



August 5, 2022

**Submitted Electronically**

Chief Counsel's Office  
Attention: Comment Processing  
Office of the Comptroller of the Currency  
400 7<sup>th</sup> Street SW,  
Suite 3E-218,  
Washington, DC 20219  
DocketID OCC-2022-0002

Ann E. Misback,  
Secretary,  
Board of Governors of the Federal Reserve System  
20<sup>th</sup> Street and Constitution Avenue NW,  
Washington DC 20551  
Docket No. R-1769

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

**Re: Community Reinvestment Act; RIN 3064-AF81**

Dear Ladies and Gentlemen,

The Wisconsin Bankers Association (WBA) is the largest financial trade association in Wisconsin, representing nearly 200 state and nationally chartered banks, savings and loan associations, and savings banks. WBA appreciates the opportunity to comment on the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency's (Agencies) proposal to amend their regulations implementing the Community Reinvestment Act of 1977 (CRA).

The agencies have proposed to update how CRA activities qualify for consideration, where CRA activities are considered, and how CRA activities are evaluated. CRA serves an important goal, yet CRA regulation has become complex, unpredictable, and has not kept pace with technology or the ways consumers expect to access financial products and services. WBA appreciates the need to modernize CRA, and thanks the agencies for their efforts to issue proposed changes on an interagency basis. Such an effort is no small task but is incredibly important in order to create a consistent examination experience for the industry.

WBA supports the agencies' efforts to modernize the CRA rules and has seen success by Wisconsin banks in achieving CRA goals. In review of the proposal, the industry remains

committed to those goals, and supports the vital role CRA plays in low- and moderate-income (LMI) communities. Wisconsin banks have reported meaningful growth in loan activity and investments in LMI communities since the law's enactment. CRA's objectives help banks better serve their communities and grow their core business. WBA offers the following comments for consideration regarding the agencies proposal to amend their rules implementing the CRA.

## **Discussion**

### *Asset Thresholds*

WBA appreciates that the agencies have proposed to increase the asset thresholds. The banking industry has changed since CRA was implemented, and banks have become subject to increasing regulatory burden throughout the years. As such, WBA appreciates the agencies' effort to tailor the proposal to avoid imposing additional burden upon smaller banks by proposing to raise the asset threshold for each bank category (small, intermediate, and large). Small and intermediate banks would not be required to collect and report new data. WBA supports the agencies efforts to balance the goals of providing more clarity, consistency, and transparency in the evaluation process, with minimizing the associated data requirements for smaller banks.

However, WBA requests the agencies re-examine certain aspects of the performance expectations tied to these asset thresholds for large banks. These expectations include new data collection for data on deposits, auto loans, retail services and products, and community development services and loans/investments. The agencies have proposed a Retail Lending Test and Community Development Financing test which would require new data collection and reporting based upon a higher asset threshold. These additional requirements would apply to banks over \$10 billion in assets. WBA understands and appreciates the effort to address the fact that smaller large banks may have more limited capacity, but requests that the agencies re-examine the \$10 billion threshold, as discussed below in the applicable sections.

### *Assessment Areas*

The existing CRA regulations require a bank to delineate one or more assessment areas in which its record of meeting its CRA obligations will be evaluated. The regulations require a bank to delineate assessment areas consisting of geographic areas (metropolitan statistical areas (MSAs) or metropolitan divisions) or political subdivisions in which its main office, branches, and deposit-taking automated teller machines are located, as well as the surrounding geographies (i.e., census tracts) where a substantial portion of its loans are originated or purchased.

The agencies have proposed to update the CRA assessment area approach to evaluate performance in facility-based assessment areas for all banks, and in retail lending assessment areas for large banks. In addition, the agencies propose to consider qualifying community development activities outside of a bank's assessment areas at the state, multistate MSA, and institution levels to add certainty and to encourage qualifying activities in areas with high community development needs. The agencies have also proposed to evaluate large banks and certain intermediate banks on their retail loans that are outside of both retail lending assessment areas and facility-based assessment areas.

There are various positives and negatives to such an approach, and while these updates are intended to totally establish the local communities in which a bank is evaluated, based upon ongoing changes to the banking industry, WBA recommends that the agencies consider an

approach that is designed to be as flexible as possible. Banks serve communities subject to a variety of differing market competition, and regional considerations. For example, WBA is aware of banks with branches which skirt the edge of a separate county. It is not realistic to expect such banks to service the entire county in these situations. This becomes particularly difficult for rural areas and branches which may face criticism for not reaching central areas. As such, WBA recommends consideration of a more flexible approach. For example, one which permits banks to provide evidence for meeting the spirit of the regulation by providing contextual evidence. A bank could then, if it so chooses, still decide to designate the entire county, but also have the flexibility to build a case in support of another approach if it is truly more appropriate.

In addition to facility-based assessment areas, large banks would delineate retail lending assessment areas in concentrations of retail loan originations outside of facility-based assessment areas. Only the Retail Lending Test would apply in these areas. The delineation of a retail lending assessment area would be required in any MSA or the combined non-MSA areas of a state, respectively, in which a bank originated in that geographic area, as of Dec. 31 of each of the two preceding calendar years:

- (i) at least 100 home mortgage loans outside of its facility-based assessment areas; or
- (ii) at least 250 small business loans outside of its facility-based assessment areas.

