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; RIN 3064-AF81

Dear Madam or Sir:

Sallie Mae Bank ("SMB" or the "Bank") commends the efforts of the Joint Agencies ("Joint Agencies") of 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") to modernize the Community Reinvestment Act of 1977 ("CRA"). SMB supports the goals of CRA and its obligation to help meet the credit needs of its communities, including low- and moderate-income ("LMI") individuals and areas, consistent with safe and sound banking practices. Thank you for the opportunity to provide comments on the Joint Agencies notice of proposed rulemaking ("NPR" or the "proposal") regarding the modernization of the CRA.

The Bank recognizes the immense undertaking of updating the CRA and we appreciate the Joint Agencies have come together to provide a unified rule. The proposed rule includes many positives the Bank supports including:

- Confirmation of qualifying community development activities;
- Retention of the Strategic Plan option, and existing strategic plans will remain in effect until their expiration;
- Focus and effort to provide uniformed metric-based quantitative approach to performance evaluations;
- Combination of the evaluation of community development lending and community development investments; and
- Maintaining the importance of community service.

Background

SMB is a Utah-charted Industrial Bank regulated by the Utah Department of Financial Institutions ("UDFI"), the FDIC, and the Consumer Financial Protection Bureau ("CFPB"). The Bank is a subsidiary of SLM

Corporation ("SLM"), the nation's leading provider of private education loans. Private education loans are credit-based and underwritten and act as gap financing to help students and families responsibly finance higher education after exhausting scholarships, grants, and federal student loans. In total, private education loans make up approximately 8% of total student loan debt outstanding today. The vast majority of student loans today (92%) are federal and originated directly by the federal government.

As of June 30, 2022, the Bank has $27.4 billion in total assets. The Bank also offers a range of deposit products insured by the FDIC, including social goal-based savings through the SmartyPig brand. The Bank does not have a traditional bank branch network, but instead interacts with its customers through online, mail, and phone communications.

Guiding Principles

The business of banking, the role of technology in delivering financial services, and how consumers interact with their financial service providers has evolved considerably since the enactment of the CRA more than four decades ago, and since the last major revisions to the CRA's implementing regulation more than two decades ago. The modernization of CRA should be executed carefully to avoid unintended consequences, such as excessive costs and complexity for institutions. The modernized regulation also needs to allow banks the flexibility to accommodate the increasingly swift evolution of financial services and changing technology in the current environment and the decades to come.

Overall, SMB continues to believe modernization of the CRA should be guided by the following principles:

1) Do no harm to elements of the current regulation that promote bank responsiveness to LMI and community development credit needs;
2) Enhance the regulation's recognition of individual bank business models; and
3) Extend current objective metric-based approaches to broader segments of CRA covered institutions.

In our comment letter below, SMB addresses observations and specific questions raised in the NPR.

Strategic Plans

I. Retain the Strategic Plan Option and Flexibility for Nontraditional Banks

SMB appreciates the proposal retains the option for a bank to develop a strategic plan for addressing its CRA responsibilities and to be evaluated based on its performance under the strategic plan. The strategic plan option in the current regulatory framework is designed to allow banks the flexibility to meet their

CRA obligations, taking into consideration their business model, capacity, constraints, and public comment while being responsive to the credit needs of the communities they operate in and serve.[1] We believe the current strategic plan framework, flexibility, and latitude provided is truly the only viable method for banks with nontraditional business models.

SMB utilizes the strategic plan option to meet its CRA obligations, and not to lower its performance expectations. Due to SMB's unique business model and the fact that it does not offer mortgages, small business loans, or small farm loans, it cannot be appropriately or fairly evaluated under the traditional CRA tests. However, the proposed strategic plan option in the NPR does not afford banks the opportunity to consider these types of material differences in their business models. The loss of the strategic plan option or the limited flexibility as proposed would be a detriment to the CRA and would mean SMB would be unable to meet its CRA obligations.

