August 5, 2022

MINNESOTA BANKERS ASSOCIATION
THE CHAMPION FOR MINNESOTA BANKERS

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

RE**:** Comments RIN 3064- AF81

Dear 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 community banks, while the other comment letter focuses on large 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 several questions on which to provide this input.

1. *Asset Size for Small and Intermediate Banks*

The MBA believes that the Agencies have chosen appropriate asset size thresholds within which to define what constitutes a "Small" or "Intermediate" bank—those being with assets under $600 million for Small banks and between $600 million and $2 billion for Intermediate banks. The MBA is of the opinion that this should help reduce the burden these institutions would otherwise face for the data collection and reporting that Large banks (those with assets over $2 billion) will endure.

[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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2. Definition of "home mortgage loan"

The first issue that the MBA wants to comment on is the definition of a "home mortgage loan" in the proposed rule. The proposed rule defines it as "a closed-end home mortgage loan or an open-end home mortgage loan as these terms are defined in this section and that is not an excluded transaction under 12 CFR 1003.3(c)(1) through (10) and (13)." The MBA thinks the exclusion of various home loans not counted for purposes of Regulation C should be changed. The MBA proposes the following alternative language: "12 CFR 1003.3(c)(1), (5), (7) through (10) and (13)."

The proposed rule's definition would remove lending products that many low- and moderate-income (LMI) communities and individuals can utilize. For starters, the proposed rule would not include loans secured by unimproved land as a home mortgage loan. This penalizes banks for lending to builders or individuals looking to build in LMI communities. With housing shortages rampant throughout the United States, not providing credit for a loan that can be used to acquire the land on which to build a home and alleviate this problem is not prudent.

Another issue with the proposed rule's definition is that it does not include temporary financing as a home mortgage loan. Two types of temporary financing make this a huge concern. One is bridge financing, and the other is home construction. Both products provide critical opportunities for borrowers. Bridge financing is necessary for many individuals looking to sell their existing home and purchase a different home. With skyrocketing home values, and inflation in general, most people do not have sufficient down payment cash sitting in a bank account. This is particularly true for LMI individuals. A bridge loan offers the chance for someone to obtain the down payment cash they need for a home purchase.

Another significant issue is not including home construction. Just as with bridge financing, the home shortage dilemma is a nationwide issue. Many people require construction and construction-to-permanent financing to achieve their home ownership goals. The proposed rule would unnecessarily harm banks making these loans to LMI individuals and LMI communities. If the goal of the CRA is to put money back into a community, it is sound logic that this should also include the loans to build the physical homes in those communities, even if only temporary.

Lastly, the proposed rule suggests that closed-end mortgages and open-end lines of credit purchased, whether as a pool of credits or through an acquisition or merger, should not be counted in the definition of a home mortgage loan. The MBA disagrees with these exclusions. These loans should be counted in a bank's CRA assessment the same as loans the bank otherwise originates. When community banks purchase loan pools within their assessment areas (AAs), they are purchasing whole loans and servicing rights and not merely purchasing an investment vehicle. Purchasing loan pools also permits community banks to meet the credit needs of their communities despite not having the resources, e.g. staffing and marketing, to generate these loans one transaction at a time. Similarly, just because a bank acquires or merges with another bank should not mean that the target's portfolio is excluded for CRA evaluations. These are still investments in LMI individuals and communities, they are on the bank's books, and they should be included in the definition.

3. Response to Agencies Question 1

The Agencies asked whether partial consideration is appropriate for any other community development activities (*e.g.*, financing broadband infrastructure, health care facilities, or other essential infrastructure and community facilities), or whether partial consideration should be limited to only affordable housing.[2] The MBA encourages the Agencies to give partial credit to other community development activities, such as those provided as examples and other community development activities as well.

Affordable housing is unquestionably a worthwhile investment to make in LMI communities. But the act of investing in a particular community extends beyond just housing. CRA credit should be given to the financial institutions that lend in LMI communities for activities that promote the general welfare and quality of life for individuals in these areas. Healthcare facilities provide medical care and jobs for individuals in these areas. Financing provided to increase broadband services, utilities, and other infrastructure projects helps residents maintain parity with the quality of life experienced in other communities. Providing a bank with a measure of credit for these loans will encourage banks to lend on these crucial projects. That in turn will increase options for developers to finance projects, and it will improve the quality of life for the individuals living and working in LMI communities.

