Community Bankers of Michigan

One Mission. Community Banks.

August 4, 2022

Ann E. Misback, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

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

Chief Counsel's Office
Attention: Comment Processing
Office of the Comptroller of the Currency
400 7th Street, SW, Suite 3E-218
Washington, DC 20219

Via Federal eRulemaking Portal – Regulations.gov

Anita Fox, Director
Department of Insurance and Financial Services
124 W. Allegan Street, Suite 1000
Lansing, MI 48933

Re: RIN 1557-AF15; RIN 3064-AF81; RIN 7100-AF[•]

Ladies and Gentlemen,

The Community Bankers Association of Michigan (CBM) represents banks headquartered in Michigan. We align nationally with the Independent Community Bankers of America (ICBA) on many banking issues, however we are independent and place our focus on the needs of Michigan community banks. We are staunch advocates for our banks on the local, state, and national level. A big part of our advocacy efforts involves working with all bank regulators on the state, regional, and national level. We have enjoyed a long, excellent, and very candid and productive relationship with the Federal Reserve, the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC), and the Department of Insurance and Financial Services in Michigan. We appreciate the opportunity you have provided for us to submit our comments on behalf of Michigan banks.

CBM and Michigan community bankers are strong advocates for updating Community Reinvestment Act regulations to support fair, equitable, consistent, and transparent CRA implementation. CRA has been around since 1977 and the world around us has changed and the regulation needs to be updated. The last major update was 1995.

We are encouraged that the proposal would tailor CRA evaluations and data collection for community banks. Regulators should ensure the plan meets the needs of all community banks and the communities they serve and does not place undue burdens on banks for data collection and reporting. After all, credit unions, mortgage companies, farm credit lenders like Greenstone, and fintech's do not have to comply with CRA, which is not acceptable and places an unfair and unjust burden on banks alone. Bankers do an outstanding job of meeting the needs of consumers in low to moderate income communities – not because we have to, but because it is the right thing to do. All Americans should be treated equally in financial transactions and have every opportunity for a better financial future for themselves and their families. Community banks are dedicated to this idea – but unfortunately, banks carry the entire regulatory burden of compliance with CRA while all of the other lenders can avoid lending to low to moderate income communities while facing no oversight or recrimination for their failure to help all American consumers. Credit unions say they are there to serve all communities, but nearly every review conducted of HMDA data says otherwise – they disproportionately lend to upper income communities, under lend in low to moderate income communities, and are rarely held accountable by their regulator, the NCUA, for fair lending issues or prudent lending standards for that matter. Try to find a fine for a flood violation for a credit union – pretty rare, and they are not strong in the area of compliance – they just have a much lower bar to meet with their regulator. Greenstone and other federally subsidized farm credit tax exempt lenders cherry pick residential mortgage loans to the wealthiest farmers, while turning a blind eye to low-income, rural housing which is desperately needed in our country. No government entity holds CUs or farm credit lenders accountable for CRA type lending – yet our community banks face compliance burdens nearly equal to those applied to the largest banks in the country. These other lenders face no lending test, no service test, and no investment test – they are almost totally and completely unaccountable for their actions.

Banks were the saviors of the Michigan economy during the PPP program, lending over 95% of the funds in our state to keep our small and mid-sized businesses alive during a very tough time for all communities. Lending data shows that banks lent to minority owned businesses, and businesses in low to moderate income communities in direct proportion to their make-up of the overall economy, both in Michigan and nationally. If banks had more time to roll the PPP program out, we could have reached even more businesses in every community. Credit unions made only 3% of the PPP loans in our state and Greenstone and other farm credit services lenders were under 1% of PPP lending – both groups were missing in action just like they are in CRA related loans. Fintech's received the poorest marks in client service and were responsible for a disproportionate amount of fraud losses in the PPP program. If you were in a low to moderate income community in an urban or rural area, and you needed a PPP loan, you effectively had only one place to turn to – your local bank. And thankfully our bankers rode to the rescue for their local communities. The unfair tax-exempt status of credit unions and farm credit lenders should be revoked, as they are not serving the mission they were created to serve – providing credit to underserved communities.

CRA regulations and approaches are outdated and can serve as barriers to implementing the law's mission. Modernization should ultimately reflect banking industry changes, recognize the disproportionate reporting burden on community banks, improve transparency, and be extended to credit unions, mortgage companies, Greenstone and fintech's. We do appreciate the three regulators working together to develop a consistent framework so that there is less confusion on various requirements. We also want to see a proposed two-year phase in period of any changes to the regulation.