A one-size-fits all approach as contemplated by the NPR would be problematic for banks with unique, nontraditional business models like SMB. Under the current framework, banks with nontraditional banking models cannot be fairly evaluated. This will continue to be the case under the proposal. For example, SMB does not offer any retail lending major product lines that could be evaluated under the proposed Retail Lending Test. Therefore, SMB cannot be evaluated under this test, yet this test constitutes 45% of a bank's performance rating. The proposal is silent on the impact this will have on SMB or other similar nontraditional bank's overall performance rating. It is important the strategic plan option retains the flexibility and ability to customize strategic plans to account for these types of differences in banks' business models. Testing banks that are evaluated under a strategic plan by the same performance tests and standards that would otherwise apply defeats the purpose of a strategic plan.

Furthermore, the flexibility for a bank to tailor its performance metric goals needs to be maintained. Strategic plans can span a period of up to five years. Given the proposed benchmarks will not be available when a bank is developing its strategic plan, it is unrealistic for a bank to set goals based on unknown benchmarks. The strategic plan option needs to continue to allow banks the flexibility to tailor their CRA performance goals and metrics.

The amended regulation should retain and codify the existing flexibility and latitude under the current framework.[2] Banks requesting to utilize the strategic plan option should not be constrained to the framework applicable to banks subject to the general performance standards proposed in the NPR. Forcing banks into a one-size-fits all approach and not taking into consideration a bank's unique business model, capacity, and constraints will limit a bank's ability to be industry innovators, and it may have the unintended consequences of limiting a bank's capacity to serve and meet the needs of its community in a responsive, impactful way. Constraining a bank's CRA performance goals to the general performance

[1] 12 CFR __.27(f)(1)
[2] 12 CFR §__.27(f)(1)(ii)

standards limits the effectiveness of the strategic plan option and is not consistent with the intent of the CRA.

II. Informal and Formal Public Comment Process Should not be Prescriptive and the Role of Public Comments Should be Clearly Defined

The amended regulation should not be prescriptive in how a bank conducts its community outreach and solicits informal comments. In the development of a strategic plan, the current regulation requires both formal and informal public comments.[3] SMB understands this engagement with the community is an important part of the development of a strategic plan. Through the process of soliciting public comments, banks gain a better understanding of the needs of the communities they serve. These conversations provide valuable insight and help shape the focus of a bank's CRA program. Banks have intimate knowledge of the communities they serve and have developed relationships with key community stakeholders. Forcing banks into a prescriptive process for garnering informal participation may inhibit a bank's ability to leverage its knowledge and its relationships within a community.

SMB continues to believe that the regulators should clarify the role that public comments will play in the approval of a strategic plan. For example, what topics are in scope and how are they weighted? Furthermore, banks should not be forced to act on input they may receive during the informal and formal comment process in which the commenter does not have a direct relationship with the community. Last, the amended regulations should codify the current guidance that banks are not required to enter into community benefit agreements as a condition of developing strategic plans.[4] Our recommendations with regard to the public comment process will drive meaningful input and conversations with the communities' banks serve.

Performance Tests, Standards, and Ratings, in General

I. Continue to Consider Performance Context

Performance context needs to be retained as an important consideration in the various test evaluations. A bank's performance is often shaped by factors that cannot be uniformly evaluated. This can include internal factors such as a bank's business model, capacity, and constraints, or external factors such as the community, economic conditions, or competition. Performance context allows a bank to provide background that might otherwise be overlooked but is crucial in the evaluation of a bank's CRA activities; a rigid evaluation framework may cause banks to commit resources to complying with the rule rather than serving their LMI communities.

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[3] 12 CFR §__.27(d)(1)

[4] See Q&A §__.29(b) – 2

Retail Lending Test

I. Consumer Lending Should Not be Included in Retail Lending Test

Consumer lending evaluations, such as student lending and credit card lending, should not be included under the Retail Lending Test. The evaluation of these types of consumer lending product lines should remain, as proposed, in the Retail Services and Products Test and should be limited to a qualitative evaluation. A quantitative analysis of consumer loan products is not an appropriate evaluation method for these types of product lines, and it does not paint the full picture of a bank's support of its community. Therefore, they should not be evaluated in the same manner as the major product lines that will be evaluated under the proposed Retail Lending Test. For example, SMB recognizes that LMI persons should first exhaust free money options through grants and scholarships and then take advantage of federal student loans before considering private student loan products such as those offered by SMB. Evaluating private student lending in the same manner as retail lending product lines and in a quantitative manner will paint a skewed picture because the quantitative analysis will not show how the community is being served. A larger private student loan is not necessarily better if it means the student has not exhausted free money first. Additionally, this example supports SMB's position that performance context is an important factor in the evaluation of a bank's CRA activities.

