



New York Bankers Association

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Clare M. Cusack
President & CEO

August 5, 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

Office of the Comptroller of the Currency
400 7th Street SW
Suite 3E–218
Washington, DC 20219
Attention: Comment Processing, Docket
ID OCC—2022-0002

Chief Counsel's Office
Ann E. Misback
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551
Attention: Comments Docket R-1769; RIN 7100-AG29

Re: Community Reinvestment Act Regulations

Dear Sir or Madam:

The New York Bankers Association (“NYBA”)¹ appreciates the opportunity to comment on the above referenced joint Notice of Proposed Rulemaking (“NPR”), in which the Office of the Comptroller of the Currency (“OCC”), the Board of Governors of the Federal Reserve System (“Board”), and the Federal Deposit Insurance Corporation (“FDIC”) (collectively, the “Agencies”) seek comments regarding their jointly-proposed amendments to the regulations implementing the Community Reinvestment Act of 1977 (“CRA”) (the “Proposal”).

¹ NYBA is comprised of the smaller community, mid-size regional, and large banks across every region of New York State. Together NYBA members employ nearly 200,000 New Yorkers, safeguard \$2 trillion in deposits, and extend nearly \$70 billion in home and small business loans. NYBA members also support their communities through an estimated \$200 million in community donations and 500,000 employee volunteer hours.

We strongly support the Agencies' efforts to modernize the regulatory framework implementing the CRA and we applaud their efforts to bring consistency, transparency and predictability to the CRA performance evaluation process. New York banks are committed to the fundamental purpose of the CRA: encouraging banks to help meet the credit and deposit needs of the communities in which they operate, including low- and moderate- income ("LMI") geographies, consistent with safe and sound banking practices. Nonetheless, with the approaching forty-five-year anniversary of CRA, and the myriad ways in which banking has changed as an industry since its enactment, we support efforts to modernize and improve upon this important and vital regulatory framework for the benefit of our communities.

At the outset, NYBA supports and adopts the suggestions and comments outlined in the American Bankers Association ("ABA") letter addressing the Proposal, dated August 5, 2022. Our members and fellow state banking associations across the country collaborated with the ABA to develop a comprehensive set of comments representing the industry from a national perspective. We believe these comments will provide the Agencies' with valuable and constructive insight to help guide their rulemaking process.

In addition to the ABA letter, and in an effort to reduce duplication of comments, NYBA will focus this letter on an issue of paramount concern for New York banks in particular, given some unique circumstances in our State. Specifically, because New York is one of only a handful of states with its own CRA law for state-chartered banks, our members are especially concerned with avoiding divergent or potentially conflicting federal and State CRA requirements.

New York's CRA law, Section 28-b of the New York Banking law, is almost identical to the current federal CRA implementing regulations. All state-chartered banks in New York are regulated simultaneously by the State's Department of Financial Services ("DFS" or the "Department") and one of the relevant federal agencies. Historically, whenever possible, the Department examines institutions simultaneously with its relevant federal counterpart for CRA compliance.

NYBA strongly urges the continuation of this longstanding practice of closely coordinating CRA enforcement among federal and state regulators, and further supports the coordination of any changes to the federal CRA regulations in concert with New York State law. We also reiterate the immense importance of federal and state regulators working together to reduce duplication of efforts and produce exam results in a timely and effective manner. In this way, the review and exam process can be efficient and productive for both banks and regulators, but most importantly for the communities we have the privilege to serve.

Because of our State CRA requirements, New York State-chartered banks are subject to two CRA examinations and ratings, one from DFS and another from their respective federal regulators. This means that conformity and cooperation between New York and federal CRA rules and regulators are absolutely essential for our State-chartered banks, which, unlike their federal counterparts, must maintain a CRA program that satisfies two distinct regulatory agencies. A lack of conformity can only cause confusion and place New York State-chartered institutions at a competitive disadvantage with their national counterparts. It is incumbent upon DFS and the relevant federal agencies to work closely to make certain that New York-chartered institutions are not confronted with different

State and federal compliance standards and duplication of efforts within the exam process.

Concerns about divergent State and federal CRA regulatory requirements are particularly acute for State-chartered banks headquartered in New York but with out-of-state branches. These interstate banks not only have State and federal CRA responsibilities in New York, they also have federal CRA responsibilities outside New York. Failure to take into account an interstate bank's non-New York CRA obligations can put these banks at a competitive disadvantage vis-à-vis their federally-chartered counterparts and create a disincentive for interstate banks to have a New York State charter. While the federal proposal appears to take this into account in the revision of assessment areas, we urge coordination among State counterparts around the country to address State-chartered interstate banks.

The Proposal contains numerous provisions that would exacerbate the existing differences between New York's CRA requirements and those arising under federal law. While we hope and expect that DFS and New York State lawmakers will strongly consider aligning the State's CRA requirements with any new federal requirements – an outcome for which we will continue to advocate – it is unlikely they will do so before the federal Proposal is finalized. Consequently, the one-year implementation period for the Proposal is likely too short for the Department to effect any conforming changes to State CRA rules. For this reason, along with those noted in the ABA letter, NYBA requests that the implementation period for any final rule be extended well beyond the 12 months reflected in the Proposal.

We thank you for the opportunity to comment on the NPR and appreciate the Agencies' leadership in soliciting suggestions on modernizing the CRA. We welcome the opportunity to discuss this further. Thank you.

Sincerely,

A handwritten signature in black ink that reads "Clare Cusack". The signature is written in a cursive, flowing style.

Clare M. Cusack