The proposed regulations continue to put too much compliance burden on small and mid-sized community banks. The regulatory burden on banks below $1 billion should be rolled back by the OCC, the Federal Reserve, and the FDIC. It is not enough to keep old requirements in place because they prolong the unfair competitive advantage they give to CUs, fintech's, farm credit lenders and mortgage companies. Community banks should not be unfairly forced to include entire counties, or worse, MSAs in their CRA assessment area when they have only one or two branches in a large area (large by population or geography or both). This has been one of the most unjust requirements imposed over the last couple of years on small to mid-sized banks by regulatory fiat, with no concrete definition of when a bank needs to pull in a large MSA, city, or county. We favor a sound empirical approach such as deposit market share or branch market share (measured including credit union deposits) for requiring a large area being added to a community bank's CRA lending/assessment area. We recommend that it must account for over 7% of branch or deposit market share in order to require the inclusion of large MSAs, cities, or counties in a bank's CRA lending area. Community banks who enter a large MSA with one or two branches often do not even register 1% in branch or deposit market share, but they are still occasionally unjustly burdened by their regulator to have to do marketing and selling efforts across the entire area, with no empirical test or rationale for the requirement. It is these types of discretionary regulatory actions, sometimes just by individual examiners, which put undue burdens on small and mid-sized community banks that were never intended by Congress and need to be addressed and revised in the new CRA proposals.

Affordable Housing Issues
Questions 3 through 10 relate to various aspects of affordable housing. We understand that this issue has always been a significant concern in various federal laws. However, the biggest dilemma for community banks in evaluating affordable housing opportunities is the fact that this is often driven by factors outside their sphere of influence, including the priorities of various governmental agencies, zoning laws, and financing incentives or the lack there of, in various communities and an array of other issues outside of the banking industry's control or influence. Bankers are usually at the center of coordinating financing activities with local government to help the community, but some areas lack effective local government leaders and banks should not be saddled by burdens they did not create.

Community Supportive Services
Several of the issues in questions 14 through 24 deal with disaster recovery and climate risks. We concur that activities related to disaster preparedness and climate resiliency should be qualified activities. Unfortunately, the last two disasters that have hit Michigan communities in 2022 were denied emergency classification by FEMA and thus funds which could have supported bank lending to rebuild hard hit communities were not fully utilized to help repair climate damage.

Financial Literacy Activities
In response to question 27, CBM urges that activities that benefit individuals and families of all income levels should be considered. For example, a variety of programs are offered through public schools so that students of all income levels have access without consideration of their income.

Asset Thresholds Should Be Adjusted for Small Banks
Under the proposal, Small Banks are defined as those with assets of up to $600 million and Intermediate Small Banks are those with an asset threshold of $2 billion. Large Banks are those with assets of at least $10 billion. These asset sizes do not reflect reasonable benchmarks. Any inflation adjustment no matter how conservative would result in thresholds 2-3 times larger than what is proposed – again unfairly burdening small to mid-sized banks.

Small Banks should be defined as those with assets of up to $1 billion in total assets, with commensurate adjustments for Intermediate Small Banks at $5 billion and Large Banks at over $20 billion. We did note that the $1 billion threshold is consistent with the proposed definition of "community bank" in the 2012 FDIC Community Banking Study.

Small and Intermediate Small Bank Opt-In
The CBM and our bankers appreciate and support the proposal that allows Small Banks (currently below $600 million in total assets) to remain with the existing Lending Test for evaluations unless they elect to opt into the new Retail Lending Test. Raising the Small Bank threshold to $1 billion would give more banks needed flexibility.

Banks with total assets between $600 million and $2 billion would have the option to remain with the current Community Development Test or comply with the new Retail Lending Test. This should be adjusted per our recommendation to banks over $1 billion and under $5 billion.

CRA-Qualifying Activities Should Be Expanded and Consistently Applied
The OCC final rule (withdrawn in December 2021) included qualifying activities confirmation and an illustrative list that described examples of qualifying activities that were publicly available on the OCC's website. That reform also provided a process for interested parties to request confirmation of qualifying activities, which could be added to the list.

Among community banks, qualifying activities confirmation was a popular element of the OCC's reform which included the development of an "illustrative list" of acceptable CRA activity. This was not only helpful to community banks – but it also can serve as a source of information for regulators and community groups. We highly recommend it be part of any new CRA standards.

This proposal would require the agencies to maintain a publicly available, illustrative, list of activities considered eligible for CRA consideration. The agencies also propose including a process for modifying the illustrative list of activities periodically. In addition, the agencies are proposing a process, open to banks, for confirming eligibility of qualifying community development activities. In this process, banks would submit the details of a potential loan or investment to their regulator and could receive a binding decision about whether the loan or investment would be eligible for CRA credit.

Based on anecdotal evidence, there are likely to be inconsistencies in the treatment of activities based on differences in examiners. Thus, maintenance of this list would help provide consistency for all concerned parties.

