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August 5, 2022

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

VIA EMAIL TO: comments@fdic.gov

Attention: Comments RIN 3064-AF81

Dear Mr. Sheesly,

The National Association of Industrial Bankers (NAIB) appreciates the opportunity to submit comments on the Notice of Proposed Rulemaking promulgated by the Board of Governors of the Federal Reserve System the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency ("Agencies") relating to amendments to the regulations implementing the Community Reinvestment Act (CRA), issued May 5, 2022.

NAIB is the national association for industrial banks (IBs). First chartered in 1910, industrial banks operate under several titles: industrial loan banks, industrial loan corporations, or thrift and loan companies. These banks engage in consumer and commercial lending on both a secured and unsecured basis. They do not offer demand checking accounts but accept time deposits, savings deposit money market accounts, and NOW accounts. Industrial banks provide a broad array of products and services to customers and small businesses nationwide, including in some of the most underserved segments of the U.S. economy. These same institutions are also commonly referred to as industrial loan companies (ILCs).

FDIC call reports and numerous academic studies verify that industrial banks are the strongest and most sound financial institutions of the country – and have been so for decades. The FDIC and state regulators provide firm but fair supervision to ensure that industrial banks deliver safe innovative financial services to millions of Americans.

Our member banks are state-chartered institutions and subject to all regulations – including CRA. Our members believe it is essential for the implementing regulations to be similar for all the federal banking regulators. That is needed to avoid unequal standards that might unfairly impose additional burdens and requirements on one group of banks and facilitate the development of CRA programs in which multiple banks participate. To that end, we hope you find the following comments helpful.

To assist readers, our letter is organized into several sections:

I. General overview of industrial banks and CRA

II. Concurrence with statements provided by other banking associations

III. Comments specific to industrial banks

IV. Conclusion

I. General overview of industrial banks and CRA

At the outset, our members wish to express their support for the goals of CRA. They understand the importance of programs designed to meet the needs of low- to moderate-income people and communities and are committed to developing CRA programs that provide meaningful benefits. Furthermore, our members have deep experience with CRA and wish to share their expertise in this comment letter.

One of our members' most significant concerns is ensuring the implementing regulations provide the flexibility needed to adapt CRA programs to different bank business models. Most of our members are branchless banks providing specialized products and services to specific customer groups nationwide. This model did not exist when the CRA law was enacted in 1977. The law then was designed to fit with a business model that serves a limited geographic area with a full array of banking products and services delivered through retail branches. For traditional banks, compliance with CRA is often fully integrated into their core businesses. CRA programs cannot integrate into the core business for branchless banks. Instead, they should consist of a separate program with various products and services. For these banks, flexibility is crucial to make CRA programs workable and enable them to deliver the maximum benefits. This dynamic presents some additional potential issues.

A significant concern is that CRA requirements should not impose burdens on branchless banks that unnecessarily impede that business model's success. It was not the intention of CRA to interfere with the development of new business models. It would be an abuse of rulemaking authority if the amended law has that impact, either intentionally or inadvertently – especially if other options are available.

The other concern is to ensure that CRA regulations do not impede innovation and efficiency in developing CRA programs and other financial services. Achieving maximum efficiency and innovation will result in the most significant number of benefits flowing from CRA programs and enable banks to act on a wide array of opportunities to serve LMI people and communities nationwide. But many options are limited because of outdated constraints on designating assessment areas. More simplicity and flexibility would help direct CRA programs to where they can perform the most good.

We strongly suggest any amendments to regulation maintain the wholesale and limited purpose designations, community development test, and the strategic plan option. These have been the centerpiece of most CRA programs developed by branchless banks. Preserving them is crucial to avoiding unnecessary restrictions impeding a branchless bank's ability to comply with the law.

Concerning assessment areas, our members' consensus is that the current methods work well for wholesale and limited purpose banks. Yet, there is a need to increase our secondary assessment areas.

For strategic plan banks, rather than having an additional assessment area(s) determined by regulation, our members recommend allowing banks to negotiate secondary assessment area(s) with their regulators during strategic plan development. We recommend basing these assessment areas on the bank's business model and other factors, such as opportunities in regions where non-branch facilities and affiliates are located.

Additional comments on strategic plans emphasize the importance of retaining the option for banks with unique business models and maintaining flexibility in goal setting based on their business model, expertise, and community needs.

II. Concurrence with statements provided by other banking associations

We are grateful that numerous financial service trade associations, individual banks and nonprofit organizations are submitting comments to these proposed amendments. For the sake of brevity and efficiency, we will not repeat all the points and supporting text contained in these documents. We support the following observations and suggestions provided in these letters:

A. The length and complexity of the proposed amendments are excessive—it is very difficult to determine the impact of the rule on individual banks and communities. Regulators need to provide additional tools and guidance to help banks determine both short and long-term impacts of the rule. In fact, we recommend an additional NPR to allow banks to provide feedback on changes proposed as a result of comments received on this proposal.

