National Bankers Association
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August 5, 2022

DEPARTMENT OF THE TREASURY
Office of the Comptroller of the Currency
12 CFR Part 25
Docket ID OCC-2022-0002
RIN 1557-AF15

FEDERAL RESERVE SYSTEM
12 CFR Part 228
Regulation BB
Docket No. R-1769
RIN 7100-AG29

FEDERAL DEPOSIT INSURANCE CORPORATION
12 CFR Part 345
RIN 3064-AF81 Community Reinvestment Act

RE: Public Comment on Joint Proposed Rulemaking for Regulations Under the Community Reinvestment Act

The National Bankers Association ("NBA" or "Association") appreciates the opportunity to submit comments to the Comptroller of the Currency ("OCC"), the Federal Deposit Insurance Corporation ("FDIC") and the Federal Reserve System ("FRS") (collectively "Agencies") in response to the joint proposed rulemaking for regulations under the Community Reinvestment Act ("CRA" or "Act"). We commend the Agencies in recognizing the need to modernize CRA's implementing regulations, and we believe that the NBA's proposed amendments set forth below further the CRA's broader objectives of enhancing credit access to low- and moderate-income ("LMI") communities while also producing a CRA that better supports the work that the country's minority depository institutions ("MDIs") do in expanding credit access to communities of color and LMI communities.

The National Bankers Association is the leading trade association for the country's MDIs. We occupy a unique space amongst our banking trade association peers as we not only advocate for our member institutions but also for the communities we serve. To that end, we take a unique view of the CRA as both a representative of regulated entities that must comply with the Act, but also as representatives of potential beneficiaries of CRA-related investments, in addition to being a voice that ensures CRA adequately meets the credit needs of LMI communities.

The history of the Act and many of our member banks both emerge out of discrimination in access to credit that the Act and our institutions seek to address. Therefore, we believe that our members' experiences in engaging with the Act as regulated entities and as the banks of choice for many

residents in the LMI communities that the CRA seeks to reach, makes us unique amongst our trade association peers.

The Association surveyed its members on the proposed regulations, and a few common themes emerged:

- Given the mission-oriented nature of our member banks, they already provide unique products and services tailored to the needs of the LMI communities they serve – ranging from "second chance" checking accounts to alternatives to high-cost small-dollar loans to small business and first-time homeowner workshops – that do not always receive CRA credit. The proposed regulations' expansion of the universe of potential activities that would qualify for CRA credit is welcomed by our member banks.

- Member banks consistently agreed that their CRA programs would benefit from additional clarity regarding the types of activity that would qualify for CRA credit before they engaged in said activity, including a non-exhaustive, illustrative list of qualifying activities. This list should specifically include: equity investments in MDIs (with the appropriate CRA multiplier), small business technical assistance geared toward making more minority entrepreneurs "bankable" for our member institutions, the provision of customized deposit and credit products (like second chance deposit accounts, installment lending designed to provide alternatives to payday and other high-dollar lending, and credit card products geared toward customers with impaired credit), and loan participations that are both sold by and sold to MDIs, as well as credit counseling.

- Member banks agree that it would be helpful if the Agencies allowed banks to provide feedback and/or to submit activities they deem eligible for CRA community development consideration in advance of publishing this non-exhaustive list as many banks pursue innovative and flexible CRA activities. Including these non-traditional activities on this list would expand the breadth of activities that can qualify.

- The Agencies are proposing a formal mechanism for banks to receive feedback in advance or after the fact on whether proposed community development activities would be considered eligible for CRA. It would be helpful if the Agencies provide feedback in advance of whether a proposed community activity is eligible for CRA, and for that feedback to be provided in a timely manner. Failure to provide timely feedback prevents non-MDIs from pursuing innovative and flexible CRA activities with MDIs and Community Development Financial Institutions ("CDFIs") in lieu of traditional CRA activities that they know will qualify. This limits investments in innovative activities that may be more responsive to the needs of LMI and minority communities.

