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

Fourth, not all banks collect the hours that bank employees devote to community development services; many banks track by number of services provided, not hours.

Fifth, 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 it will require them to implement the 2020 Rule years ahead of the January 2023 implementation date.

Considering the information above, the OCC's estimate of the time that it will take for institutions to respond to the Survey is woefully inadequate. The labor required to identify loans and investments eligible for CRA consideration under the OCC's new framework, analyze quarterly back-ups, and conduct geocoding and data integrity reviews will far exceed the OCC's estimate of 146,000 hours. While our members have not formally estimated the time it will take to complete these tasks, we are confident that it will far exceed the OCC's estimate of 1,390 hours per bank.

Finally, the true costs and burdens imposed must be balanced with the utility of the information collected. As noted above, we are very concerned that basing performance metrics on constructed data will hinder the OCC's ability to use the information collection to appropriately calibrate performance metrics for the 2020 Rule. Moreover, assuming the OCC pauses implementation of the 2020 Rule and works with the other agencies on a joint rule, the utility of the information collection is even more questionable.

Conclusion

For the reasons described above, we urge the OCC to withdraw its information request and focus its CRA modernization efforts on working with the Federal Reserve and the FDIC to adopt joint CRA regulations. To be clear, we strongly support modernizing the regulations that implement the Community Reinvestment Act and reiterate our commitment to engaging in a constructive dialogue with the banking agencies and other CRA stakeholders in order to develop an updated regulatory framework that serves communities, banks, and regulators well. However, proceeding with the proposed Survey would be counterproductive and would not advance an interagency effort.

Sincerely,

American Bankers Association
Association of Military Banks of America
Bank Policy Institute
Community Development Bankers Association
Consumer Bankers Association
Independent Community Bankers of America
Mortgage Bankers Association
National Association of Affordable Housing Lenders
National Bankers Association