ILLINOIS BANKERS®

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Office of the Comptroller of the Currency
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Board of Governors of the Federal Reserve System
Docket No. R-1769; RIN 7100-AG29

Federal Deposit Insurance Corporation
RIN 3064-AF81

Re: **Joint Notice of Proposed Rulemaking**
Community Reinvestment Act Regulations
87 Federal Register 33884 (June 3, 2022)

The Illinois Bankers Association (IBA)[1] is writing on behalf of its members to comment on the Joint Notice of Proposed Rulemaking to modernize the Community Reinvestment Act (CRA) regulatory framework. We very much appreciate the huge investment of time and energy by agency staff and leadership to bring all three agencies together for this proposal.

The IBA's members strongly support the CRA's goals. Our member banks work every day to meet the credit needs of the communities they support and rely on. In addition to marketing and originating thousands of loans to low- and moderate-income individuals and contributing billions of dollars in nonprofit grants and contributions in Illinois alone, our members serve their communities with innovative down-payment and closing cost assistance, housing counseling, affordable housing, financial literacy, and other programs in partnership with community groups. Our hope is that the final rule will craft clear and consistent standards — while avoiding rigidity and complexity — to help banks support their communities by reducing supervisory ambiguities and avoiding unnecessary costs and restrictions.

Please note that we have submitted three comment letters throughout the CRA modernization effort so far: a 2018 letter in response to the OCC's Advance Notice of Proposed Rulemaking, a 2020 letter in response to the OCC and FDIC's Joint Notice of Proposed Rulemaking, and a 2021 letter in response to the Federal Reserve's Advance Notice of Proposed Rulemaking. The following discussion builds on and is consistent with our earlier comments.

Bring Clarity and Consistency to CRA Ratings. We have long heard from our members that the current CRA rules seem opaque and are not always applied consistently. For these reasons, we strongly support all aspects of the proposal that increase clarity and consistency for CRA ratings, including the publicly available, illustrative, and non-exhaustive list of qualifying activities, as well as a workable preapproval process for qualifying activities. Transparency and clarity as to qualifying activities will

[1] The Illinois Bankers Association is a full-service trade association dedicated to creating a positive business climate for the entire banking industry and the communities we serve. Founded in 1891, the IBA brings together state and national banks and savings banks of all sizes in Illinois. Over 52% of IBA members are community banks with less than $250 million in assets, and over 75% of IBA members are community banks with less than $750 million in assets. Collectively, the IBA represents nearly 90% of the assets of the Illinois banking industry, which employs more than 105,000 men and women in over 5,000 offices across the state.

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encourage productive investments that are beneficial to our communities, community organizations, and banks alike.

We request that the preapproval process for adding new activities to the list be as straightforward and speedy as possible. For example, banks sometimes need quick answers when approached about a potential CRA investment or other activity to meet an urgent need in the bank's community. The requirements to apply for and obtain approval of a new qualifying activity should not require major investments of time or effort.

Provide Reasonable Implementation Periods of 2.5 to 3.5 Years. Our member banks are very concerned about implementing the final rule in just one year. The last thing banks want is to fall short of their goals to support the CRA and their communities. However, our members are finding that implementation of the proposed rule is likely to be lengthy and difficult, especially because the regulatory text is unusually complex and difficult to understand.

Also, our members will soon be implementing the CFPB's new small business lending data requirements under Section 1071 of the Dodd–Frank Act, which the CFPB is required to finalize by March of 2023. These requirements, as proposed, are triggered by making just 25 covered loans, and very few of our member banks will be exempt from reporting. There is significant overlap in the staff members responsible for implementing the Section 1071 reporting requirements and this proposal's new CRA requirements, and banks' resources dedicated to new regulatory requirements are already stretched thin.

Given the proposal's complexity and other regulatory burdens, including Section 1071 implementation, we urge the agencies to provide banks with the breathing room to properly implement any new CRA requirements. A reasonable implementation period of 2.5 and 3.5 years would be adequate, with flexibility based on the size and complexity of the bank, as was provided for most of the substantive provisions of the OCC's 2020 CRA rule (85 Fed. Reg. 34734 (June 5, 2020), with implementation dates of January 1, 2023, and January 1, 2024).

Make Further Updates to Fully Modernize the Rule's Thresholds. The proposed thresholds for consideration as a "small" or "intermediate" bank are very low. We suggest replacing these thresholds and basing performance standards on business models and risk profiles rather than pure asset thresholds.

The asset threshold for a "large" bank is ripe for further modernization. The proposal categorizes banks with just over $2 billion in assets as "large," but we would view a bank of that size to be a community bank. Also, throughout the banking industry and particularly in Illinois, we are seeing banks' asset sizes only increasing as increasing regulatory burdens provide incentives for existing community banks to merge and disincentives for *de novo* institutions to enter the market.