- Access to capital remains a top issue for MDIs. Equity investments in MDIs already receive CRA credit, but very few Insured Depository Institutions ("IDIs") utilize the CRA to make equity investments in MDIs. We believe that the proposed regulations – particularly the opportunity for "CRA multipliers" – present a unique opportunity to maximize the CRA's potential as a tool to encourage equity investments in MDIs. Equity

investments act as community development "force multipliers" given MDIs' track record of over-indexing in their consumer and small business lending in minority and LMI communities. Equity investments in MDIs should also receive the appropriate multiplier effect to reflect the impact of our institutions in the communities we serve. We similarly propose an additional multiplier for MDI-CDFIs which comprise the vast majority of the Association's membership. Therefore, the Association recommends that the proposal allow for CRA multipliers to apply to MDIs with additional multiplier consideration for MDI-CDFIs.

- The proposed data collection, recordkeeping, and reporting requirements would be burdensome for many of our member banks. The Association recommends that the Agencies provide technical assistance grants to help banks below $1 billion obtain the technological resources necessary to comply with the proposed data collection, recordkeeping, and reporting requirements with priority, or a potential set aside, for MDIs and/or CDFIs. The Association also recommends that CDFIs be allowed to submit the information they submit for their annual CDFI certification to operate as a rebuttable presumption of compliance with the proposed framework's data collection, recordkeeping, and reporting requirements.

Before we provide additional suggestions to the proposed regulations' four reform areas, we would be remised if we did not raise a long-standing concern of many of the Association's CDFIs. The vast majority of the Association's member institutions are also CDFIs requiring that they annually certify that no less than 60% of their lending activity occurs in LMI communities. In many instances, the work that the Association's member institutions do to retain their CDFI certification would either be sufficient for meeting their CRA obligations or includes activities that should be CRA qualifying activity. Unfortunately, there is no reciprocity between the CDFI certification, data collection, reporting, and recordkeeping process and what is required for CRA examinations despite clear overlap in objectives and qualifying activity.

Many of our smallest member institutions that are CDFIs expend staff and financial resources to comply with competing regimes that should otherwise be aligned. The proposed regulations do not provide accommodations for CDFIs that would streamline their CRA obligations or that would allow CDFIs to enjoy a rebuttable presumption of CRA compliance (at least a "Satisfactory" rating). We believe that the proposed regulations in their current form are a missed opportunity to streamline the regulatory burdens that mission-driven lenders face.

Specifically, we would recommend considering the following accommodations for CDFIs in meeting their CRA obligations:

- CDFIs should be able to submit their Annual Certification and Data Collection Report Form to be deemed in compliance with both the existing CRA reporting, data collection, and reporting requirements and the newly proposed requirements; and,

- Deemed compliance shall constitute a "Outstanding Rating" given the type and scale of investments (minimum of 60% of the CDFI's annual financing activities) necessary to obtain and maintain CDFI certification.

We recommend the following suggestions to the proposed regulations in addition to the recommendations provided by Association member bank, East West Bank, in their comment letter attached hereto as **Exhibit A**. Our comments follow the order of the proposed regulations and do appear in order of priority.

Clarifying and expanding what qualifies for CRA credit

The Association agrees with several proposed modernization reforms that would expand the type of activity that qualifies for CRA credit. We respectfully request that the Agencies consider the following amendments to the proposal's section regarding clarifying and expanding what qualifies for CRA credit:

- **Adding a criterion for financial literacy programs, education, counseling and/or technical assistance for consumers and minority entrepreneurs.** The proposal references expanding CRA credit for various types of financial literacy programs, but they are generally geared toward homeownership. We support including homeownership literacy programming, but we also recommend expanding qualifying financial literacy programming to include financial literacy, education, and technical assistance supporting consumers and minority entrepreneurs. Many of our institutions already work closely with consumers and minority entrepreneurs in every way imaginable that currently does not receive CRA credit. In particular, the challenges that minority entrepreneurs face in becoming "bankable" is well-documented as is the role that MDIs and CDFIs play in supporting minority entrepreneurs. Our member banks also engage in a tremendous amount of consumer financial literacy work, both formal and informal. All activity geared toward supporting the financial education of consumers and minority entrepreneurs should qualify for CRA credit much in the same way that the proposal would expand the CRA eligibility for virtually all homeownership literacy programming.

