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August 4, 2022

James P. Sheesley, Assistant Executive Secretary
Attention: Comments RIN 3064-AF81
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

Re: Joint Notice of Proposed Rulemaking – Request for Comment: Community Reinvestment Act RIN 3064-AF81

Dear Madam or Sir:

The Iowa Bankers Association (IBA) is a trade association representing 98 percent of the almost 300 state- and national-chartered financial institutions and federal thrifts operating in the state of Iowa. The IBA submits this letter to the Federal Deposit Insurance Corporation in response to its request for comment related to the Community Reinvestment Act ANPR. The Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation and the Office of the Comptroller of the Currency (Agencies) are seeking comment to amend their regulations implementing the Community Reinvestment Act of 1977 (CRA). The IBA thanks the Agencies for their leadership and diligence in drafting a joint proposal on which stakeholders can provide feedback.

ASSET THRESHOLDS

The proposal attempts to tailor CRA requirements based on bank asset size. IBA members are in support of this effort to tailor the proposal to avoid imposing additional regulatory burden on the smallest banks by increasing the Small and Intermediate Bank asset levels and adjusting them annually. Most Small and Intermediate Banks in Iowa have only one or two employees responsible for CRA in addition to various other duties. As such, IBA members support the increase in asset threshold for small banks to at least $600 million. For Large Banks, while the $2 billion asset threshold is an improvement from the existing CRA rule, this asset threshold is not indicative of even the smallest of large banks. IBA member banks urge the Agencies to increase the asset threshold defining a Large Bank from $2 billion to $10 billion to create parity with several others regulatory definitions such as those laid out in the Dodd-Frank Act. Lastly, IBA members agree Small and Intermediate Banks should not have to collect and report new data points. While they generally support the flexibility provided by the proposal to allow Intermediate banks to be evaluated under the Retail Lending Test and the existing Community Development Test, our members note concerns articulated in this letter regarding the structure and complexity of the Retail Lending Test.

PUBLIC FILE

IBA members generally support the proposed requirements for the bank's CRA Public File to make the bank's CRA public file more accessible to the public. The proposal allows banks with a website to include its CRA public file on its website. The proposal would continue to require the bank to provide notice in the public areas of its main office and each of its branches.

ASSESSMENT AREAS

Facility Based Assessment Areas

Existing CRA regulation largely limits the evaluation of a bank's CRA performance to those geographic locations where the bank has a physical presence, as well as the surrounding geographies in which the bank has originated or purchased a substantial portion of its loans – referred to in the proposal as Facility-Based Assessment Areas (FBAA). This definition was developed when brick and mortar branches were the primary means of delivering financial products and services. The proposal retains this requirement and allows Small and Intermediate Banks to use partial counties when determining their FBAA. IBA members support this decision as it would be difficult for smaller banks to serve larger geographical areas. For example, the City of Des Moines resides in Polk County. Some smaller banks have a satellite branch at the very edge of Polk County since they serve communities that are located immediately adjacent to, but not within, the Des Moines metro. It is not reasonable for these banks to take the entire county as their assessment area. Furthermore, regulators should err on the side of providing flexibility by allowing banks of all asset sizes to select either full counties or partial counties. Allowing these banks to continue to define their FBAA by census tract more accurately depicts their expected market area provided these assessment areas do not reflect illegal discrimination or arbitrarily exclude low- or moderate-income census tracts. In addition, the proposal to designate full counties could have an adverse effect based on the performance metrics used for the Retail Lending Test and potential examiner expectations related to community development services.

Contrary to the flexibility given for assessment areas, the proposal sets the benchmarks for other tests at the county level. IBA members request the Agencies consider benchmarks lesser than full counties for the other tests to more accurately compare these banks to those in similar areas.

