

July 31, 2022

Via Electronic Submission

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

Chief Counsel's Office
Office of the Comptroller of the Currency
400 7th Street SW, Suite 3E-218
Washington, DC 20219
Docket ID OCC-2022-0002

Ann E. Misback
Secretary
Board of governors of the Federal Reserve System
Washington, DC 20551
Attention: Docket R-1769; RIN 7100-AG29

Re: Community Reinvestment Act Regulations

Dear Madam or Sir:

The Massachusetts Bankers Association (MBA), which represents more than 120 commercial, savings and cooperative banks and federal savings institutions with 70,000 employees located throughout the Commonwealth of Massachusetts and New England, appreciates the opportunity to comment on the interagency Notice of Proposed Rulemaking (NPR) issued by the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC) and the Board of Governors of the Federal Reserve System (Fed) that modernizes the regulations that implement the Community Reinvestment Act of 1977 (CRA).

MBA member banks represent the backbone of the residential and commercial real estate lending markets in the Commonwealth and operate to meet the needs of their communities, specifically by providing access to capital in low- and moderate-income (LMI) communities. Massachusetts banks have a strong record of compliance and exemplary performance in CRA, and our members look forward to implementing the changes enacted in the final rule.

Overview

The MBA and its collective membership have long advocated for comprehensive updates and modernization to the implementing regulations of CRA. The outdated regulatory framework does not properly address the significant impact that technology has had on lending, the delivery of financial products and services, and the needs of today's consumers. We acknowledged in a 2020 comment letter the broad interest amongst regulators, bankers, policymakers, and consumer advocates in modernizing the CRA framework. We appreciate the time and effort involved in the interagency process to coordinate an updated framework for the 21st century and the entirely different gig economy that exists today.

This NPR is complex, extensive and covers multiple tiers of asset sizes and thresholds in banking. We appreciate the positive components to the proposed rule, specifically areas where the interagency process clarified longstanding issues in qualified activities for CRA credit, performance measurement and community development projects and initiatives. MBA does have serious concerns with several areas of the NPR, including tailoring thresholds, the pervasive ambiguity of assessment area definitions for both intermediate and large banks, and the projected implementation period. Our comments are structured on the following areas of focus within the proposal: *Qualifying Activities and Community Development, Performance Measurement, Tailoring & Burden Reduction, Assessment Areas, and Implementation*. We will also conclude our comments by covering a critical issue for banks in the Commonwealth of Massachusetts as it relates to CRA and differences between state and federal regulation.

Qualifying Activities and Community Development

The proposal requires the agencies to publish a list of qualifying activities in community development (CD), combines lending and investments into a single CD financing test, and permits for bank level CRA credit for CD activities that occur outside the Facilities Based Assessment Area (FBAA) and Retail Lending Assessment Area (RLAA). An illustrative list of qualified CRA activities would be immensely helpful to the banking industry and other stakeholders.

MBA also favors establishing an approval process for CRA credit on certain CD projects. A process where regulators provide positive or negative feedback about a potential project's worthiness for CRA credit is a welcome inclusion to the proposal. We would note that specifics are not presented for comment in the NPR regarding timeframes and mechanisms for regulatory response. Previous proposals had suggested a six-month window, and the absence of a response in such a timeframe would imply banks could assume the project qualified. We strongly urge the agencies to include specific guidelines and structure to this process in the final rule.

Performance Measurement, Tailoring and Burden Reduction

The integration of tailored regulation and examinations within the financial services industry has been a bright spot in the last decade. CRA specifically has long had a certain level of tailoring within the examination guidelines, and we hope it continues to be a part of the CRA framework. The NPR adjusts the definitions of Small, Intermediate and Large banks to assets under \$600 million, assets between \$600 million and less than \$2 billion and assets of at least \$2 billion, respectively. There are certain requirements that apply only to Large banks with assets of \$10 billion or more, as well. We would also note that regardless of where the agencies settle on what constitutes Intermediate or Large banks, MBA has members between \$2B and \$10B in assets that very much remain *community* banks. This is true across the country in densely populated and economically diverse areas, regions, states.

As CRA reform has been debated over the years, the Association has received significant member feedback regarding prospective changes in performance measurement by asset thresholds and the regulatory burden that would be imposed upon our community and regional banking members. We appreciate the new definition for small banks of assets less than \$600 million but believe \$750 million would be a more appropriate threshold in the Commonwealth of Massachusetts. Massachusetts is a densely populated state with a complex and modern economy. The normative asset size in Massachusetts is different than many other areas of the country. Likewise, the cap on Intermediate banks should be raised to \$3 billion, which would be a better representation of the median large bank in the Commonwealth and New England.

We do appreciate the flexibility provided for Intermediate banks in the NPR. Allowing these members to opt in or out of the new CD financing test (therefore removing the requirement for these banks to collect and track the new data points within the proposal) provides much-needed flexibility for Intermediate banks. Additionally, for Intermediate banks that opt into the CD financing test, the lack of a mandate to report these data points appropriately tailors the regulatory burden moving forward.

MBA has serious concerns regarding the impact to Large banks which we will detail in our discussion of Assessment Area changes. We would also point out that the inclusion of indirect lending (i.e., auto lending) to the definition of major product lines for all members is notable and curious. Indirect lending isn't marketed in traditional fashion and this area of lending in Massachusetts and New England has historically featured high levels of competition between the largest lenders in the country including captive finance companies, credit unions and some community banks. This could drive more of our members from this line of business and therefore reduce competition, a direct negative impact to consumers, particularly low and moderate-income borrowers.