4. Response to Agencies Questions 56 & 57

The Agencies inquire whether 1) the Agencies should aggregate together closed-end home mortgage loans of all purposes (*i.e.*, purchases, refinances, home improvements, etc.); 2) the Agencies should exclude home improvement and other purpose closed-end home mortgage loans from the closed-end home mortgage loan product category, to emphasize home purchase and refinance lending; and 3) if excluded, should these loans be included under the retail services and products test rather than the retail lending test.[3] Our opinion on these questions is that all loan purposes should be classified together as closed-end home mortgage loans under the retail lending test.

These loan purposes, while different, provide meaningful financial products and support to borrowers. A purchase, by its very nature, means an individual acquires an interest in property. This is one of the most foundational aspects of the CRA. Although a refinance is merely a novation of an existing loan, it is just as much a worthwhile retail lending activity as a purchase. Refinances generally lower homeowners' cost of credit with lower rates, which is the better long-term solution for borrowers. Lowering the cost of credit in LMI communities is a worthwhile venture for which banks should receive the same CRA credit as the initial home purchase. The home purchase offers LMI individuals the opportunity to own a home, whereas a refinance offers them better affordability through increased disposable income that is not spent on servicing debt. Many of these borrowers might even opt for a cash-out refinance, freeing up equity value in the home that

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[2] Community Reinvestment Act, 87 Fed. Reg. at 33,892
[3] *Id*. at 33,931

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can be put towards home improvements or other borrower needs. Overall, a refinance provides crucial opportunities to improve the financial viability for LMI individuals.

Likewise, home improvement loans and other loan purpose classifications under the Home Mortgage Disclosure Act (HMDA) and Regulation C should be aggregated together with refinances and purchases under the retail lending test. These loans provide access to credit to improve homes in LMI communities. Improving homes in LMI communities adds to the overall aesthetic appeal of a neighborhood, while also, importantly, adding equity for homeowners. Reinvesting in a community should not merely be limited to the initial access to credit, but it should be expanded to include those opportunities that lead to greater wealth accumulation. As a home is, commonly, the most valuable asset owned by an individual, this should be an obvious goal in which the Agencies can encourage lending. However, delineating a difference between a home improvement loan and the like under the retail services test will not afford banks the credit they deserve for helping to invest in a tangible asset in LMI communities—and one that happens to be a substantial building block behind improving community wealth.

5. *Response to Agencies Question 58*

The Agencies asked whether closed-end non-owner-occupied housing lending should be in the closed-end home mortgage loan product category.[4] The MBA believes that these loans should be included in the closed-end category as well. Naturally not all housing is purchased as borrower-occupied, primary homes. Some homes are bought as second homes, while many are purchased as investment properties to be rented. Regardless of the owner resident status, our opinion is that these loans should be counted in the same category. The reason is that these loans are nonetheless an investment in the LMI communities. LMI is a characteristic of both a geographic location and people. Many of these loans are not made to LMI individuals, that is obvious to us, but one of the beneficiaries of that loan can be an LMI individual as a tenant. These loans will ultimately provide housing opportunities in LMI areas and potentially to LMI individuals, even if the person who obtained the loan is not an LMI individual or a resident of an LMI area.

6. *Response to Agencies Question 59*

The Agencies have asked whether open-end mortgage loans should be evaluated under the retail services and products test rather than the retail lending test.[5] We believe that open-end mortgage loans should be included in the retail lending test. These loans are secured credit. They offer borrowers a chance to tap into home equity for multiple uses. Borrowers regularly utilize open-end mortgage products as an alternative method to pay for regular updates to a home. Many homes throughout the United States, and homes in LMI areas are no exception, needing repairs or improvements. Some repairs may be an emergency, and access to an open-end product provides that instant access to capital some homeowners need. Other times the cash obtained can help provide improvements to a home, perhaps with new windows and insultation. In that example,

[4] *Id*. at 33,931.
[5] *Id*. at 33,931.