Retail Lending Assessment Areas

To reflect the changes in how banking services are delivered, the proposal would require Large Banks (defined as those with more than $2 billion in assets) to delineate a new type of assessment area, known as a Retail Lending Assessment Area (RLAA), when the bank has a concentration of home mortgage or small business lending where it does not have a physical presence. These RLAAs would consist of any MSA or the combined non-MSA areas of a state in which the bank originated at least 100 home mortgage loans outside of its FBAAs ***or*** at least 250 small business loans outside of its FBAAs in each of the two preceding calendar years. Importantly, a bank would be evaluated for its CRA performance for ***all*** of its major product lines in each RLAA, regardless of whether the bank surpasses ***either or both*** of the proposed thresholds. IBA members generally agree that a modernized CRA regulatory framework should no longer rigidly adhere to physical presence as the sole basis for a bank's CRA evaluation. However, our member banks have significant concerns with the RLAA criteria as proposed. While it appears workable in theory, the 100/250 loan triggers pose several practical problems.

- *First*, the loan volumes that would trigger a RLAA are not sufficiently material (e.g., they will not likely represent a significant market presence). As proposed, many banks would be required to create dozens—and in some cases hundreds—of new assessment areas in geographies where

the bank does not have a meaningful market presence or that are not central to the bank's broader business strategy. For example, one of our member banks would go from three assessment areas today to over 60 assessment areas under the proposal. This increase in assessment areas may dilute the effectiveness of CRA activity by potentially incentivizing a bank to focus its community development activities in a particular census tract when it could instead make a significant difference for LMI individuals and communities in a larger geographical area. For this reason, our members recommend that the Agencies re-calibrate the proposal to create a regulatory framework that incentivizes banks to focus on locations where they can make a meaningful impact toward closing the wealth gap. One of our largest members proposes eliminating the RLAA requirement stating "keeping the RLAAs will make CRA compliance extremely complex and very burdensome as banks will need to add a significant number of new assessment areas. This will lead to unintended consequences that will not benefit LMI consumers and could cause banks to pull back lending to minimize the complexity of establishing new RLAAs". This bank stresses that evaluating out-of-footprint lending at the institution level satisfies the Agencies' goals for evaluating lending beyond FBAAs and would still represent a significant expansion of the current evaluation process but in a manageable and meaningful way. Allowing banks to concentrate their efforts in areas where they have more substantial activity than the 100/250 loan thresholds is more likely to achieve the goals of CRA than requiring them to spread their efforts across numerous new assessment areas.

A related problem is that the proposal would trigger coverage for all of a bank's major product lines in each RLAA once the bank meets the trigger for only one product line. For example, if a bank makes 125 mortgage loans (thereby triggering an RLAA) and 75 small business loans, both products would be subject to the Retail Lending Test (provided the 75 small business loans are a major product line), even though the bank's small business lending volume is insufficient to trigger an RLAA on its own. In the spirit of focusing on lending that is material to the bank and to the community, IBA members recommend that the Retail Lending Test not apply to a product that, by itself would not trigger a RLAA designation. In this same vein, they recommend that any final rule carefully calibrate what constitutes a major product line.

- *Second*, the proposed thresholds could unintentionally incentivize banks to curtail retail lending in locations that are incidental to the bank's business strategy and where the bank does not actively market its loan products. For example, one of our member banks exceeds the 100 mortgage loan threshold in Iowa City even though the bank does not have branches in Iowa City and does not market its mortgage products there. Nonetheless, the bank would be required to add the Iowa City MSA as an RLAA and meet the same CRA performance benchmarks as banks with a branch in the city or that market their products in the area. Under these circumstances, some banks may choose to take a hard look at the costs and benefits of accepting loan applications from, and managing a CRA program, in a geography that is incidental to the bank's business strategy.
- *Third*, while the Agencies sought to tailor the proposal to reflect a bank's asset size and capacity, the proposed FBAA structure and weighting of the Retail Lending Test will disadvantage some bank business models. For example, one of our member banks has only one retail lending product. This book of business represents less than 2% of the bank's total loan portfolio, yet the bank would be required to add dozens of RLAAs as a result of this single product offering. Moreover, this product line would comprise 45% of the bank's entire CRA rating even though it represents less than 2% of the bank's total loan portfolio. To be effective and workable, a final rule must take these types of situations into account.
- *Fourth,* the proposal would establish requirements to develop a RLAA where the bank originated at least 100 home mortgage loans or at least 250 small business loans outside of the bank's

FBAAs that are originated in non-MSA areas of the state as one RLAA. Iowa is a rural state with only seven MSAs consisting of 20 counties. That results in 79 counties in non-MSA areas. As written, the proposal seems to require banks that trigger the thresholds collectively in these non-MSA areas to now include the entire state in the non-MSA RLAA; a concept that is unreasonable and would deflect significant attention away from servicing the bank's customers within its intended assessment area.