- **Specifically providing for a multiplier for capital investments in MDIs – irrespective of an MDIs location.** The proposal seeks comments on the kinds of activity that potentially warrant CRA multipliers to encourage banks to engage in certain types of activity. The Association takes the position that our institutions over-index in the impact that our activity has in meeting the credit needs of LMI and/or communities of color. And, like many minority-owned businesses, our member institutions often encounter significant barriers to raising capital due in part to the mission-oriented lending our banks tend to engage in. The Act has long provided for CRA credit for capital investments in MDIs, but the instances where institutions have taken advantage of this provision to make capital investments in MDIs has been sporadic at best. To that end, we believe that a multiplier for capital investments in MDIs sends the appropriate signal to potential bank investors and it would directly support the community development work that CRA seeks to encourage, and that MDIs already engage in. We also recommend that capital investments

in MDIs be CRA-eligible activity even if an MDI is not in the CRA assessment area of the institution making the capital investment. This reflects the limited geographic reach of many MDIs, and if adopted, would maximize the potential opportunities for CRA-qualified capital investment in MDIs.

- **Clarifying that both loan participations sold to and from MDIs constitutes qualifying CRA activity.** Existing law is unclear as to whether loan participations sold to MDIs from non-MDIs is CRA-qualifying activity. As a result, an Association member institution submitted an inquiry to the Federal Reserve in January 2018 seeking to clarify if loan participations sold to MDIs from non-MDIs would be qualifying CRA activity (existing law is clear that participations sold to non-MDIs from MDIs is CRA qualifying activity). The Federal Reserve responded noting that participations sold from non-MDIs to MDIs would also constitute CRA qualifying activity, but our member institutions still encounter issues in getting non-MDIs to recognize this activity as CRA qualified given that the letter is the only guidance available on this subject, and it was only issued by the Federal Reserve. Loan participations sold to MDIs allow our member institutions to diversify and strengthen their balance sheets such that they can better meet the credit needs of the LMI communities they serve. Therefore, we recommend that the non-exhaustive, illustrative list of CRA-qualifying activity specifically state that loan participations both sold to and from MDIs should be considered CRA-qualifying cooperation with an MDI.

- **Specifically providing for deposit and savings products designed to meet the banking needs of LMI customers.** The proposal seeks comments on the range of retail banking services provided – such as checking accounts, savings accounts, and certificates of deposit – and how they should be considered under the proposal and how they should be considered in an institution's performance context. Many of our Association members have developed deposit, savings, and credit products tailored to the unique banking needs of the LMI communities we serve. Regulators talk often about banking the unbanked or underbanked, and we believe that retail banking services tailored to the unique needs of LMI communities should qualify for CRA credit as they often form the building blocks for credit for LMI customers.

Expanding where CRA activity counts

The proposal permits banks to engage in CRA-qualifying activity conducted outside of its assessment area. Banks would still be expected to meet the credit needs where its branches and depositors are located, but there should be some flexibility to serve other LMI communities. Said activities would then be included in calculating the overall dollar value of the bank's qualifying activities.

The Association agrees with providing this kind of flexibility, as it would benefit Association member institutions' ability to make CRA-qualifying investments in areas outside of their CRA assessment areas. Expanding where CRA activity counts would also make each of our members eligible to receive capital investments or engage in other collaborative efforts with IDIs whose assessment areas would not otherwise include where our member institutions are located.

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Providing an objective method to measure CRA activity

The Association generally agrees that the proposal's attempts to make CRA activity more predictable and easier to measure objectively are helpful. However, we are concerned that the proposed rulemaking focuses too much on the dollar volume of small business loans as opposed to the number of small business loans made. The elimination of credit for the number of small business loans leaves a gap in meeting the underserved needs of small businesses in LMI areas. Small business loans and micro-loans are the lifeblood of many small businesses in LMI areas. They take more time and effort, but ultimately reach a greater number of LMI people. The dollar amount of small loans will not add up to one large infrastructure project, so the proposal in effect discourages banks from putting in the work to make smaller loans.