One model for an appropriate "large" institution asset threshold comes from the National Credit Union Administration (NCUA), which recently raised the threshold for its large-credit union supervisory program to $15 billion in assets. In making this change, the NCUA recognized that institutions' balance sheets have been growing more quickly in recent years due to the COVID-19 pandemic and the corresponding policy response. 87 Fed. Reg. 45005 (July 27, 2022). As bank balance sheets similar balloon due to the same factors, and given this proposal's extreme complexity and costs, the asset thresholds set in the proposal should be dramatically higher — while also taking into consideration bank business models and risk profiles.

Simplify and Streamline New Data Collection and Reporting Requirements. The proposal requires reams of new data to be collected and reported, often in categories that examiners can (or soon will be able to) access through other means — from mortgage data reported under the Home Mortgage Disclosure Act to the small business lending data to be reported under the CFPB's imminent Section 1071 rulemaking.

Much of the time and expense spent in CRA data collecting and paperwork instead should be deployed in our banks' communities, through lending and investments, marketing to low- and moderate-income communities, and promoting financial literacy and other worthy causes. We ask that the agencies remove any unnecessary or duplicative reporting requirements by relying on existing datasets instead of requiring similar data to be re-reported with different formatting or a few additional data points. Any remaining reporting requirements should be streamlined for efficient collection and reporting, with flexibility for diverse bank data systems.

Any collection of new data or novel uses of existing data will require new or upgraded systems, training, and oversight, because many banks simply do not store data in the manner in which it will have to be reported. Transferring data from one system to another can be fraught with challenges. For example, before pulling data from a Call Report system, banks will have to ensure that their loan systems are pulling data from the correct Call Report and that no errors or software issues have corrupted the data while in transit. Similar issues pop up when pulling data from other data systems, as our members often maintain mortgage, consumer, auto, and business loan data on distinct systems.

Many of our members tell us that they will, for the first time, need to hire vendors to assist with their CRA data reporting requirements. Currently, there are no vendors providing data collection and reporting capabilities to fully meet the proposal's requirements, a situation that is unlikely to change soon, so our members are looking to vendors providing partial solutions (to the tune of six figures per year for a regional bank, for example). Before hiring a vendor, banks must investigate vendor options, perform due diligence (an involved process to be governed by the Proposed Interagency Guidance on Third-Party Relationships, 86 Fed. Reg. 38182 (July 19, 2021), among other applicable guidance), negotiate contracts, test new solutions with legacy systems, and train employees. Also, banks of all sizes tell us that they may have to hire new staff members to fulfill their new CRA data collection and reporting responsibilities.

To be clear, these newly hired vendors and staff members will not be meeting with customers or community groups, assessing community needs, making loans or providing community services, marketing, or otherwise producing value for banks or their communities — rather, these bank resources will be purely devoted to crunching numbers to comply with the new CRA data reporting requirements.

Much of this data would be collected and retained to no end — since banks would not know which "major product lines" might be subject to the rule until the end of a CRA examination cycle. Nevertheless, banks will have to continue collecting and retaining this data in case a product line ends up exceeding the 15% threshold for major product lines in the next cycle.

Also, given the CRA's limited coverage in most loan markets, data reported under the proposal will necessarily be incomplete and skewed. As to mortgage lending, the most recent Home Mortgage Disclosure Act data shows that nonbanks free from CRA oversight or reporting responsibilities originate nearly 64% of reportable mortgage loans, and that share is increasing every year (Press Release, FFIEC Announces Availability of 2021 Data on Mortgage Lending (June 16, 2022)). Banks' share of automobile lending is even smaller. Rather than forcing banks to expend inordinate resources to collect and report incomplete datasets, the agencies should allow banks to refocus their resources on their communities.

Avoid Punishing Traditional Banks with New Retail Lending Assessment Area Requirements. The thresholds for delineating retail lending assessment areas should not apply to traditional banks maintaining physical presences in their communities. The novel concept of retail lending assessment areas should be strictly limited to branchless lenders with online- or mobile-only models and very limited physical locations.

Most of our members provide online and mobile services to their customers. However, they are far from adopting internet-only banking models and are committed to maintaining physical branches, loan production offices, and other brick-and-mortar facilities. But these same members are predicting a huge influx of new assessment areas when applying the proposed retail lending assessment area criteria. If the proposal is finalized as written, our members and their communities will suffer as capital flows are slowed to avoid the unintended consequences of this aspect of the proposal.

In the brief ninety days since the proposal's publication, our members have just begun estimating the unintended consequences of delineating CRA assessment areas based on their institutions' retail lending. Of primary concern is that the forced recognition of these assessment areas will result in reduced capital flowing to these communities. If the proposal is finalized as written, many of our members could be forced to change how they serve their communities by reducing lending to avoid the distortions created by retail lending assessment areas.