In light of the foregoing concerns, the Agencies might evaluate non-facility-based assessment area lending at the bank level rather than creating many new RLAAs. Another option would be to adjust the triggers for delineating a RLAA based on a material loan count *and* market share. Regardless of the approach that the Agencies ultimately take, it is imperative the Agencies be mindful of the unintended consequences that could result from major revisions to the assessment area construct.

RETAIL LENDING TEST

The proposal would raise the bar for the performance on the Retail Lending Test. As a result, an Intermediate or Large Bank would have to exceed past performance to attain the same CRA rating that it received on a prior exam. The Agencies believe that these heightened performance standards would incentivize banks to increase lending to underserved communities. This is an admirable goal. However, as explained below, the proposed benchmarks and ratings methodology may actually create a *disincentive* for certain types of lending and investment. For this reason, the Agencies must ensure that new benchmarks and ratings methodologies are calibrated appropriately.

- *First*, in an attempt to standardize CRA evaluations, the proposal would apply the same performance metrics to all banks operating in an assessment area, regardless of whether the bank has a digital or a physical presence. Regulators should instead ensure any final rule does not competitively advantage or disadvantage certain business models.
- *Second*, the proposal is weighted too heavily on the Retail Lending Test, which would constitute 45% of a bank's CRA rating. Under this approach, a bank could not achieve an overall rating of Outstanding unless it receives an Outstanding rating on the Retail Lending Test, regardless of the bank's performance on the Community Development Test. The Agencies believe that a weighting of 45% appropriately emphasizes the importance of retail lending to LMI individuals and communities. However, over-emphasizing the Retail Lending Test could have unintended consequences. For instance, if a bank believes an Outstanding on the Retail Lending Test is unattainable, that bank may choose *not* to pursue an Outstanding on the Community Development Financing Test since the bank would not be capable of achieving an overall rating of Outstanding due to its Retail Lending Test rating. In other words, the proposed benchmarks could create a *disincentive* for banks to stretch and do more community development lending and investing. This would result in a highly undesirable outcome, particularly for communities that desperately need revitalization and are located outside of the assessment areas of most banks.
- *Third*, the proposed Retail Lending Test benchmarks may be unachievable and could incentivize unsafe and unsound risk taking. To obtain a High Satisfactory rating, a bank must meet 110% of the market benchmark or 90% of the community benchmark. For an Outstanding rating, a bank must meet 125% of the market benchmark or 100% of the community benchmark. Importantly, the proposal would evaluate banks on a relative basis rather than an absolute basis. IBA members are concerned the proposed performance standards could create an unrealistic target, whereby it will be mathematically impossible for all banks in an assessment area to meet the proposed thresholds. In other words, the proposed performance standards would create an

automatic bell curve of ratings distributions within the Retail Lending Test. In fact, according to the preamble to the proposed rule, 34% of banks would fail the Retail Lending Test in their RLAAs and 39% would only receive a Low Satisfactory rating.

IBA members strongly disagree with this approach. CRA performance benchmarks should be vigorous, yet achievable, and the expectation should be that all banks can meet or exceed the established standard—as is the case with all other consumer protection and safety and soundness regulations. Artificially high benchmarks could incentivize banks to engage in activities that pose undue risk in an attempt to meet the regulation's performance standards. This would be disastrous for consumers, communities, and could increase risk in the financial system. Lastly, as stated above, the Retail Lending Test should not apply to a product that, by itself, would not trigger a RLAA designation.

Our members do support the provision that applies to Intermediate Banks and the Retail Lending Test that states when an Intermediate Bank fails the retail lending volume screen, the bank would not be limited to receiving only a conclusion of "Needs to Improve" or "Substantial Noncompliance" on the Retail Lending Test. Instead, the bank's outcome on the retail lending volume screen would be reviewed as an additional factor indicative of its lending performance and considered when reaching the Retail Lending Test conclusion. Members suggest this same provision should apply to banks of all asset sizes.