Minority banks make many small business loans and, in general, have lower average loan sizes than those of mainstream banks of similar sizes. This is driven by the focus of minority banks as mission-driven lenders. The CRA should not incentivize all banks to focus on higher dollar value investments and loans. The new proposed regulations seemingly discourage banks from expending resources and time on small loans and small businesses.

Consistent with the general framework of the proposed CRA regulations, banks might be given a goal in which the number of small business loans (or participations in small business loans where there are no other bank participants) is a certain percentage of the overall number of business loans in order to obtain a "Satisfactory" or "Outstanding" rating. Banks that do not meet this goal would be rated "needs to improve" notwithstanding its other CRA efforts.

Revising data collection, recordkeeping, and reporting

As noted above, the Association has long believed that the CDFI Fund's requirements for CDFI certification and reporting substantially overlap with the CRA. If a CDFI maintains its status by ensuring that at least 60% of its financing activities happen in LMI communities, we recommend that the CRA regulations reflect that CDFIs – particularly those with less than $1 billion in assets – should be able to take advantage of a rebuttable presumption that such an institution is also "Outstanding" for CRA purposes, or at least going to obtain a minimum of a "Satisfactory" CRA rating. Further, we recommend that the Agencies amend the proposed regulations' provisions regarding data collection, recordkeeping, and reporting for CDFIs such that the data they submit annually through their Annual Certification and Data Collection Report Form is deemed in compliance with any CRA-related data collection, recordkeeping, or reporting requirements. This would reduce regulatory burdens for smaller, mission-driven lenders like so many of our member institutions without losing any of the key social and economic impact data that both the CRA and the CDFI Fund seek to capture.

We appreciate the opportunity to submit comments and commend the Agencies on their leadership in modernizing the CRA. We believe that the proposed changes strike the appropriate balance between modernizing CRA, meeting the credit needs of LMI communities, and strengthening

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MDIs. We look forward to continuing to work with each of you as we all work to ensure that CRA continues to do the work in LMI communities that it was originally intended to do.

Respectfully,

Nicole A. Elam, Esq.
President & CEO

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EXHIBIT A

EASTWESTBANK

July 30, 2022

Via Electronic Mail: regs.comments@federalreserve.gov
Via https://www.regulations.gov

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

Re: Public Comment on Proposed Rulemaking for Regulations Under the Community Reinvestment Act; Docket No. R-1723; RIN 7100-AF94

Ladies and Gentlemen:

East West Bank appreciates the opportunity to comment on the proposal by the Federal Reserve Board and other agencies for a new regulatory framework to modernize the regulations implementing the Community Reinvestment Act of 1977 ("CRA"). We agree that the current CRA regulations and guidance do not recognize the changes in the financial services industry that have occurred since the CRA was enacted in 1977. East West Bank is minority-operated bank. We were founded in 1973 in Los Angeles to serve the financial needs of immigrants. Since then, we have grown with over 120 branches across the United States. Many of our branches are in majority-minority census tracts and over one third are in low-to-moderate income census tracts.

We are also glad that the proposed new regulatory framework recognizes the importance of minority depository institutions ("MDIs"). The current CRA framework does not take account of the special role of MDIs and in some ways puts greater requirements on MDIs than other banks.

We share your belief that MDIs should have a special place in CRA. Both MDIs and the CRA have a mission to serve underserved and historically disadvantaged communities. MDIs would

not exist unless they were filling this need. This need is consistent with the purposes of the CRA, and we are glad that this is finally being recognized in CRA regulations.

It is also relevant to note that they also provide career opportunities for the community that might not be as available at other banks. It does not need to be pointed out that there are few if any non-MDIs where the share of senior leadership who are persons of color is greater or even the same as the population. An MDI is able to serve its community because its leadership and employees are part of that community.

