August 3, 2022

James P. Sheesley
Assistant Executive Secretary
Federal Deposit Insurance Corporation,
550 17th Street, NW, Washington, DC 20429

Attention: Comments RIN 3064- AF81

Mr. Sheesley:

The Minnesota Bankers Association (MBA) appreciates the opportunity to write this letter in response to the request for public comment on the proposed rule for the modernization of the Community Reinvestment Act (CRA) regulations by the Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), and the Office of the Comptroller of the Currency (OCC) (together "Agencies") on June 3, 2022.[1] The MBA has elected to write two separate comment letters on the proposed rule. This letter focuses on large banks, while the other comment letter focuses on community banks.

The MBA is Minnesota's largest banking trade group, representing more than 95 percent of the state and national banks in Minnesota. The MBA is "The Champion for Minnesota Bankers," providing education programs, legal and compliance support, and government relations advocacy that helps ensure banks are best positioned to serve their customers and communities. The MBA's membership includes banks of all sizes, including several large national banks and a handful of regional banks; although, the vast majority of our members are community banks.

The proposed rule requests input on numerous questions. We at the MBA have chosen to comment on several issues due to their potential impact on large banks.

I. Retail Lending Assessment Areas

The first issue the MBA is providing feedback on to the Agencies is the Retail Lending Assessment Areas (RLAAs), which is the most significant issue impacting large banks. The Agencies have proposed the RLAAs as a means to better evaluate activity outside of the branch footprint. The MBA thinks that the increased compliance burdens from creating and maintaining RLAAs is not offset by establishing more accurate criteria to assess a bank's record of helping to meet the credit needs of its local communities. The MBA proposes two alternatives, the first of which is the preferred option. The MBA believes it would

[1] Community Reinvestment Act, 87 Fed. Reg. 33,884 (proposed June 3, 2022) (to be codified at 12 C.F.R. pt. 25, 12 C.F.R. pt. 228, 12 C.F.R. pt. 345).

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be preferrable to eliminate the RLAAs, keep the existing facilities-based lending areas under the current rules, and include the Agencies' proposed nationwide out-of-footprint area.

The problem with keeping the RLAAs is that it will make CRA compliance extremely complex and burdensome. Large banks will need to add a significant number of new assessment areas. This will lead to unintended consequences that will not benefit low- and moderate-income (LMI) consumers, because these large banks may pull back lending to minimize the creation of new RLAAs. The alternatives the MBA proposes for evaluating out-of-footprint lending at the institution level would still satisfy the Agencies' goals for assessing lending beyond facility-based assessment areas, absent of course the need to add RLAAs, and it would still represent a significant expansion in the current evaluation process that the agencies seek. This can be accomplished while helping the industry manage the additional burdens that will result from CRA modernization.

Another option is to raise the proposed 100 mortgage and 250 small business loan thresholds in the proposed rule to 500, which would be in-line with institutional partial exemptions under the Home Mortgage Disclosure Act (HMDA).[2] However, this alternative is not as ideal as the first option because it still results in the unnecessary creation of more RLAAs.

II. Retail Lending Test

The next issue that the MBA is commenting on is the retail lending test and the impact this test has on large banks. Before discussing the problems with the retail lending test there are a couple points on which the MBA agrees with the Agencies. The MBA agrees with the Agencies' idea of being able to combine product categories and having options to choose them. This would also help reduce burdens in connection with the data collection requirements. The MBA also supports the view that determining major products should be at the institution level rather than the Assessment Area (AA) level for the facility-based AA and the RLAA. But as noted *supra* in Part I, this depends on if those are included in the final rule. Finally, the MBA agrees with the Agencies intent to make evaluations more transparent and predictable.

Next, there are multiple issues the MBA has with the retail lending test. Under the proposed rule no large bank would earn an Outstanding rating on the retail lending test, which is 45% of the overall rating. Table 9 of the preamble in the proposed rule shows that no banks with more than $50 billion in assets would have achieved an Outstanding conclusion on the proposed Retail Lending Test, the most heavily weighted part of the proposed large bank framework, if the framework had been in place from 2017 to 2019. Because of the weight associated with the test it would not be possible to achieve an Outstanding rating overall. This could lead to banks no longer striving to be Outstanding and rather, just accepting a Satisfactory rating. This potentially means less service to LMI communities and

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[2] See 12 C.F.R. 1003.3(d)(2)-(3).

individuals. Thus, the test as proposed discourages service to LMI communities and individuals, rather than encouraging excellence since the rating is unachievable as proposed.

Additionally, as proposed downgrades can occur for more situations, such as fair lending concerns, which is not a factor in the current rule. The retail lending volume screen is also problematic because banks will receive a low rating for not meet the 30% threshold. Holding government and large corporate, commercial deposits could skew the screen calculation. This poses a particular issue for large banks, so it should be excluded or there should be harmony and consistency with lending and deposits in the ratio calculation. Although it should be incorporated in the test rather than be a separate screen.