Assessment Areas
We appreciate the proposed flexibility that allows Small Banks and Intermediate Small Banks to continue to be allowed to delineate assessment areas consisting of a portion of a county that the bank can be reasonably expected to serve, provided they continue to include only whole census tracts, without having to delineate an entire county. However, this has not been consistently applied by examiners in the past. We would like to see standards set that keep examiners from unreasonably pressuring banks to adopt expanded assessment areas. Many examiners require that institutions include whole counties in an assessment area, even when it is clear that the bank cannot service the entire county's needs.

Under the proposal, regulators would still use "facility-based assessment areas," which are delineated by a bank's deposit-taking networks, as the primary factor for determining if banks are meeting their CRA obligations.

Loan production offices (LPOs) are not branches and should not be considered in determining the bank's assessment area. It is common for banks to use LPOs to test the waters and determine whether a branch should be established in a new area. However, until that formal step is taken, the LPO should not affect the assessment area determination.

Large Banks would be required to delineate assessment areas that "consist of one or more MSAs or metropolitan divisions or one or more contiguous counties within an MSA, a metropolitan division or the nonmetropolitan area of a state."

Large Banks and banks that opt-in to the Retail Lending Test would be required to delineate a Retail Lending Assessment Area in any MSA or the combined non-MSA areas in which a bank originated in that geographic area, as of Dec. 31 of each of the two preceding calendar years:

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

Comment: The Retail Lending Assessment Area is not a workable concept, and it has no foundation in CRA legislation from Congress. It should only be used for branchless internet-based banks. Bank charters should not be awarded by regulators for internet only organizations, but that argument is for another day. The concept of retail assessment areas for CRA for banks of any size that also operate a retail branch network is not viable and may indicate some misunderstanding of what is required for a sound CRA program for a bank. Banks must have staff members who interact with local communities and local governments to do effective and sound low to moderate income lending. It can carry higher risk, and banks often choose to accept higher loan loss rates to help extend credit to low to moderate income borrowers. This requires more management oversight and intervention to make sure you are doing loans that are also safe and sound. This also requires a physical presence – loan officers, branch managers, bank CRA staff, credit staff, and usually senior management to interact with local developers, local government officials, and local community groups to develop, implement, and oversee viable programs that meet targeted community needs. These loans cannot be done in a safe and sound manner without the cooperation of, and close working relationships with, all of these parties. This does not and cannot happen in areas where banks do not have a physical branch presence. The expense that would be imposed on banks of any size would far outweigh any potential community benefit and may result in banks cutting off credit to communities to remain under any required targets. Any lending organization would evaluate the cost benefit of doing another loan and may choose to stop lending at the cutoff to avoid the exorbitant incremental costs that would be imposed on them with a retail assessment area. This is the exact opposite of what is in our nation's interests and what is in the interests of local communities who need access to credit. We understand that regulators have a hard time enforcing CRA standards on internet only banks – so the easiest solution is to stop granting charters to them. Banks of all sizes would be at a further competitive disadvantage to CUs, fintech's, and mortgage companies if retail assessment areas were required as the competition would bear no such compliance burden. This concept also imposes significant tracking and reporting expenses on banks. No regulation should be imposed on any industry without a thorough cost benefit analysis and those proposing this concept have not produced any data to support its viability, the cost burden on the industry, or its net benefit to society.

Comment: Health Savings Accounts, prepaid debit cards and other similar accounts should be reported at the bank level and not the branch level. These products are managed at the bank level, and records reflect that.

Comment: When MSAs are spread across multiple counties, the dollar value of activities should be distributed to all LMIs across multiple counties. A number of MSAs in Michigan have more than one county.

Retail Lending Test

The proposed Retail Lending Test would apply to Large Banks and Intermediate Small Banks and Small Banks could opt in. It would be applied in each of several major product lines:

- Closed-end home mortgage loans — all closed-end home mortgage loans secured by a one-to-four-unit dwelling. Open-end home mortgage loans — all open-end home mortgage loans secured by a one-to-four-unit dwelling.

Comment: Home mortgage product lines should be considered only when the number exceeds the proposed threshold of 100 loans. We reiterate that we do not support the overall concept of retail assessment areas.

Comment: Agencies should aggregate all closed-end home mortgage loans of all purposes and not split out home improvement loans and refinances.

- Multifamily loans — loans secured by multifamily housing will be considered as a major product line. The proposal also considers the subset of multifamily loans that provide affordable housing to low- or moderate-income individuals under the Community Development Financing Test.

- Small business loans — the agencies propose to define "small business" and "small farm" in the CRA regulations in alignment with the CFPB's proposed definition of "small business" in its Section 1071 Rulemaking. As such, the agencies propose to define "small business" as a business having gross annual revenues of $5 million or less for its preceding fiscal year. This is a significant increase from the current level of $1 million.