There have been minority banks since the 1800's but historically they have not always been encouraged to grow or succeed by the rest of the banking industry or by regulators. For example, for years the National Bankers Association would not allow in minority banks; and for years the perception of many minority banks was that they would not be viewed as credible unless they hired a well credentialed White person in regulator-facing jobs. It is too late for minority banks to catch up to the handful of large banks with national branch and ATM networks that now dominate the banking industry, the head start has been too much. But it is encouraging that this this has been changing in recent years and that now further change is contemplated by the proposed CRA reforms.

We would like to make suggestions on some parts of the proposed new regulations that particularly affect Minority Depository Institutions.

Definition of Minority Depository Institution
We support the change in the definition of "minority depository institution" to expand it beyond ownership and to also refer to the FDIC's minority deposit bank program, which includes minority operated banks.

A bank that is successful and is growing needs to raise outside capital, which at some point when a bank becomes larger, usually comes from institutional investors. Thus, if a growing bank raises outside capital, it would no longer be viewed as a minority bank under the CRA under an ownership test. This would have the unintended consequence of keeping minority banks small.

Similarly, the old rule had an unintended consequence for minority banks that are in financial distress and seek equity investments from mainstream banks in order to replenish their capital. In such circumstances, existing shareholders may be diluted with the result that the bank may no longer be majority owned by minorities. Consequently, CRA regulations would not be encouraging mainstream banks to help a distressed minority bank if providing that capital made the bank no longer a minority bank because of changed ownership.

I would add that raising outside capital and becoming publicly traded is one way for a minority bank to meets its mission. Growing and being able to sometimes challenge larger banks toe-to-toe for non-minority customers makes a bank stronger and more sustainable and also gives it increased ability to better serve its core minority customer base.

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Lending Distribution Metrics - Low to Moderate Income Areas
The lending distribution metrics include calculations of loans to low to moderate income persons and also loans in low to moderate income areas. The regulations as written however do not seem to reflect the diversity of lending practices by many banks, including many minority banks. Many loans are made based on criteria other than income to assess the ability to pay a loan. These alternative criteria help the ability of many to purchase a home and this should be recognized. Income data is not collected and so as written, many loans to low-income persons would not be considered for CRA credit. The regulation as written will disqualify a vital avenue to provide home loans to LMI individuals and their families.

We would propose that a home loan or HELOC be presumed to be to a low or moderate-income person based on the value of the house, such as a house that is less than 40% of the average home price in a metropolitan area. A 2-, 3- or 4-unit house would be divided by 2, 3 or 4 to make this determination.

Should the agencies consider activities undertaken by an MDI or WDI to promote its own sustainability and profitability? Yes
If so, should additional eligibility criteria be considered to ensure investments will more directly benefit low- and moderate-income and other underserved communities? No
Without this clarification, it appears that a mega bank will obtain CRA credit for purchasing stock in a minority bank, but that same minority bank would not get CRA credit for investments in itself. A minority bank should get credit for investing, such as retaining earnings in the business to grow capital instead of dividending the earnings or repurchasing shares. Similarly, a mega bank can get CRA credit for participating in a loan with a minority bank, but that same minority bank does not also get credit for the portion of the loan not sold to the mega bank.

Moreover, without clarification, the current CRA practice will be continued that a minority bank status is disregarded in that an outreach program by a large mainstream bank to a particular ethnic group may receive CRA credit, but a program by a minority bank aimed at the same ethnic group might not receive positive mention because it is viewed as part of their business as usual and not part of their specific CRA program.

A minority bank should get credit for its own loans or its investments just the same as a mainstream bank does in working with a minority or women's bank. Without such change, we believe we will see a continued decline in the number of minority banks. The eligibility credit for an MDI "investing in itself" should not be limited to investments that directly are tied to helping LMI persons. Limiting the credit to activities that would get credit regardless of MDI status is of no benefit to MDIs and is not consistent with the purpose of helping MDIs to survive and to succeed.

Being an MDI by itself is helping a historically underserved and disadvantaged community and consistent with the purposes of the CRA. The primary reason for minority banks to exist and to be assisted by regulators is to help remedy past practices by the banking industry that have made it more difficult for minorities to achieve financial success.

Assessment Areas.

