233 South 13th Street, Suite 700
Lincoln, Nebraska 68508
Phone: (402) 474-1555
Fax: (402) 474-2946
www.nebankers.org

NBA Nebraska Bankers Association

*Extraordinary Service for Extraordinary Members*

August 5, 2022

Chief Counsel's Office
Attention: Comment Processing
Office of the Comptroller of the Currency
400 7th Street SW, Suite 3E-218
Washington, DC 20219

RE: Docket ID OCC 2022-0002

On behalf of the Nebraska Bankers Association (NBA), I am submitting these comments on the Federal Banking Agencies proposed revisions to the regulations implementing the Community Reinvestment Act. Banks in Nebraska are and have been committed to the goals of the CRA in meeting the credit and financial services needs of their customers and communities. The NBA is a trade association representing 158 of the 167 commercial banks and savings institutions in the state of Nebraska.

Advances in technology have transformed the delivery of financial products and services, triggering the need to update the existing CRA regulatory framework. The banking Agencies, in making these updates, need to ensure that CRA expectations are transparent and that examiners interpret and apply CRA regulations consistently.

I want to thank the combined Agencies for their leadership and efforts to draft a joint proposal for which interested parties can provide input. It is crucial that the final CRA rule is issued on an interagency basis and we are deeply appreciative that the Agencies have come together in this fashion.

With passage of time and advances in technology there is certainly a need to modernize the CRA regulatory framework. Existing regulation and supervision have become overly complex, unpredictable and have not kept pace with the manner in which consumers expect to use technology to access financial products and services. Future revisions and updates will no doubt be in order as technology and the financial services industry continues to evolve. While generally supportive of the regulations proposed by the Federal Banking Agencies, I have detailed below the primary interests and concerns of the Nebraska banking industry.

## I. REDUCING BURDEN ON SMALL BANKS

The proposed regulation would revise the definitions for “small,” “intermediate,” and “large” banks, as follows:

- Small banks: assets under $600 million;
- Intermediate banks: assets of at least $600 million and less than $2 billion;
- Large banks: assets of at least $2 billion, with certain new requirements applicable only to “large” banks with assets of $10 billion or more.

The NBA is extremely appreciative of the Agencies’ effort to tailor and streamline the proposal to avoid imposing undue regulatory burden on the smallest banks by adjusting the caps for small banks and intermediate banks to $600 million and $2 billion, respectively.

We would ask that the Agencies consider further adjustments to the thresholds, as follows:

- Increase the small bank threshold to $1 billion;
- Increase the intermediate bank threshold to $3.3 billion (this level is consistent with changes that have occurred since the thresholds were established in 2005 in order to maintain 21.8% of the banks as intermediate banks, which was the case in 2005);
- Increase the large bank threshold to $3.3 billion, with certain new requirements applicable only to “large” banks with assets of $10 billion or more.

Consideration should also be given to adjusting thresholds based on an annual inflation adjustment.

It is also most helpful that small and intermediate banks would not have to collect and report the new data the proposal would require for large banks. Making these exceptions for small and intermediate banks is appropriate as provisions to increase assessment areas (i.e., adding Retail Lending Assessment Areas) and the performance expectations for large banks would be unduly cumbersome for community banks, as would any new data collection requirements for deposits, auto loans, retail services and products, and community development services and loans/investments.

We also appreciate the flexibility provided to small banks by allowing them to determine whether to be evaluated under existing criteria or to “opt–in” to the revised framework based on their unique business models.

## II. INCREASE TRANSPARENCY REGARDING COMMUNITY DEVELOPMENT ACTIVITIES

The NBA supports the requirement for the Agencies to publish a list of qualifying activities for community development, as well as the combination of community development lending and investments into a single Community Development Financing Test. The section provides greater certainty and specificity regarding activities which qualify for community development credit. Provisions allowing CRA credit at the bank level for community development activities that a bank conducts outside its assessment area(s) is also a positive step forward. Finally, we appreciate the inclusion of financial literacy as a specifically approved activity and would recommend that it be expanded to include financial literacy activities directed at small businesses.

## III. LARGE BANK RETAIL LENDING ASSESSMENT AREAS

We do have concerns that the requirement for large banks to delineate a new type of assessment area, known as a Retail Lending Assessment Area (RLAA) will have unintended consequences and run counter to the objectives of the CRA. Under the proposed regulation, a large bank would be required to delineate an RLAA in any MSA, or combined in non-MSA areas of a state, where the bank has originated at least 100 home mortgage loans in each of the **two preceding calendar years** or at least 250 small business loans in each of the two preceding calendar years, outside of the bank's facilities based assessment areas. Upon meeting either or both of these triggers, the bank is required to delineate an RLAA, and will be evaluated for its CRA performance for **all** of its "major product lines" in the RLAA.

Under the regulation, a major product line is one or more of the following product lines, if the line makes up at least 15% of the bank's retail lending by dollar volume in the particular assessment area:

(1) Closed-end home mortgage;
(2) Open-end home mortgage;
(3) Multifamily; and
(4) Small business loans.

In addition, auto loans are a major product line if they are at least 15% of the bank's retail lending, by both dollar volume **and** number of loans.

In light of the concerns expressed above, we would strongly encourage the Agencies to drop the RLAAs, retain the existing facilities–based lending areas provided under the current rule, and include the Agencies' proposed nationwide out–of–footprint area. Retaining the RLAAs will make CRA compliance extremely complex and will be very burdensome as large banks will need to add a significant number of new assessment areas.