SMALL BUSINESS LENDING

Conceptually, IBA members support aligning the definitions of small business for purposes of CRA and Dodd-Frank Section 1071. However, as stated in our comment letter related to the Section 1071 proposal, our members strongly encourage the Agencies to define a small business as one that has Gross Annual Revenue of $1 million or less in the preceding fiscal year. Even if this alignment is made, this CRA proposal still does not address the fact that banks would still be required to report small business loans for Call Report purposes due to the different requirements. The Agencies need to reconcile this discrepancy prior to finalizing this proposal.

COMMUNITY DEVELOPMENT LOANS

Per the proposal, a bank may receive community development consideration for a loan, investment, or service that has a primary purpose of community development. The proposal includes several additional definitions of Community Development Activities. IBA members support the additional definitions for Community Development Activities in the proposal. However, our members stress that the final rule should allow banks of all sizes to classify multifamily loans either as small business loans or community development loans – not just Small and Intermediate Banks.

In addition, the proposal provides for full credit when a loan, investment, or services has a primary purpose of community development. For affordable housing, this would apply when the majority of dollars, beneficiaries, or housing units are identifiable to the purpose of community development. For activities that do not meet the "primary purpose" requirements, pro-rata credit is allowed – but only for affordable housing activities. These activities would only receive credit for the percentage of housing units that are affordable. IBA members strongly encourage the Agencies to apply the pro-rata concept to all other qualified community development activities and not exclusively to affordable housing activities. Many rural banks in Iowa have assessment areas that include no low- or moderate-income tracts. For these banks, it is extremely difficult – if not impossible- to prove the "primary purpose" as almost all service providers in these areas do not collect income information when providing assistance.

Benchmarks and Rating Methodology

IBA members believe the performance benchmarks are overly complicated and may be unachievable for some banks. In addition, the Agencies should not hold RLAA banks to the same performance standards in an assessment area as a bank that has an extensive branch network in that location.

Furthermore, our members caution the Agencies about the limitations of using census tracts to determine whether banks are getting products to LMI households. As you move away from metropolitan areas, there is less concentration and fewer LMI census tracts. In fact, in Iowa – as stated above - there are some bank assessment areas that contain no LMI census tracts – not because there are no LMI borrowers but because these census tracts are not *primarily* made up of LMI individuals. Not all LMI individuals live in LMI tracts. This is also true for multifamily loans.

Lastly, while IBA members support combining the Community Development Lending and Investment tests, the community development activity preapproval process, community development illustrative list of qualifying activities and credit at the bank level for community development financing outside of a bank's assessment area, they disagree with the weighting. Our members believe the weighting should be 50% for Retail Test and 50% for the Community Development Test with some community development services being applied to the Retail Test. Also, when looking at naturally occurring affordable housing, the Agencies propose rent for the majority of units in the multifamily property should not exceed 30 percent of 60 percent of the area median income for metropolitan areas or nonmetropolitan counties. Rather than 60 percent as stated in the proposal, the percentage of area median income should remain at 80%. Moderate income is defined in CRA as income that is 80% or less of the area median income. Lowering this arbitrarily to 60% for multifamily affordable housing creates inconsistency and confusion and unnecessarily excludes borrowers between 60% and 80% in this test. The 60 percent threshold is also consistent with the housing goals for Fannie Mae and Freddie Mac.

Adequate Transition Period

The Agencies propose to incorporate a transition period comprised of multiple "applicability dates." For the most burdensome aspects of the proposal (including RLAAs; new performance tests, standards, and ratings; and data collection and reporting requirements), the Agencies would provide a transition period of only one year. Twelve months is insufficient to implement the proposed changes for a rulemaking this comprehensive and complex.

In addition to parsing the highly-technical rule, banks will need to:

- Apply new and complicated formulas to their existing CRA programs;
- Establish administrative oversight over newly designated RLAAs and ensure that they are properly incorporated into the bank's CRA program;
- Ensure that all assessment areas (new and existing) meet the rule's newly-established performance benchmarks;
- Implement major data collection, recordkeeping, and reporting mechanisms that significantly exceed existing CRA requirements, including the establishment of data integrity procedures and controls; and
- Evaluate the cost-benefit of certain business lines and geographic markets in light of the burden that the new RLAAs and performance metrics create.