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that inadvertently leads to energy cost savings, a benefit to the homeowner, and decreased energy usage, a benefit to the environment. Regardless, routine home improvements are critical to maintaining and increasing home values. Even if not used on the home itself, these products provide liquidity and security to LMI individuals. They are secured against a tangible asset. Overall, open-end mortgage products have significant value for LMI individuals and communities. Therefore, the MBA thinks that open-end mortgage loans should be evaluated under the retail lending test and not the retail services and products test.

7. *Response to Agencies Question 64*

It is asked whether retail loan purchases should be treated as equivalent to loan originations, and if there should be any qualifications or limitations on these loans.[6] The MBA believes that retail loan purchases should be given equal weight as loan originations. A retail loan purchase is an investment in a community and an individual borrower. The fact that a bank did not originate the loan should not be a detriment to its ability to receive credit for the investment. Purchasing loans is standard banking practice. It offers buying banks the chance to diversify a portfolio into areas they may lack the resources with which to actively lend at all. These loans may also help add to a bank's existing loan origination portfolio in the areas in which it already operates, which still allows the bank to capture that business. Purchased loans can also free up capital for the selling bank to lend out again to other borrowers.

The MBA believes the originator should not be a consideration for treating purchased loans the same as originated loans. The Agencies ask, as an example, if only loans purchased from Community Development Financial Institutions (CDFIs) should be counted the same. We think that loans regardless of originator should be treated the same as an origination. Investments in LMI communities and individuals do not always come from CDFIs. This would lead to an unfair punishment for those banks looking to improve their portfolios. A purchase, whether from a CDFI or not, is still a worthwhile investment and should be given the same weight as an originated loan.

However, the credit for purchased loans should not be without limitation. The MBA agrees with the Agencies on the second referenced limitation, which is that the purchase should only be counted for purposes of CRA credit when purchased from the originator. This will decrease the motivation for banks to churn loans and sell them as soon as a CRA assessment is complete. It will also help eliminate the risk that loans are counted more than once for CRA assessments.

8. *Response to Agencies Question 65*

The MBA believes that it would be inappropriate to consider information indicating that retail loan purchases were made for the sole or primary purpose of influencing the bank's retail lending performance evaluation. Regardless of any motive of the purchasing bank, the community will still have received access to credit from the origination of the purchased loan plus the originating institution regaining access to lending capital. In addition, community banks purchasing loans

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[6] *Id*. at 33932.

often will also acquire full servicing rights and retain the loans until payoff. Without granting community banks CRA credit for purchasing loans in their communities, the Agencies will incentivize community banks to look for loan pools based solely on performance, as an investment, instead of evaluating whether the loan pools aid their communities.

9. Response to Agencies Question 67

The Agencies inquire whether credit cards should be included in CRA evaluations; if the answer to that question is yes, the Agencies wonder whether to include them as a major product line and evaluate them under the retail lending test or the retail services and products test. It is the opinion of the MBA that credit cards should be included in CRA evaluations. A credit card is a loan like any other. Its importance in building and maintaining good credit should not be undervalued. These are most often the very first forms of credit someone obtains. The ability to demonstrate to a lender that someone can manage a regular credit card bill is the first step in obtaining future credit opportunities for more complex, life-building opportunities. Whether the borrower eventually buys a car or a home, the credit card is where it all begins.

Further, credit cards are one of the most efficient ways with which a person can construct a good credit history and maintain it throughout life. Having a good credit score, and being given the opportunity to build it, is the most critical component in pricing and underwriting future debt opportunities. The Agencies and many elected representatives are persistent in their intentions to encourage banks to expand the types of credit that count towards underwriting and pricing decisions. The credit card is the most basic, most accessible method for any borrower to improve their credit history. A better credit history will help lead to positive underwriting decisions, and it will lead to better pricing for future credit. It is one of the core banking functions individuals need in life. Because of their importance, credit cards should also be included in the retail lending test.

10. Transition

Finally, the MBA thinks that the proposed rule's one-year transition period is too short. The implementation period should be at least two years. Banks of all sizes will need to incur significant costs and added personnel to incorporate the proposed rule into their operations. For some banks, particularly community banks in non-urban areas, it may not be possible to merely hire additional staff. Many banks need to reassign and train existing employees to manage the final rule. A one-year implementation is simply not enough time for Small and Intermediate banks to meet the challenges they will face with the final rule.

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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