We fear that retaining RLAAs will result in unintended consequences that do not benefit LMI consumers as banks may pull back lending to minimize the creation of new RLAAs. Evaluation of out–of–footprint lending at the institution level should adequately satisfy the regulators' goals for evaluating lending beyond facility–based assessment areas, without the need to add RLAAs, and would still provide a significant expansion of the current evaluation process. If RLAAs are to be retained, the proposed 100 mortgage/250 small business loan threshold should be significantly increased.

## IV. RETAIL LENDING TEST FOR LARGE BANKS – RATINGS AND BENCHMARKS

The proposal would raise the bar for performance on the Retail Lending Test for large banks. A large bank would have to exceed its past performance in order to obtain the same CRA rating that it received on a prior exam. While regulators may believe that these heightened performance standards would incentivize banks to increase lending to underserved communities, the manner in which ratings and benchmarks are structured may provide significantly different results.

The weight given to the Retail Lending Test would make it extremely difficult, if not impossible, for a large bank to achieve an outstanding rating overall. With the Retail Lending Test constituting 45% of the overall rating, banks failing to earn an outstanding rating on this test could not achieve an outstanding rating overall.

This would appear to provide a disincentive for banks to strive to receive an outstanding rating, simply accept a satisfactory rating, which ultimately means less service to LMI communities and individuals.

Other areas of concern with the proposed retail lending test are:

(1) Downgrades can occur for more situations, such as fair lending concerns, which is not a factor under the current rule;
(2) The retail lending screen is also problematic as banks will receive a lower rating if they do not meet the 30% threshold; and
(3) A bank holding government and large corporate/commercial deposits could also skew the screen calculation and should be considered for exclusion.

The NBA supports the concept that determining major projects should be conducted at institution level as opposed to the assessment area (AA) level for the facility–based AA and the RLAA, if these are included in the final rule.

While NBA member banks share the Agencies' goal of increasing service to LMI families and communities, the areas of concern set forth above must be addressed in order to avoid unintended consequences.

Other issues and areas which should be considered by the Agencies include the following:

(1) Purchased loans should be included, at least the first purchased loan. Banks working with state housing finance programs, where they serve as a "master servicer," help provide service to LMI areas which would benefit from at least allowing first purchased loans to be included;
(2) The proposed rule should provide additional flexibility for including mortgage-backed securities. These loans are typically held for a long time, which should address regulator concerns with including mortgage-backed securities (MBS);
(3) The inclusion of auto lending, especially indirect auto loans, may cause banks to step back from that business, leaving the line of business to non-banks that are not as regulated and not covered under CRA. Banks have little control in how dealers present their bank as a financing option or which lender a purchaser chooses and this lending applies to a depreciating asset, as opposed to assets that build wealth, which the CRA was meant to address.

## V. DEFINITION OF "SMALL BUSINESS" AND "SMALL FARM"

The proposed CRA regulation attempts to align its definition of "small business" and "small farm" with the CFPB's proposed definition of "small business" in its rulemaking to implement the Small Business Data Collection requirements established in Section 1071 of the Dodd–Frank Act.

Under this approach, a "small business" or "small farm" would be defined as having gross annual revenues of $5 million or less for the preceding fiscal year. This would mean that virtually every loan made by a Nebraska community bank would be a "small business loan" or "small farm loan" subject to reporting requirements. This will impose significant new data collection and reporting requirements on community banks that opt-in to the Retail Lending Test.

As a result, we recommend that the Agencies define "small business" and "small farm" based on loan size rather than gross annual revenues.

## VI. EXTEND CRA REQUIREMENTS TO CREDIT UNIONS AND OTHER FINANCIAL ENTITIES

Since the CRA was enacted in 1977, the marketplace for financial services has significantly changed. Almost all financial activity in the United States was handled by banks in 1977 when the CRA was adopted. Today, less than 50% of that activity is handled by banks. Non-bank originations of small business loans are on the rise and the credit union industry continues to expand.

Banks expend a significant amount of resources to meet the convenience and needs of communities which they serve and to otherwise remain in compliance with the CRA rules and regulations. Non-banks, including credit unions, by contrast, are not obligated to comply with the CRA, and as such, there are no measurable assurances that they are meeting the convenience and needs of their communities. All financial entities that offer products and services comparable to those offered by banks should be subject to CRA–like obligations comparable to those to which banks are subject.

Federal Reserve Chairman Jerome Powell recently observed, "Like activity should have like regulation… Consumers require protection and low–and moderate–income communities require credit support, regardless of the nature of the institution."

Recognizing that the agencies may be constrained in their ability to impose CRA-like obligations on non-banks, including credit unions, and that Congressional action is likely required for CRA-like obligations to be imposed on these entities, we would encourage the Agencies to advocate before Congress for the application of these rules to additional non-banks in order to expand credit availability and level the playing field.

## VII. IMPLEMENTATION PERIOD

The Agencies have proposed to incorporate a transition period comprised of multiple "applicability dates." For the most burdensome aspects of the proposal (including RLAAs, new performance tests, standards, and ratings, and data collection and reporting requirements), the Agency would provide a transition period of **one year**. However, 12 months is insufficient to implement proposed changes for a rulemaking of this complexity.

The NBA would recommend at least a two-year implementation period as new systems will need to be developed by NBA member banks, there will be a need for extensive staff training and banks will need to rely on vendors to comply with some aspects of the new rule, which is generally out of their control.

In closing, the NBA wants to reiterate its appreciation for the Agencies joining forces to present a single CRA regulatory proposal. Further revisions and adjustments are in order prior to issuing a final rule, but we are grateful for the opportunity to submit the foregoing comments.

Very Truly Yours,

Richard J. Baier
President & CEO
richard.baier@nebankers.org