Retail Products and Services Test

I. Digital banks do not fit the evaluation criteria under the Retail Products and Services Test

The proposed Retail Products and Services test has a primary focus on branches and remote service facilities and does not fully contemplate digital banks. The NPR requires the evaluation of a bank's branches and remote service facilities but does not call out the impact to the Retail Products and Services rating if a bank does not operate any branches or remote service facilities. As the NPR is written, it is unclear how a digital bank that does not operate any branches or remote service facilities will be evaluated under the Retail Products and Services Test. If a bank does not operate branches or remote service facilities will this negatively impact the bank's performance rating, or will this portion of the evaluation be excluded from the review? From our perspective, this test standard is inappropriate for digital banks and is another example of why the strategic plan option is needed for banks with nontraditional banking models.

Community Development Financing Test

I. The Community Development Financing Test benchmarks need to be simplified

SMB believes the updated Community Development Financing framework needs to be clear, understandable, and not overly complicated. The statewide and national benchmarks are expansive, complicated, and burdensome. The addition of state and nationwide benchmarks does not provide additional clarity to the examination process and goes against the intent of CRA to encourage banks to help meet the credit needs of their local communities. The updated regulation should continue to focus on assessment area community development activities and benchmarks should only be set in a bank's assessment areas.

II. Facility-based Assessment Areas weighting should not be diminished in the combined weighting

SMB appreciates the NPR indicates facility-based assessment areas will remain the cornerstone of the proposed evaluation framework.[5] However, this is not reflected in the proposals for the combined weighting of a bank's activities. The proposal discusses weighting facility-based assessment area activities commensurate with its deposit and lending in its assessment area.[6] For digital banks like SMB that conduct a substantial portion of their business outside their facility-based assessment area, it would mean the substantial majority of its CRA activities would need to occur outside its facility-based assessment area. We agree that facility-based assessment areas should be the "cornerstone of the evaluation framework" which is why we are concerned that the proposed combined weighting will cause banks to focus their CRA activities outside of their communities and will take away from the activities banks will conduct in their communities. [7]

SMB also believes a bank's facility-based weighting should not be de minimis relative to a bank's state and nationwide performance scores. The intimate knowledge of a bank's community helps shape its CRA program and allows the bank to tailor the program to the needs of the community. Conducting CRA activities in an area where a bank does not have a presence or capacity will be disadvantageous and contrary to the CRA goals of meaningful community involvement and support. Without the knowledge about a community, the personal care and understanding that often goes into the smaller more meaningful deals will be lost.

III. The purchase of mortgage-backed securities should be considered regardless of whether or not it is the initial purchase

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[5] Section VI. Assessment Areas and Areas for Eligible Community Development Activity

[6] CRA NPR, Appendix B to Part Calculations for the Community Development Tests – 15(iii)

[7] CRA NPR, VI. Assessment Areas and Areas for Eligible Community Development Activity

SMB appreciates the NPR retains mortgaged-backed securities ("MBS") that support affordable housing for LMI individuals as a qualifying activity. However, CRA qualification should not be limited to initial purchases due to the complexities of pooling and selling the securities. Often, larger brokerage institutions hold the securities on their books for one to two months before the pool is purchased and held by a bank to fulfill its CRA commitments. Limiting MBS purchases to the initial purchase from the issuer and not considering subsequent purchases of the securities adds complexity, inhibits MBS market activities, and may have unintended consequences that trickle down to the initial issuer (and consequently, the LMI borrower), limiting the issuer's ability to efficiently sell affordable housing mortgages. When SMB purchases MBS pools, they are intended to be held for the duration of the security. To address the concerns raised regarding churning, a holistic approach should be taken during the evaluation of a bank's community development lending and investments. Please carefully consider the impact and unintended consequences that the changes being contemplated may have on the MBS market that supports affordable housing and lenders' ability to serve LMI borrowers.