CRA implementation will be a very heavy lift on its own. But, the proposed 12-month implementation period is especially unrealistic given that banks will likely be required to implement the new CRA

regulation in tandem with the CFPB's anticipated final Small Business Lending Data Collection Rule (Dodd-Frank Act Section 1071). For many banks, the same staff will be charged with implementing both of these new regulations, particularly as it pertains to overhauling technology systems and implementing new data collection and reporting mechanisms. This dual implementation will make the time pressures of a 12-month implementation period particularly acute.

Banks are not the only entities that must dedicate substantial resources to meet the time pressures of a new CRA rule. Banks are dependent on software vendors and core providers to furnish services that will be necessary to implement a new CRA framework. Regulators should solicit input from these third parties regarding the time that will be necessary to develop the requisite coding, programs, and systems necessary for banks to implement a final rule. In the case of prior rulemakings involving HMDA and TRID, bank implementation and testing of vendor products was delayed because third-parties lacked sufficient time to develop systems changes for their clients. IBA members urge the Agencies to draw upon these experiences when establishing the implementation period for the final CRA rule.

For the foregoing reasons, IBA members request the Agencies provide an implementation period of at least two years following publication of the final rule in the *Federal Register*. Our members also recommend the Agencies provide extensive interagency training and support to help banks understand and apply a new regulatory framework. Examiner training should also be conducted on an interagency basis. Lastly, for banks subject to reporting requirements, banks would be required to collect new data starting 12 months after the publication of the final rule. The Agencies stated they believe that the applicability date for this provision would give banks sufficient time to revise their systems for data collection and develop new procedures for implementation of the proposed regulatory framework. IBA members strongly disagree with this statement based on their own history of implementing changes to major regulations. Not only do they request additional time for implementation as stated above, our members also urge the Agencies to amend the proposal regarding the start date of reporting. Members strongly request a start date equal to the beginning of a calendar year after the implementation period has expired and not mid-year. For example, if the proposal was finalized August of 2023 and a two year implementation period was granted, the date of first reporting would be January 1, 2026 with first exams under this final rule beginning no earlier than January 1, 2027.

CRA-LIKE REQUIREMENTS TO CREDIT UNIONS

Financial institutions, as defined in the CRA, are no longer the exclusive provider of financial services. With the proliferation of electronic delivery channels, other entities are actively involved in providing financial products and services and serving the communities in which they are located, including credit unions. These entities have both a facility and electronic presence in most communities in the United States. As such, credit unions should be subject to the same regulations and reporting enabling the Agencies and consumer groups to monitor their activities (or lack thereof) related to low- and moderate-income individuals in their communities. History has shown that credit unions have increasingly targeted wealthy communities and are a contributing factor to widening economic inequality. While IBA members understand the Agencies do not have the direct authority to amend this definition within the CRA, they strongly encourage the Agencies to engage policymakers in discussions regarding CRA modernization, urging them to reconsider the entities that have community reinvestment responsibilities.

CONCLUSION

Thank you for the opportunity to comment on potential revisions to the regulations that implement the CRA. IBA members support the CRA statute's objective of encouraging banks "to help meet the credit

needs of the local communities in which they are chartered, consistent with safe and sound operation of such institutions". There is also consensus that the Agencies need to ensure CRA expectations are transparent and that examiners interpret and apply CRA regulations consistently. Updates to this regulation are long overdue, and the industry remains optimistic that it is possible to improve the effectiveness and administration of CRA on an interagency basis. Some elements of the proposal, as stated above, would more appropriately accomplish the goals of the CRA; however, IBA members are concerned that others will result in outcomes contrary to the Agencies' intent – especially those related to the Retail Lending Test and the new metrics for CRA performance. IBA members encourage the Agencies to read and carefully considers ALL comments submitted from industry stakeholders.

Once again, we thank the Agencies for their thoughtful consideration of our comments. For questions, please contact Julie Gliha at 800-532-1423, ext. 2981 or via the email address below.

Respectfully submitted by,

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