B. The strategic plan option needs to remain flexible to allow different business models to comply with CRA, including:

   i. Flexibility in the strategic plan option makes CRA programs workable for branchless banks and enables them to deliver maximum community benefits through CRA.

   ii. Allow negotiation of AAs in strategic plan development to account for different business models and regional factors.

   iii. Maintain flexibility in strategic plans for goal setting based on business model, expertise, and community needs.

   iv. Allow measurable goals to be as a percentage of average assets rather than deposits.

   v. Do not impose burdens on branchless banks that unnecessarily impede the success of their business models (outside of CRA rulemaking authority).

   vi. Do not impede innovation and efficiency in the development of financial services and CRA programs. This will hurt LMI communities.

C. Any type of service benefitting LMI individuals and communities should count for CRA:

   i. Service requirements should be limited to employees in Facility Based Assessment Areas, be open to any type of employee, and not need to be related to the provision of financial services.

   ii. Many employees are uncomfortable with teaching financial literacy courses but would gladly serve the LMI community in other/equally impactful ways.

   iii. Requiring unqualified employees to do financial literacy focused service could cause more harm than good.

D. There should be a cap on the number of Retail Lending Assessment Areas a bank will have, or it will be impossible to manage.

E. Costs to collect/report additional data for product and service tests are burdensome and unknown (and likely very high) raising questions that the burden outweighs the benefit of collection. We encourage agencies to use data currently being collected.

III. Comments Specific to industrial banks

As noted above, industrial banks are subject to the same federal and state regulations as other state-chartered banks. However, certain restrictions on industrial banks, and the niche services they provide to millions of Americans, compel appropriate adaptation in the enforcement of CRA regulations.

Industrial banks support the important goals and objectives contained in CRA. Therefore, we are seeking additional information and provide the following comments:

A. We are seeking more information on the following items:

   i. More clarity is needed on the determination of acceptable vs. non-acceptable basis for when a bank fails to meet the Retail Lending Volume Threshold in a Facility Based Assessment Area.

   ii. More information is needed on the justification that will be required in order to obtain approval of a strategic plan.

   iii. The wording of the rule makes it appear that financial literacy service to any income group will count. The rule should more clearly state if that is the case for any activity.

B. The proposed performance benchmarks in the Retail Lending Test would essentially grade banks "on a curve," which is not appropriate for compliance regulations. If a bank's performance warrants an "outstanding" or "satisfactory" rating, regardless of how many other banks received the same rating, they should be given the rating they earned. There

is no reason why all banks can't receive "outstanding" or "satisfactory" if their performance warrants that rating.

C. We respond to the specific questions in the proposed rule as follows:

Question 9: Should the proposed approach to considering mortgage-backed securities that finance affordable housing be modified to ensure that the activity is aligned with CRA's purpose of strengthening credit access for low- or moderate-income individuals? For example, should the agencies consider only the value of affordable loans in a qualifying mortgage-backed security, rather than the full value of the security? Should only the initial purchase of a mortgage-backed security be considered for affordable housing?

Response: Limiting mortgage-backed securities consideration to only the initial purchase from the issuer adds undue complexity and may negatively impact the market for mortgage-backed securities. CRA qualification should not be limited to initial purchases due to the complexities of pooling and selling securities. There are many instances where larger brokerage institutions hold securities on their books for 1-2 months before the pool is purchased and held by a bank to fulfill CRA commitments. Rather, the holistic approach a bank takes in fulfilling its commitment to the CRA should be considered.

Current regulation allows that an investment receives CRA consideration if the majority of the investment qualifies for CRA. This needs to be retained in the proposal. After initial purchase, the bank does not have the insight into the paydowns of the individual mortgages within the security and would have no way of allocating the value of the affordable loans in the qualifying security in subsequent years. The value of the "prior period investments" for CRA consideration would be impossible to determine. In addition, this would also negatively impact the mortgage-backed security market as banks would only be willing to purchase securities containing 100% of affordable loans.

Please carefully consider the impact and unintended consequences of these changes on the mortgage-backed securities market that supports affordable housing and lenders' ability to serve low- and moderate-income borrowers.

Question 13: Should the agencies retain a separate component for job creation, retention, and improvement for low- and moderate-income individuals under the economic development definition? If so, should activities conducted with businesses or farms of any size and that create or retain jobs for low- or moderate-income individuals be considered? Are there criteria that can be included to demonstrate that the primary purpose of an activity is job creation, retention, or improvement for low- or moderate-income individuals and that ensure activities are not qualified simply because they offer low wage jobs?

Response: We feel loans to businesses and farms of any size that create/retain/improve jobs for low- and moderate-income individuals fulfill the purposes of CRA and should not need additional criteria.

Question 31: Should the agencies also maintain a non-exhaustive list of activities that do not qualify for CRA consideration as a community development activity?

Response: Yes—both lists would save time for banks and the agencies (especially as they are more fully developed over time).

Question 32: What procedures should the agencies develop for accepting submissions and establishing a timeline for review (for pre-qualification of CRA eligible activities)?