The MBA supports the current $1 million gross annual revenue threshold for small business. That threshold should not be linked to the threshold under the Consumer Financial Protection Bureau's proposed rule for section 1071, which may be $5 million. The reason is that many large banks only have system codes for gross annual revenues that indicate whether a business is above or below $1 million, but not the actual thresholds.

The MBA thinks that purchased loans should be included in the retail lending test calculation for the first purchase of a loan. Large banks partner with state housing finance programs, often serving as a master servicer. This is a vital service for LMI areas. This benefit to LMI communities should result in appropriately recognizing first purchased loans.

The MBA requests that the Agencies include additional flexibility than what the proposal rule provides for including mortgage-backed securities (MBS). It is difficult to determine the origin of the loans in the MBS pool in these situations. Large banks tend to hold these assets for a long period of time, which should address the Agencies' concerns with including MBS.

Lastly, including automobile lending, particularly indirect automobile lending, may cause banks to step back from that business. This gap then will leave that product to non-banks as the only alternative, which are less regulated and not covered under CRA. Banks have little control in how dealers present their bank as a financing option, or which lender a buyer chooses. Automobile lending applies to a depreciating asset, as opposed to assets that build wealth, which the CRA was meant to address.

III. Retail Products and Services Test

The MBA has a few points to make on the retail products and services test. As to the provisions that refer to extended and weekend hours, there needs to be consideration for different business models (*e.g.*, a grocery store in middle- to upper-income areas). The MBA opposes collecting and reporting income on deposit accounts. Large banks often do not have this information; but even if they did, it would need to be updated regularly to be meaningful. The MBA believes the Agencies should preserve the option of tracking services to LMI individuals who use non-LMI branches. Further, the retail

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products and services test metrics are needlessly complex and do not add value in measuring bank performance. However, the MBA does support the approach of using qualitative in addition to quantitative benchmarks, if banks are given the opportunity to explain when efforts fall short.

IV. Qualifying Community Development Activities and Impact Review

For this issue, the MBA thinks the proposed rule has a few challenges for large banks. The requirement that activities be in "conjunction" with government plans in order to qualify for CRA should either be deleted entirely or be "consistent" with government plans. Also, the requirement to not "displace or exclude" LMI residents would be difficult to show and would essentially require banks to "prove a negative."

The MBA believes there is a need for flexibility in making determinations about "naturally occurring affordable housing," with thresholds raised from 60% to 80% area median income (AMI), and as high as 120–140% AMI for high-cost areas. Lastly, purchased MBS should be included as well. Banks hold these loans to maturity, so it would be difficult to manage compliance if only originated loans were included.

V. Data Collection and Reporting Requirement

These are very extensive, so banks welcome changes that reduce burdens. But the MBA is specifically concerned with information being reported more often than annually, and reporting should begin at the beginning of the calendar year so that there are no partial-year data reporting.

VI. Transition

The transition period for a final rule should be at least two years after publication in the Federal Register. Banks will need to implement new systems. Banks will need to determine whether the new systems can or should be proprietary or can rely on vendors. When relying on a third-party vendor, banks will have less control over the new system's capabilities and development schedule. There will also need to be extensive bank staff training efforts on the final rule and using any new systems. Banks will likely rely on outside groups for these training efforts, since they will necessarily focus first on implementing systems compliant with the new requirements and later address their broad training needs. Any reliance on third parties will increase the response for all banks in appropriately implementing the new requirements. Finally, the more reasonable two-year minimum timeframe would permit greater interaction between banks and prudential regulators and avoid the likelihood of unintentional non-compliant action.

VII. Concerns with Ratings

The MBA is concerned that the proposed rule increases benchmarks. Instead, the MBA thinks future incremental changes in benchmarks should be used and then reviewed later for possible increases at a later point once a benchmark's achievability, if any, can be determined. The MBA also thinks the Agencies should apply the 60% rule only to facility-based AAs. This requires a bank with at least 10 assessment areas to receive a Low Satisfactory rating in 60% or more of its assessment areas at a minimum to receive an overall Satisfactory rating. Large banks may be objectively "large" nationwide but may have only a modest presence in a specific facility-based AA. An adverse CRA decision on facility-based AAs can impact the branching decisions and decrease necessary competition to address the credit needs all customers, including LMI customers. Banks need flexibility in providing "performance context" data that is tailored for a bank's specific situation.

VIII. Other

Finally, the MBA is of the opinion that CRA cannot be viewed as the only solution to address wealth distribution. Other tools are needed, such as Project REACh.

Again, the MBA appreciates the opportunity to provide these comments. If you would like additional information, please do not hesitate to contact legal@minnbankers.com.

Sincerely,

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