WBA recommends that the agencies consider higher thresholds for determining delineation of a retail lending assessment areas. The proposed thresholds would require addition of assessment areas in areas that are not representative of a bank's overall business. For example, a large bank might be required to add an assessment area in a county where they have a loan production office, but overall, this retail area represents a relatively small percentage of their production. Automobile lending, for example, is an area where a bank may hit the threshold, but its activity is in no way representative of the actual market given the presence of smaller community banks, credit unions, and auto loan specialists which are far more heavily engaged. This situation is discussed more below in the context of retail lending test requirements but for purposes of assessment area designations, under the current thresholds, large banks would face additional costs and burden to designate these areas which, ultimately, do not actually represent the true market, nor meet the intent of CRA.

#### *Performance Tests, Standards, and Ratings*

As discussed above, the agencies have proposed that some new requirements would apply only to large banks with assets of over \$10 billion. For example, the agencies propose that only large banks with assets of over \$10 billion would have requirements for deposits data, retail services data on digital delivery systems, retail services data on responsive deposit products, and community development services data. In addition, the agencies propose that banks with assets of over \$10 billion, including wholesale and limited purpose banks, would have automobile lending data requirements. WBA is concerned that these requirements will be quite significant while, in some cases, not accurately represent lending activity.

For example, one large member bank provides automobile lending, but in a market where credit unions, auto loan specialists, and smaller banks are far more heavily engaged. This results in a lopsided situation where the data is not truly representative of the availability of automobile loans. So, a large bank would be evaluated, but not against the actual competition, missing entire segments of the market. WBA understands the agencies desires to gather this information based upon the increased resources of larger institutions but questions the \$10 billion threshold and requests that the agencies re-examine whether this threshold is an

appropriate way to capture the lending data.

### *Definition of Small Business*

The retail lending test would apply to several major product lines, including small business loans. The agencies have proposed to define “small business” and “small farm” following the Consumer Financial Protection Bureau’s (CFPB) definition of “small business” issued in its Section 1071 proposal. As such, the proposal would define “small business” as a business having gross annual revenues of \$5 million or less for its preceding fiscal year. WBA appreciates the efforts to create parity and avoid confusion among definitions, however, this threshold must be consistent across the regulation. For example, the borrowing distribution metrics look at small businesses with gross annual revenues of more than \$250,000 but less than or equal to \$1 million. Such a metric creates instability within the definition of small business.

Additionally, member banks have reported concerns with determining gross annual revenue. It will be difficult for businesses to report annual revenue at the beginning of the year. Instead, for accuracy and consistency purposes, the amount should be dependent upon what the borrower indicates in their application. This would be sensible given it will reflect what the credit decision is based upon. For example, business applicants are far more likely able to represent the prior two fiscal years rather than represent what their gross annual revenue will be at the beginning of the year.

### *Data Collection, Reporting, and Disclosure*

The proposal has reduced the amount of data and supporting documentation for all qualifying activities and certain non-qualifying activities conducted by the bank which must be collected and reported until the completion of its next CRA evaluation from what has been seen in previous proposals. WBA appreciates the agencies consideration of the significant burdens such requirements place upon the industry. As such, WBA requests that the agencies remain mindful that data collection, reporting, maintenance, and disclosure of records drains banks of resources. Member banks have indicated they will need to consider adding to staff, increasing software, training costs, audit, checkpoints, and accuracy checking. Such costs divert resources and funds from other areas, which go toward supporting the local communities which banks are a part of, such as donations, creation of new products, and other resources.

### *Qualifying Activities*

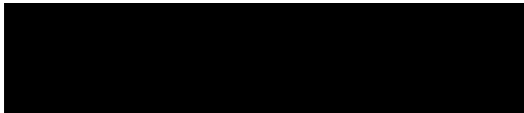
To provide additional certainty in determining what community development activities qualify, the agencies have proposed maintaining a publicly available illustrative, non-exhaustive list of activities eligible for CRA consideration. WBA appreciates the agencies’ efforts to provide this additional confirmation and method by which banks can obtain clarity as to whether activities count and supports the confirmation process (confirmation of eligibility) as proposed. However, WBA requests that the rule provide stronger incentives for affordable multi-family housing. At a minimum, the industry would appreciate more concrete examples of how to count affordable housing. For example: conditions which qualify? Partnering with non-profits? Signing of certifications? In summary, WBA recommends that the agencies consider clear, less stringent qualification standards to incentivize affordable housing.

### **Conclusion**

WBA supports the agencies efforts to modernize the CRA rules and reports success in achieving CRA goals amongst Wisconsin banks. When finalizing their CRA rules, WBA requests that the agencies remain aware of concerns with the additional burden adoption of new CRA rules will place upon the industry.

WBA appreciates the opportunity to comment on the agencies' proposed rulemaking.

Thank you,



Rose Oswald Poels  
President/CEO