Response: We suggest an email based procedure and 30 day timeline for pre-qualification of CRA activities—this would enable banks to be more innovative and nimble in responding to community needs.

Question 48: Should all banks have the option to have community development activities outside of facility-based assessment areas considered, including all intermediate banks, small banks, and banks that elect to be evaluated under a strategic plan?

Response: Yes. Allowing banks to receive consideration for activities outside their facility-based assessment area can help mitigate CRA "hot spots" and allow an entire region to benefit from banks' community development activity. Most of our banks provide Rocky Mountain Community Reinvestment Corporation ("RMCRC") a line of credit that funds loans for low- to moderate-income multi-family housing projects. RMCRC is a not-for-profit corporation formed in 1998 by Utah-based financial institutions to provide a platform addressing LMI affordable housing challenges and is a major LIHTC lender in the state, providing financing for a majority of all LIHTC projects requiring debt financing. To mitigate the effects of a concentration of CRA activity in Utah, RMCRC expanded its geographic reach to include all states that are referred to as the Rocky Mountain or Intermountain Region (Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Utah and Wyoming). As a result, the capital provided to RMCRC by Utah-based banks benefit an entire multi-state region. The banks' capital now advance the utilization of $72.7 million LIHTC credits rather than $9.2 million credits allocated to Utah alone. The beneficial impact expanded from a single-state population estimated in 2022 of 3.4 million to the multi-state estimated population of 25.6 million.

In addition, RMCRC submitted its own comment letter in which it provided the following commentary:

> *Congress wisely chose not to define "community", perhaps because it recognized that communities evolve. Community has changed dramatically because of technology. In many respects, it has erased geographic borders, particularly in financial transactions. The internet has become the community. This is particularly true of branchless banks since they identify the deposits of the community and its credit needs through the internet. However, to remain competitive legacy brick and mortar banks also utilize the internet for deposits and lending. Branchless banks don't target a particular geography as much as they target the financial services needs of populations across the country.* ***The "assessment area" regulatory construct seemed appropriate before the dramatic changes caused by technology.***

However, it shouldn't be the objective to retain facility-based assessment areas as the cornerstone of the CRA regulations. *Rather it should acknowledge that the model has changed – facility-based activity remains but takes on a lesser role and has its place alongside internet-based activity. Striking the appropriate balance with an emphasis on identifying and servicing the underserved community should be the foundation of the regulation. Instead of developing a multitude of tests, metrics and benchmarks, responding to which exhausts the limited banking resources,* ***clear, yet demanding, expectations should be established with a focus on benefiting disadvantaged populations****. Respectfully, continuing to emphasize the concept of "assessment area" seems akin to driving while looking in the rearview mirror to see where to go. Where physical location is present the local communities should be given greater input on addressing the challenges of populations in the community.*

Question 65: Would it be appropriate to consider information indicating that retail loan purchases were made for the sole or primary purpose of inappropriately influencing the bank's retail lending performance evaluation as an additional factor in considering the bank's performance under the metrics or should such purchased loans be removed from the bank's metrics?

Response: "Inappropriately" should be better defined—if a bank purchases the loans of a community organization (effectively doubling their lending capacity in an area), that seems to be an "appropriate" way to influence retail lending performance in the area and is a valuable service to the community. Unless there is churning (or an otherwise nefarious underlying purpose), we feel purchases should be treated the same as originations.

Question 179: Would it be better to tie the timing of a change to the proposed small business and small farm definitions to when the CFPB finalizes its Section 1071 Rulemaking or to provide an additional 12 months after the CFPB finalizes its proposed rule? What are the advantages and disadvantages of each option?

Response: To reduce an already high level of complexity, we feel it would be appropriate to finalize 1071 and generate 1071 related benchmarks before implementing this proposal.

IV. Conclusion

Overall, we believe that the effort the Agencies are expending to modernize CRA regulations is an opportunity to amend a structure that should be focused on benefits to the community. Thus, recent and obvious future developments in technology and how Americans use financial services needs to be addressed.

Banks with a strategic plan should be able to measure goals using average assets rather than deposits. Regardless of our teaching plan, all banks should be held to criteria and standards that satisfy objective criteria. The use of curves to determine ratings is inappropriate.

We wish to reemphasize that CRA requirements should not impose burdens on branchless banks that unnecessarily impede that business model's success. CRA was established to assist communities, families, and individuals. It was not the intent of Congress that CRA interfere with the development of new business models. Therefore, the legacy of CRA is threatened by rulemaking that impacts such, either intentionally or inadvertently – especially if other options are available.

Because industrial banks possess a track record of strength and success in providing safe innovative financial services to millions of Americans, we have a responsibility to participate in the development of appropriate CRA guidelines. NAIB members support the goals and objectives of CRA, as demonstrated by our pride in the many and deep contributions to the recipient communities. Therefore, we appreciate the opportunity to provide observations and recommendations to the proposed amendments.

On behalf of our members, we hope you find these comments helpful.

Thank you for the opportunity to respond.

Sincerely,

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