Assessment Areas

This interagency NPR generally retains the current approach of delineating assessment areas around a community or regional bank's branches and deposit-taking facilities, referred to within the proposal as FBAs. We would note our concern with the continued use of overly broad and vague language throughout the proposal that discusses boundary adjustments that "banks and financial institutions could reasonably be expected to serve." There have been notable disagreements between banks and financial institutions across the country with the regulatory agencies relative to reasonably expected marketing areas, otherwise known as REMAs. We recommend the agencies clarify this language in the final proposal. If the agencies wish for member banks to include entire counties and their associated census tracts based on a physical footprint within the county, they should specify this within its regulatory guidance.

Within the Commonwealth of Massachusetts, a physical footprint inside Middlesex County wouldn't necessitate pervasive CRA activity throughout the entire county, for instance. Middlesex County includes approximately 1.614 million people¹ and it remains unreasonable for our members to map an assessment area that includes this entire county simply because they have a branch at the southern tip of the county in Somerville, MA. These types of geographical differences occur throughout the Commonwealth and New England. We reiterate that tailored examinations and reasonable expectations for CRA activities will remain important for MBA members and the banking industry throughout the country.

For Large banks, the creation of Retail Lending Assessment Areas (RLAAs) represents a significant change. The NPR states that large banks must delineate an RLAA where the bank has originated at least 100 home mortgages or at least 250 small business loans in the preceding two calendar years, outside of the bank's FBAs. All major product lines are then evaluated inside the declared RLAA, including certain indirect (auto) lending. We strongly urge the agencies to reconsider some aspects of the proposed language. The agencies should consider market share as a triggering threshold rather than arbitrary lending totals, for instance. Not all Large banks are presently staffed and equipped technologically to engage in full-scale CRA activities in these new RLAAAs. If the agencies don't alter the proposed language, we would at least recommend a delayed implementation phase to permit banks and financial institutions the requisite time to assess, address and prepare for the impending changes to the industry.

¹ [U.S. Census Bureau QuickFacts: Middlesex County, Massachusetts](#)

Implementation

The NPR notes that the implementation phase will incorporate transition periods comprised of multiple “applicability dates”. Our concern remains that the most impactful changes in the NPR – new RLAAAs, performance and testing standards affecting all banks, ratings changes and data collection requirements for those Intermediate banks opting in – provide for a transition period as short as one calendar year from the effective final date of the rule. Twelve months is an insufficient period to implement the proposed changes as this rulemaking will be comprehensive and complex, from our largest to smallest members.

We also recognize the move from four tiers of CRA ratings to five tiers is meant to increase clarity in examinations and provide a roadmap for banks to achieve High Satisfactory or Outstanding CRA evaluations. We hold serious concerns for the number of banks projected within the NPR to achieve Low Satisfactory or worse outcomes. We believe this would be due to a combination of abbreviated implementation time periods and increased regulatory expectations. If the agencies decide to move forward with the five ratings, it seems plausible that a near-immediate implementation after twelve months would harm those banks on the schedule first.

Notably, the Massachusetts CRA statute has included a High Satisfactory fifth rating since the 1990s². Our member banks appreciate the recognition of their extra work that rises above the nominal Satisfactory rating but cannot yet be graded as an Outstanding performance. Community groups and other advocates also see and appreciate these banks that go above and beyond their CRA responsibilities. We have serious concerns with the proposed split of the nominal Satisfactory rating into “Low” and “High” ratings.

We would recommend a phased implementation that would permit our members to add staff and resources after a period of self-assessment and consultation with their specific prudential regulatory partner. Phasing implementation over two examination cycles would mean full implementation for the new CRA rule sometime in 2025, a more appropriate path forward. This would alleviate pressure on the industry and reduce member concerns about new business opportunities and potential mergers in the decades to come.

Uniformity in CRA and State & Federal Regulation

Finally, 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 together in the preceding decades to ensure that the supervisory environment in Massachusetts remains consistent – regardless of the agency leading the CRA exam. We remain hopeful that an extended implementation period will provide the Division of Banks in the Commonwealth the appropriate time to update the Massachusetts implementing regulations, which would reduce confusion for our members while also ensuring that credit unions aren’t afforded an even more advantageous regulatory environment within which to operate.

Like many of our state and national association trade partners, we would request that uniform CRA regulations and expectations be applied to credit unions and mortgage companies. These companies operate in the same lines of business as banks and other similar financial institutions, and their commitment and performance in CRA should match the superior record of our members and other banks around the country.

² Massachusetts General Law, Chapter 167, Section 14, Amended in 1996 to include *High Satisfactory*

Conclusion

Thank you again for the opportunity to offer our comments on the CRA NPR. 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 commentary will be considered as the agencies work to finalize a rule.

Finally, the Association also signed onto a joint state and federal association letter drafted by the American Bankers Association (ABA). We wholeheartedly support the recommendations and comments contained within the ABA's letter, dated August 3, 2022.

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". The signature is stylized and somewhat cursive, with the first name "Ben" being more legible than the last name "Craigie".

Ben Craigie
Vice President, Government Affairs