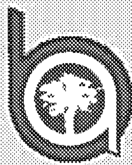

South Carolina
Bankers Association

August 5, 2022

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

Re: Community Reinvestment Act Regulations

To whom it may concern:

The South Carolina Bankers Association (SCBA) appreciates the opportunity to comment on the Notice of Proposed Rulemaking (NPR) from the Federal Reserve, Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation (Agencies) to revise regulations implementing the Community Reinvestment Act (CRA).

SCBA represents 65 banks doing business in South Carolina, ranging in assets from $36 million to over $3 trillion, and whose deposits constitute more than 99% of the deposits in South Carolina. SCBA fully supports the Agencies' efforts to modernize CRA, it is needed to accurately assess what banks are doing in the 21st century to address their communities' needs; and there are many elements of the NPR that SCBA supports. However, SCBA submits these comments and respectfully asks that the Agencies take into account the breadth of the proposal, that there are many inconsistencies and possibly arbitrary standards, that all financial institutions involved in community development are not subject to the CRA, and that, as proposed, the revised rule could possibly negatively impact community lending.

The Comment Period Should Be Extended to Additional Quality Information

The CRA is one of the most important and overarching regulations that oversees banking activities, as it seeks to fully assess how banks are addressing their communities' needs Banks are examined, possibly penalized, and then publicly criticized or complemented for their CRA compliance. As such, it cannot be understated how important it is to

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collect sufficient information and feedback to properly draft and finalize the new CRA. However, the Agencies allowed only a 90-day comment period for parties to comment on a 700-page proposal, which contains 180 questions with numerous alternatives. SCBA understands that comments had been made on previous proposals, such as the 2021 OCC rule. Still, this is different rule with new concepts that will dramatically affect how a bank is rated. SCBA strongly urges the Agencies to allow a longer comment period to receive quality feedback and suggestions from banks and other interested parties.

Increase the Asset Threshold Level to Accurately Reflect Present Conditions

The threshold levels have not been changed since 2005 and SCBA appreciates why the Agencies' propose to increase asset thresholds and to annually adjust them due to inflation. However, SCBA suggests that the threshold level for Intermediate Banks be increased to $5 billion. By doing so this would keep approximately the same percentage of banks that qualify as intermediate as there were in 2005 and would also allow for growth within this category. A bank that is $2 billion to $5 billion in assets is considered an average size community bank in 2022. There is no need to automatically qualify them as "large" for CRA purposes as under the proposed rule

Community Development Financing Test and Qualifying Activities

The NPR requires the Agencies to publish a list of qualifying activities for community development and combine community development lending and investments into a single Community Development Financing Test, similar to the OCC's previous rule that was withdrawn in December 2021. SCBA agrees with this approach and the proposed preapproval process for certain banks' activities. We further note that in the OCC's previous rule that, among community banks, qualifying activities confirmation was the most popular element of the OCC's reform.

SCBA also agrees with the Agencies developing and maintaining an "illustrative list" of acceptable CRA activity, including activity that a bank conducts outside of its assessment areas. Additionally, question 37 in the NPR asks whether the Agencies should "maintain a non-exhaustive list of activities that do not qualify for CRA consideration as a community development activity." SCBA believes that such a list would be beneficial but should be reviewed regularly and updated to accurately reflect market changes that could possibly make such activities qualifying.

All Financial Literacy Activities Should Be Considered Qualifying Activities

In question 27, the NPR asks if the Agencies should expand consideration of financial literacy activities to include activities that benefit individuals and families of all income levels. SCBA fully supports this approach. Emphasizing financial literacy with low and moderate-income level individuals and families is important and should remain a primary focus, but this does not mean that those that happen to be in higher income categories are financially literate. Financial literacy for all individuals benefits their communities and all of a bank's financial literacy activities should be considered qualifying activities.

Concerns on Assessment Areas

The NPR requires Large Banks (banks with more than $2 billion in assets) to delineate a Retail Lending Assessment Area (RLAA) in any MSA, or combined non-MSA areas of a state, where the bank has originated at least 100 home mortgage loans in each of the two preceding calendar years or at least 250 small business loans in each of the two preceding calendar years, outside of the bank's Facilities Based Assessment Areas (FBAAs). Once a bank meets one or both of these triggers and must delineate a RLAA, the bank would then be evaluated for its CRA performance for all of its "major product lines" in the RLAA. However, the Agencies do not set forward any analysis to show why these loan thresholds are proper in order to trigger additional CRA compliance. With these thresholds many banks would be required to create dozens—and in some cases hundreds—of new assessment areas in geographic areas where the bank does not have a meaningful market presence or that are not central to the bank's broader business strategy.

For instance, if a bank digitally originates more than 100 mortgages in an MSA, yet has no physical presence there, that bank then must be examined under the same CRA standards as one that has branches in that MSA. First, this approach improper equates digital lending with branch lending. Although both affect a local area, branch lending is truly developed locally yet digital lending can be conducted hundreds of miles away with no other connection to the locality. This very possibly will lead some banks to reduce retail lending in areas where they do not actively seek home mortgage or small business loans but they meet these arbitrarily set trigger thresholds that would subject them to the same CRA examination standards as those who have branches in those areas.