MDIs have a unique place under CRA in that their focus can be more on minority groups in general than on a particular geographic area. Under the current CRA framework, we and I understand other MDIs are reluctant to make a loan outside of their CRA assessment area as this may subject them to criticism. But to best fulfil their mission, an MDI should not be so restricted. An MDI should get credit for loans to minority persons or businesses as if they were in the MDIs geographic assessment area. To state the obvious, the minority person or business would not likely be applying for a loan from a bank in another city if they felt they were adequately served by the local banks.

Small Business Loans

We understand and agree with the efforts to make CRA activity easier to measure and "objective", it is important to retain flexibility for different business models and approaches. The rules sometimes appear to be written with the mega bank model in mind and incentivizing all banks to be like small versions of the mega banks. In particular, it appears that the proposed rule focuses too much on the dollar volume of small business loans as opposed to the number of small business loans made. Small business loans and micro-loans can be very important to small businesses but may not add up to a lot of dollars – fifty $10,000 loans is only half as much as one $1 million loan in dollar value but may be many times more useful in assisting the small businesses of a community, and for many lenders, at least the ones who do not rely on algorithms and on-line lending, can be much more resource intensive to do. And for MDIs, I suspect that most have a lower average loan size than a mainstream bank of similar size. The consequence of this would be to incentivizing MDIs to move away from their business model in order to ensure their "objective measurements" are as good as the mega banks, and this would be a disservice to the communities served by minority banks.

Definition of Domestic Deposit.

We suggest that the definition of domestic deposit be broadened to include deposits by LLC's and trusts and not just individuals, partnerships, and corporations. This is likely the intent, but as written the definition seems to exclude many deposits that, in the spirit of CRA, are in substance domestic deposits and should be included.

We also suggest that the definition be clarified to state clearly that retail domestic deposits do not include deposits from foreign persons or entities in U.S. branches. The United States is viewed as a safe haven to deposit money for foreign persons who are transparent about their identity and source of funds. The deposits do not come from a bank's assessment area and so are not part of the purpose of CRA of returning community money to the community. Further, to the contrary, inclusion may incentivize some financial institutions to keep this money out of the United States, which is not beneficial for the United States or the goals of CRA.

Broader Performance Context

The proposed new CRA regulations should clarify that performance context should look not only at the level of "CRA qualifying activities," but also consider the harm that may be caused to the community by a bank's practices. For example, it has been our experience that, with the new online lending platforms, loans in underserved communities are now more readily available than when the CRA rules were first written. However, the pressing need now for many in underserved

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communities is not only to get a loan but also to get a loan on the same rates and terms as other communities. New financial technologies that make credit more available are sometimes just a new way to keep people in the debt trap of high interest rate credit that borrowers are unlikely to pay back ever realistically. If an individual state or even the United States government, had to borrow at the same interest rate as many of its citizens do, it too would need to devote the majority of its income to making debt payments.

Accordingly, we suggest that the performance context of a bank look at all its activities and not just at meeting the definition of "CRA qualifying activities." For example, a bank that quickly forecloses on homeowners instead of looking for ways to help them stay in their house should not get credit for its home mortgage lending. The same is true for banks that make loans to LMI persons at higher interest rates than those charged in other communities. Finally, banks that instruct their branches to maximize overdraft and NSF fees should not receive credit for having branches in LMI areas.

We believe that MDIs have a special place in the CRA in that their mission and focus largely overlaps with the goals of the CRA. We encourage building support for MDIs into the framework of CRA regulations.

We support the comment letter of the National Bankers Association. We also support the various comments in the letters of the California Reinvestment Coalition, Greenlining, and the National Diversity Coalition that the original purpose of the CRA to stop "redlining" of minority census tracts in order to advance racial equity and close racial wealth gaps has not been well addressed by CRA regulations and that this should become part of the new framework.

East West Bank appreciates the opportunity to comment on the proposed new CRA regulations and looks forward to working with the FRB and the other bank regulators to improve the effectiveness of the CRA.

Sincerely,

Douglas P. Krause
Vice Chairman and
Chief Corporate Officer