One example of the potential for unintended consequences of delineating retail lending assessment areas: Many of our members engage in indirect lending for automobile and other equipment loans that may pose major CRA issues under the proposal. Banks operating in the indirect lending market provide an important source of capital, but cannot control the marketing of these loans, who walks in the door for the loans, and the locations of the dealerships providing the loans. Indirect lenders must rely on the marketing efforts of dealerships with no CRA responsibilities.

One of our members has estimated that their current lending profile will require it to add seventeen new assessment areas due to indirect small business loans originated by dealerships providing loans to trucking businesses. Many of the new assessment areas are in CRA-hotspot locations like Florida, New York, and California. The loans are crucial for providing capital to small businesses, particularly those operating in a niche market — truck financing — with limited financing options. Truck dealerships cannot establish locations in just any community, as the large size of the trucks they sell frequently require locations outside of urban centers, with proximity to major highways, to accommodate the unique needs of their customers.

While we doubt that the delineation of retail lending assessment areas was intended to punish banks providing capital to small businesses, under the proposal, banks in similar situations could be forced to pull out or significantly scale back their indirect lending relationships to achieve CRA compliance.

Create Certainty — Without Risks of Challenges and Lawsuits. We see a strong argument that the delineation of assessment areas based on home mortgage and small business lending is inconsistent with the statutory text of the CRA, which is overwhelmingly focused on the geography of deposit facilities, chartered locations, and deposit customers. We urge the agencies to protect CRA stakeholders from further uncertainty by removing all provisions from the final rule that would pose the risk of challenges in the form of litigation or congressional action.

The CRA requires financial institutions to "demonstrate that their **deposit facilities** serve the convenience and needs of the **communities in which they are chartered to do business**." 12 U.S.C. § 2901(a)(1). It also requires assessment of an institution's "record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods . . . ." 12 U.S.C. § 2901(a)(1). In the context of military banks, the CRA recognizes that some institutions serve individuals "who are not located within a defined geographic area" and allows such institutions to define their "entire community" as the "entire **deposit customer base** without regard to geographic proximity." 12 U.S.C. § 2901(4). It seems that refocusing instead on two types of retail lending — not deposits — and defining an assessment area based on those novel factors is inconsistent with the statutory text of the CRA.

Our members have operated under uncertainty with respect to the agencies' CRA rules since the first Advance Notice of Proposed Rulemaking was published in 2018, culminating in the adoption and complicated withdrawal of the OCC's final rule in 2020–2021. We strongly urge the agencies to adopt a final rule that can be implemented with absolute certainty for banks and their communities, without stretching the statutory text and risking the possibility of litigation or action under the Congressional Review Act, throwing our industry into another tailspin.

Emulate the CFPB's Move to Simpler and Clearer Rules. Our members uniformly have noted the complexity of the proposal, which is remarkable even in the universe of financial regulation. Some portions of the rule, such as the sections describing the four new performance tests and ratings calculations, each accompanied by many associated subtests, steps, and formulas, are so dense and difficult to parse that they almost defy comprehension.

We urge the agencies to adopt straightforward, easy-to-understand rules for the sake of our members — many of which lack the resources to assign full-time staff members to CRA duties — as well as examiners and other stakeholders. We would reference the CFPB's recent move towards simpler, clearer rules. As Director Chopra noted in an announcement of the initiative, "markets work best when rules are simple, easy to understand, and easy to enforce" (CFPB blog post, Rethinking the approach to regulations (June 17, 2022)).

Rein in Costly Application Processing Delays. A significant contributor to the costs of CRA supervision is the potential for causing major delays to the processing of banks' merger, consolidation, and other types of supervisory applications. The filing of just one nonsubstantive protest by one group can result in multiple months of delays in the application's processing. In a case involving one of our members, such a delay resulted in losses of millions of dollars for an institution that had an "Outstanding" CRA rating.

While our members have entered into productive partnerships with many community organizations, we also have seen a small number of community groups leveraging the threat of such regulatory delays to demand certain investments from banks operating in their territories. We do not believe that the CRA's goals are met when banks are forced into making unwise loans or donations on such a basis, which ultimately serves only to move dollars away from more worthy organizations and causes.

At the very least, banks that have achieved a top rating of "Outstanding" should be granted some immunity from such unsavory tactics. Applications from "Outstanding" banks should be subject to community input, but such they should not be delayed merely due to the filing of a single, unsubstantiated protest. An additional benefit would be to strengthen the incentives for banks to go beyond "Satisfactory" and achieve an "Outstanding" rating.

Cooperate With State Counterparts for Streamlined Federal–State CRA Examinations. Illinois recently joined a handful of states by enacting a state-level CRA, the Illinois Community Reinvestment Act (205 ILCS 735/35-1 *et seq.*). We urge your agencies to partner and cooperate with the Illinois Department of Financial and Professional Regulation to streamline the examination process for banks that are subject to both the federal and Illinois CRA laws.

Thank you for your consideration of our comments, and please let us know if you have any questions.

Very truly yours,

Carolyn Settanni

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