

February 16, 2021

Via Electronic Submission

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

Docket No. R-1723

Re: Community Reinvestment Act Regulations

Dear Madam:

The Massachusetts Bankers Association (MBA), which represents more than 130 commercial, savings and cooperative banks and federal savings institutions with 72,000 employees located throughout the Commonwealth and New England, appreciates the opportunity to comment on the Advanced Notice of Proposed Rulemaking (ANPR) issued by the Federal Reserve and its Board of Governors (Federal Reserve, Board) that modernizes the regulations that implement the Community Reinvestment Act of 1977 (CRA).

All our member banks strive to meet the needs of their communities and surrounding areas by serving as the backbone of the residential and commercial real estate markets and providing access to capital to low- and moderate-income (LMI) communities. Massachusetts banks have a strong record of compliance and performance relative to public examination records and our members look forward to expanding on these efforts through a modernization and updating of the CRA regulations to reflect changes in the banking industry and the delivery of financial services over the last 20 years.

Overview

MBA has long advocated for comprehensive updates and modernization of the implementing regulations for CRA. The current regulatory framework does not properly address the overreaching effect technology has had to lending, the delivery of financial products and services and the needs of today's consumers. The events of the past 24 months demonstrate there is specific interest amongst the prudential regulatory agencies to modernize the CRA framework. We appreciate the time and effort the agencies put in to update this framework for the 21st century and the very different economic model that exists today.

The ANPR from the Federal Reserve has similar and positive components to the Office of the Comptroller of the Currency's (OCC) final rule from 2020 in specific areas such as providing clarification on longstanding issues on qualified CRA credit and performance measurement. Nevertheless, MBA has serious concerns with several areas of the ANPR, most specifically the lack of a coordinated rulemaking process amongst the prudential regulators.

Lack of Consistency among All Regulatory Agencies

MBA continues to have serious concerns with the lack of a coordinated response to CRA modernization at the federal level. While our members include national or federally-regulated institutions regulated by the OCC, the majority of our member institutions are state-chartered institutions regulated by either the FDIC or the Fed. State member and non-member banks operate throughout many of the same market areas, and inconsistency in the application of the CRA standards will mean that LMI communities in these areas will be served differently based solely on which regulator the institutions have chosen.

Massachusetts is also unique in that state-chartered institutions are also subject to CRA requirements at the state level. State and federal regulators have invested significant time to ensure that CRA examinations can continue to be conducted on a joint basis and that a bank's final rating is accurately reflected by both state and federal standards.

As we noted in our comments on the OCC proposal, we are deeply concerned with the lack of uniformity of the federal CRA rules and the state CRA statute and implementing regulations we have in Massachusetts. The Massachusetts Division of Banks, the FDIC and the Fed have worked closely over the last several decades to ensure that the supervisory approach for Massachusetts banks remains consistent – regardless of which agency's examiners conduct the CRA exam. We are deeply concerned that we do not have a uniform process to CRA modernization at this time. Without a uniform federal response by the OCC, FDIC and Federal Reserve, little pressure exists to update the Massachusetts implementing regulations, creating additional confusion and regulatory burden for our member banks.

Qualifying Activities

Member feedback has consistently found high support for the regulatory agencies providing clarification on certain qualifying activities. As the ANPR makes clear, the Federal Reserve is considering a number of enhancements to qualifying activities that are substantially similar to the final rule from the OCC. We would advocate again for an illustrative list of qualified activities to be used by financial institutions throughout the year as they alter their strategic plans and develop new initiatives to better serve their communities. This list should be developed cooperatively by the agencies and we would appreciate guidance in the final rule that the list is illustrative and inclusive, and not exclusive of other creative ventures our members may pursue in the future.

MBA continues to advocate for the establishment of an approval process for CRA credit on certain community development projects. A system where the regulators would provide positive or negative feedback about a potential project's worthiness for CRA credit would be a welcome development. No specific timeframes are laid out in the ANPR but we would make a similar recommendation to the Federal Reserve that the proposed timeframe for a "pre-approval" review occur within 90 days of the request by the financial institution. This 90-day standard would allow for greater efficiency in a financial institution's pursuit of qualified lending activities.

The ANPR suggests the Federal Reserve has listened to prior feedback from financial institutions throughout the OCC rulemaking process and has not decided on consolidating or cutting back on CRA credit for loans made through correspondent lending relationships and Government-Sponsored Enterprises (GSEs). The origination of 1-4 family mortgage loans remains a core business for our member banks. Correspondent lending and secondary market loan sales allow MBA's community bank members additional flexibility to address market risk while ensuring quality underwriting, comprehensive compliance and establishing relationships with borrowers within their communities.

As you know, there are many reasons why selling loans on the secondary market is not an indicator of a financial institution's lack of commitment to CRA. Most often, banks are using the secondary market and GSEs to manage interest rate and credit risk. In addition, many loans sold into the secondary market are held as "servicing retained". This means the customer's primary lender, and subsequently the customer's loan servicer, is still the local, community bank they worked with throughout the lending process.

Finally, the availability for sale on a secondary market is a means for banks of all sizes – particularly the smallest community banks – to offer traditional 15- and 30-year mortgages with competitive rates. Ensuring that LMI communities continue to have access to these products over non-traditional retail loans

such as Adjustable-Rate Mortgages (ARMs) is an important public policy issue. We appreciate the consideration in this area as noted throughout the ANPR.

Defining “Small” and “Large” Banks for CRA Purposes

The specifics of the Federal Reserve’s proposal in the matters of assessment areas, lending and deposits tests, data collection and reporting demonstrate acknowledgement of industry feedback throughout the previous rulemaking process by the OCC. We expressed our gratitude that the Federal Reserve would review comments submitted to the OCC and it is clear that certain considerations have been made within the ANPR. MBA continues to advocate for the adjustment of asset-size thresholds to better reflect today’s environment in Massachusetts and New England. The proposed elimination of the “intermediate-small” threshold and consolidation to “small” and “large” bank categories is a welcome change. The Board seeks feedback on whether or not this threshold should be set at \$750 million or \$1 billion. We recommend that the new threshold be set at \$1 billion, along with some component included in the final rulemakings to means test this threshold and potentially raise it over time.

Small banks under this new paradigm as suggested by the ANPR would receive substantially similar examinations to today’s environment, while realizing the benefits of the proposed clarifications in qualified activities, and exam procedures. Small banks would be exempt from the additional burden of data collection, recordkeeping and reporting contained within the ANPR. MBA supports many of these changes. MBA does have serious concerns with the implications for “large” banks at the new threshold. As the industry evolves, banks with assets of \$1 billion or more are still very much community-based financial institutions, particularly in states and areas of the country with high-density metro populations. This is why we respectfully request that the final rulemakings include requirements to evaluate raising this threshold over time.

Conclusion

Thank you again for the opportunity to offer our comments on the ANPR to modernize Community Reinvestment Act regulations. We recognize that CRA needs to be modernized and made more adaptable given the changing nature of banking in the 21st century. Nevertheless, we have serious concerns with many components of the proposal and we hope our comments will be considered as the Board works to propose a final rule.

Most importantly, it is our hope that the prudential regulators will cooperate on an eventual final rule that enforces the same standards across the industry, no matter the regulator for a particular bank. It is not tenable to have parallel standards across the regulatory agencies, particularly for states that have their own requirements for CRA such as the Commonwealth of Massachusetts.

Thank you again for your consideration of our comments. If you have any questions or need additional information, please do not hesitate to contact me at bcraigie@massbankers.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Ben Craigie", with a stylized flourish at the end.

Ben Craigie
Director of Compliance and Training