Data Collection, Reporting and Disclosure

I. The proposed data collection and reporting requirements will be burdensome and costly

SMB has significant concerns with the additional deposit data collection and reporting requirements proposed. The proposed data collection and reporting requirements under the NPR substantially expand the requirements under the current regulations. These additional data collection and reporting requirements will be costly and burdensome for banks. For instance, aggregating deposit data at the county level will be challenging. SMB's systems do not capture county level detail, nor is it something the Bank requests its customers to provide. While the Bank collects depositors' addresses and validates identity at account opening, after account opening it relies on its customers to keep their addresses current. In accordance with state laws, the Bank escheats several thousand accounts annually in which it has had no contact with its customers. Additionally, there can be multiple signers/ owners of an account with different addresses. All of which make collecting county level data burdensome and costly. SMB's systems would need to be built out to capture this data, which will require significant system upgrades that will be costly and take time to implement.

Furthermore, in response to the request for feedback on what types of deposits should be included in the definition of deposit, we believe the inclusion of corporate, commercial bank, and other depository institutions deposits in the benchmark would distort banks' obligations to CRA because these deposits are not individual or small business/ farm accounts of whom it is the CRA's intent to serve. But more importantly, we believe the collection of and use of deposit data in the denominator to assess a bank's performance will not further the objectives of CRA regardless of what deposit types are included. For example, economic conditions, such as economic downturns, may impact a bank's CRA performance.

During economic downturns, individual's savings increases while spending declines.[8] This would impact the demand for certain banking products and services. Utilizing a deposit-based benchmark would artificially inflate a banks' CRA performance standards during an economic downturn that may not be achievable or sustainable. Given the lack of deposit data supporting the benefits of the proposed changes and the resulting unknown impact these changes will have, SMB does not support the collection and use of deposit data to measure a bank's performance. SMB respectfully requests the Joint Agencies identify an alternative method to evaluate banks performance that reduces the burden on banks and focuses on the needs of the community.

In addition, under retail services and data collection, the data collection is particularly onerous in context of the performance score weighting for the Retail Products and Services test which constitutes 15% of a bank's performance rating.[9] Given the minimal impact to the overall score, the prevailing benefit does not outweigh the cost and burden of collecting and maintaining this data. The Joint Agencies should consider alternative evaluation measures under this test that reduce the burden.

Applicability Dates, and Transition Provisions

I. The transition timeline proposed is too short and needs to be extended to allow banks the time to make any necessary changes to comply with the updated regulation

Given the substantial changes in the proposal, the proposed applicability and transition periods are too short from our perspective. The complexity and materiality of the proposal will require time to assess the full impact of the changes, implement processes, and update systems as necessary to comply with the rule. It will take time for banks to update or acquire the systems and tools needed to comply with the increased data collection requirements. Requiring banks to comply with this part of the rule one year after implementation is not reasonable and should be extended to a more realistic implementation period of a minimum of two years for the data requirements and should coincide with the beginning of a calendar year. Aligning the implementation of data collection with January 1 allows for a full year of data collection. Implementing data collection mid-year will not provide any benefits to the agencies or banks since a full year of data collection will be needed to conduct any meaningful analysis.

Examinations should not begin until there has been an adequate data collection period (at least two years) and the data has been made available to banks. Banks need time to assess benchmarks and make the adjustments required in their CRA programs to meet the expectations under the new rule. The proposed implementation timeline is setting banks up to fail.

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[8] Congressional Research Service, *Introduction to U.S. Economy: Personal Saving*, July 13, 2022. https://sgp.fas.org/crs/misc/IF10963.pdf

[9] CRA NPR, Appendix D to Part__—Ratings of the proposed rule text.

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CRA should encourage banks to meet the needs of their communities and be achievable. A one-size-fits all approach does not work well for CRA. The updated regulatory framework should continue to recognize different bank models and differences within the communities they operate. CRA should not limit banks business models or innovation. A limiting, rigid, and burdensome framework will inhibit a bank's ability to serve its customers in innovative, responsive ways. This is not the intent of the CRA.

SMB appreciates the opportunity to share the Bank's observations and recommendations on CRA modernization. If you have any questions or need clarification on any issue raised in these comments, please contact me at (302) 451-0382 or Harry.Zunino@salliemae.com.

Sincerely,

[redacted]

Harry Zunino

Chief Compliance Officer