The increase from $1 million to $5 million as proposed under the section 1071 proposed rule would mean virtually every loan made by a Michigan community bank would be a 'small business loan' or 'small farm loan' subject to reporting requirements. This will impose significant new data collection and reporting requirements on already taxed community banks that opt-in to the Retail Lending Test. A $5 million gross revenue threshold is too high. We recommend the $1 million level for small business loans. Again – we do not support the concept of a retail assessment area.

The same size standard should be used under both section 1071 and CRA. Therefore, if the final 1071 rule uses the larger size threshold, then we agree that the same definition should apply for CRA purposes. Otherwise, banks will have complicated, inconsistent data analyses to perform.

- Automobile loans — automobile loans will be evaluated for banks with $10 billion or more in assets. Auto loans are the only type of consumer loan to be quantitatively evaluated under the proposed rule's framework. We find this break-out puzzling. Automobile lending has been monopolized by overaggressive credit unions and captive finance companies. Fortunately, our banks did not lower their disciplined underwriting standards to compete with these poorly regulated entities. Auto delinquencies and repossessions at CUs and finance companies are already starting to spike and the federal government is likely to have another financial crisis on their hands soon with CUs which will look very similar to the S&L crisis in the 1980's. There is ineffective supervision through the NCUA. The S&L regulators had to be folded into the OCC due to their poor supervision practices and we will not be surprised when the same thing has to happen with the NCUA as the effects of the next recession materialize. The CUs will fail in droves, and we respectfully ask our regulators to start taking steps now to help minimize the future damage to our nation's financial system.

Comment: Banks should be able to choose whether a 'Small Business' or 'Small Farm Loan' is considered under the Retail Lending Test or, if it has a primary purpose of community development, under the applicable community development evaluation, regardless of the reporting status of these loans.

Regulatory agencies should provide consideration for 'Small Business,' 'Small Farm' and home mortgage loans under the Community Development Financing Test.

Community Development Services Test
For large banks with average assets of over $10 billion, the Community Development Services Test would include an additional quantitative benchmark to evaluate community development service hours. The metric would calculate the average number of community development service hours per full-time equivalent employee by dividing the hours of community development services activity in each facility-based assessment area during the evaluation period by the total full-time equivalent employees in the facility-based assessment area. This should not be limited to nonmetropolitan areas.

Comment: Agencies should clearly define 'full-time equivalent employees' and that calculation should include executive and clerical staff. Most CBM members are not "large banks," yet they may grow into that category. Currently, it is common for executive and clerical employees to engage in community development services activities.

Examples of Qualifying CRA Projects
The notice of proposed rulemaking also amends the type of activities that qualify as community development,

revising what constitutes affordable housing and economic development as well as adding new categories. Banks would be credited for activities in:

- Affordable housing (with important clarifications for unsubsidized and mixed-income housing);
- Economic development that supports small businesses and small farms (mostly evaluated under the retail lending test);
- Community supportive services;
- Revitalization activities (with significant changes from current regulations);
- Essential community facilities;
- Essential community infrastructure;
- Recovery activities in designated disaster areas;
- Disaster preparedness and climate resiliency activities;
- Activities with minority depository institutions, women's depository institutions, low-income credit unions and Treasury-certified community development financial institutions; and
- Financial literacy.

Credit for Activities Outside CRA Assessment Areas

One significant change originally proposed by the OCC would allow banks to receive credit in their CRA exams for investments and other activity outside their assessment areas that benefit LMI populations, which are now limited to physical branch networks.

Comment: Volunteer activities unrelated to the provision of financial services should be considered in all LMI areas. For some banks, it is difficult to find qualifying investments and other activities that are explicitly in their assessment area. Thus, this flexibility is extremely important.

Transition

The rule would become effective 60 days after publication of a final rule in the Federal Register. For certain provisions, the agencies propose an applicability date of approximately 12 months after publication of a final rule.

Comment: Given the additional burden this will place on banks that would conceivably coincide with implementation of the final rule under section 1071, a more appropriate effective date would be 24 months after publication in the Federal Register for all provisions – especially for small and mid-sized banks that do not have the resources to implement a rapid change.

Michigan bankers and the CBM recognize that in the case of CRA, both banks and the communities they serve will benefit from a modernized regulatory framework that recognizes the changes in the financial and banking environment that have occurred since it was originally enacted. We urge the agencies to take this opportunity to make changes that benefit all stakeholders, and which result in making more credit available. Thank you for your consideration and for the opportunity to submit comments.

Sincerely,

[redacted]

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Additional Bank Signatories
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