The Retail Lending Test Should Be Withdrawn Due to Its Arbitrary Standards

The proposal would raise the bar for a bank's CRA performance with the new Retail Lending Test. For Large Banks (those over $2 billion in assets), a CRA rating would be comprised by the Retail Lending Test (45%); the Retail Services and Products Test (15%); the Community Development Financing Test (30%); and, the Community Development Services Test (10%). Yet given this weighting it would be almost impossible to achieve an overall Outstanding CRA rating unless the bank is rated Outstanding on the Retail Lending Test, no matter what the bank received on the Community Development Financing Test or other tests. Simply put, 45% is far too much of a weighting for retail lending. This simply begs the question - where did these metrics come from?

The NPR gives little guidance as to why these are considered appropriate metrics; yet, the results could be dramatic for a bank. The Retail Lending Test incorrectly assumes that all banks should make the same percentage of retail loans in a given assessment area. This is not indicative of the various banks in many assessment areas and frankly has wholly unsupported assumptions that ultimately make no sense. Banks that choose to address their communities'' needs with products and services that are not necessarily retail

lending should not be subject to poor CRA evaluation based on arbitrary standards. SCBA suggests that the metrics for the Retail Lending Test be revisited and revised to properly reflect – and not arbitrarily punish – banks in particular assessment areas.

The Retail Volume Lending Screen Should Be Eliminated

SCBA has concerns with the Retail Lending Volume Screen that is proposed as a method to assess a bank's volume of retail lending relative to its deposit base in a certain FBAA for the purposes of the Retail Lending Test. The proposed minimum ratio would need to be at least 30% of the market average ratio of Large Banks in the area for a bank to receive a "Satisfactory" rating. So, a bank would be compared against certain Large Banks in the area to the exclusion of all banks participating in that area. In other words, a bank's entire retail lending exam in an assessment area would depend on the arbitrary standard of how well it stacks up against some market participants – not all of them.

What about banks that specialize in consumer lending? They most certainly will fail the Retail Lending Test since they do not have sufficient small business, farm or mortgage loans to meet the appropriate ratio. Why should such banks - that otherwise well-serve the credit needs of their communities - be held to the standard of other banks' business models? The Retail Lending Volume Screen should be eliminated due its arbitrariness.

All Financial Institutions Should Be Subject to the CRA and the Same Standards

SCBA stresses that notwithstanding the Agencies' statutory requirement to only assess bank practices, solely focusing on banks leads to inadequate, and even misleading, conclusions on how a community's financial needs are met. The reality is that in 2022 an increasingly significant portion of community financing and development occurs outside of depository banks. Credit unions, fintechs, and other non-banks originate a significant amount of mortgage lending, consumer lending, retail lending, small business financing, and other community financing. For instance, in 2021, more than 70% of mortgage lending was originated by financial institutions that were not banks. Since these entities are not subject to CRA examination, there is no true picture of how a community's needs are addressed, and that the actual picture is simply incomplete and could easily lead to misinterpretation.

Due to this shortfall to include all financial institutions, the CRA becomes a tool for public criticism of banks, in the guise of "improving" community development. SCBA recognizes that the NPR does consider including MDI credit unions, but these entities are miniscule compared to the large credit unions and fintechs that already provide a significant amount of the community financing today. The fact that these financial institutions receive no CRA examination at all should be of great concern to the Agencies, policymakers, and all that purport to care about community development.

SCBA understands that the Agencies have limited capacity to include these entities in the NPR. However, if the Agencies' desire is sincere to modernize CRA and accurately examine community financing, then the Agencies' top leadership should appeal to

Congressional leaders to amend the CRA and include all types of financial institutions. Otherwise the revised CRA will offer an even poorer picture of community reinvestment than it now does.

The Implementation Period Should Be Extended to Two Years

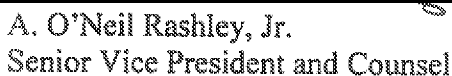
Just implementing the revised CRA will be a significant task for banks of all sizes and having to do so in 12 months will put a strain on many these banks. Yet, the Agencies must take into account that the revised CRA does not exist in isolation.

During these same 12 months, banks will be implementing the CFPB's anticipated final small business lending data collection rule, often using the same staff. Implementing both of these significant rules simultaneously will put considerable pressure on the banks and their staffs. In order to properly implement the rule, SCBA urges the Agencies to extend the implementation period to two years.

Conclusion

Modernizing a regulation with the breadth and impact of the CRA is a daunting task and will, necessarily, receive critical and even harsh comments. SCBA stresses that its comments are not intended to impugn the Agencies' efforts. Instead these comments are offered in the spirit of creating a new CRA that fully encourages and incentivizes banks – and all financial institutions – to financially support their communities, while still holding them accountable through transparent, consistent, and non-arbitrary standards.

Sincerely,



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