MORTGAGE BANKERS ASSOCIATION

February 16, 2021

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

RE: Advance Notice of Proposed Rulemaking Modernizing the Regulatory and Supervisory Framework for the Community Reinvestment Act [Docket No. R-1723]

Dear Ms. Misback:

The Mortgage Bankers Association (MBA)[1] appreciates the opportunity to comment on the advance notice of proposed rulemaking (ANPR)[2] issued by the Board of Governors of the Federal Reserve System (the" Fed") to modernize and improve the regulatory framework implementing the Community Reinvestment Act (CRA). The Fed's ANPR requests detailed feedback on various ways to improve CRA's regulatory and supervisory framework so that it can more effectively meet the needs of low- and moderate-income (LMI) communities and address inequities in credit access in furtherance of the CRA's core purpose.

I. EXECUTIVE SUMMARY

MBA supports the Fed's stated goal in the ANPR of better reflecting and promoting the purposes and intent of the CRA. The ANPR requests feedback from stakeholders on topics that address, among other things, changes in the banking system over the years, applying metrics to certain CRA evaluation standards, and providing greater clarity regarding CRA-eligible activities. MBA especially supports provisions in the ANPR that:

- tailor CRA supervision of banks to reflect differences in bank sizes and business models;
- promote community engagement; and

[1] The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 280,000 people in virtually every community in the country. Headquartered in Washington, DC, the association works to ensure the continued strength of the nation's residential and commercial real estate markets; to expand homeownership; and to extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of over 2,300 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, REITs, Wall Street conduits, life insurance companies, and others in the mortgage lending field. For additional information, visit MBA's website: www.mba.org.

[2] 83 Fed. Reg. 45053, "Reforming the Community Reinvestment Act Regulatory Framework," September 5, 2018. Available at: https://www.federalregister.gov/documents/2018/09/05/2018-19169/reforming-the-community-reinvestment-act-regulatory-framework.

- increase the clarity, consistency, and transparency of supervisory expectations and standards regarding where activities are assessed, which activities are eligible, and how they are assessed and evaluated.

MBA agrees that CRA implementation should be designed to lead to better outcomes for the communities that the rule was designed to serve. The final rule should be crafted to ensure that it is not unduly onerous, inconsistent, burdensome, or confusing – factors that could make it difficult for banks to comply and for regulators to implement. For example, it important that any proposal and resulting final rule should take into consideration the burden associated with data collection, and therefore, ensure that data collection and reporting requirements are appropriately tailored to minimize such burdens.

In general, MBA supports the Fed's proposed framework for evaluating Large retail banks' CRA performance using a Retail Test and a Community Development Test – with both tests tailored in a way that accounts for differences in bank asset size and business models. We strongly urge the Fed to continue working with the banking industry and other community redevelopment stakeholders to consider various policy options or approaches that support the ANPR's objectives and advance the goal of strengthening the CRA regulations.

II. BACKGROUND

In 2019, the OCC and FDIC published a joint Notice of Proposed Rulemaking ("OCC/FDIC NPR") on the CRA regulatory framework. The OCC/FDIC NPR was issued following a stand-alone 2018 OCC ANPR as well series of joint efforts by the three banking regulators over the last few years to address CRA modernization.[3]

Following the joint OCC/FDIC NPR, the OCC issued a final CRA rule in May 2020. Neither the FDIC nor the Fed joined in the issuance of the final rule resulting in inconsistent and unaligned rules from the banking agencies. MBA has consistently urged the OCC and the FDIC to work with the Fed to return to the decades-long practice of uniform CRA regulations among the federal banking agencies. We continue to stress the need for the agencies to work towards a unified CRA regulatory framework, which we believe would establish a more efficient and streamlined CRA regulatory process for banks and community stakeholders alike.

III. COMMENTS

The Fed requests comments on all topics addressed in the ANPR as well as responses to 99 specific questions. MBA has worked with other industry partners (including banking trade associations and other housing partners) since the publication of the ANPR, and we support many of the positions that are addressed by the banking trades in their comment letters. Hence, this letter will be limited in scope to address only topics in the ANPR that impact issues relating to mortgage and construction lending activities, including residential and commercial mortgage loans.

[3] See 81 Fed. Reg. 48506 (July 25, 2016).

A. Small Bank Definition

The ANPR proposes an asset threshold of either $750 million or $1 billion for purposes of distinguishing between small and large retail banks. Regulation BB currently defines a small bank as a bank that, "as of December 31 of either of the prior two calendar years, had assets of less than $1.322 billion." This definition essentially covers intermediate small banks ("ISBs") with assets between $326 million and $1.322 billion, and small banks, which have assets below $326 million.

The OCC in its 2020 Final Rule defined small banks as banks under $600 million in assets and intermediate small banks as banks between $600 million and $2.5 billion in assets, with the thresholds to be adjusted each year for inflation.

The ANPR specifically asks whether the proposed $750 million or $1 billion is an appropriate asset threshold to distinguish between small and large retail banks. Furthermore, the ANPR asks whether the final rule should contain an automatic mechanism for allowing that threshold to adjust with aggregate national inflation over time. MBA recommends an increased threshold than what is proposed in the ANPR. We believe that both the $750 million and the $1 billion thresholds are too low for the small bank definition. We recommend that the threshold be increased to $2.5 billion, which would align with the OCC threshold. Alternatively, maintaining current law threshold of $1.305 billion would also ensure that no banks currently evaluated under the intermediate small bank test become large banks.

The support for the higher threshold should take into consideration increasing consolidation in the banking industry. That consolidation is driven in part by the need to spread rising regulatory costs across a larger asset base. In 2005 when the $1 billion small and ISB asset size threshold was established, about 92.6 percent of FDIC-insured institutions were below that threshold. Applying the same percentage today to the distribution of bank asset sizes would set the small bank and ISB threshold at $2.43 billion, which informed the OCC's conclusion on setting the small bank asset threshold at $2.5 billion in its final rule. Thus, a higher asset size threshold would ensure that small banks and ISBs continue to be appropriately treated despite the changing landscape arising from consolidations in the industry.

As proposed, small banks would have the option of opting out of the new metrics under the final rule, and therefore, increasing the proposed threshold would allow many small banks and ISBs have the option to opt into the new metrics and be evaluated only under the Retail Lending Test. Hence, the Fed correctly noted that "although increasing the small bank threshold above the existing limit might result in fewer banks' community development activities evaluated for purposes of CRA, it would also better tailor the compliance and data implications of the proposed Community Development Test only to banks with substantial community development activity." MBA agrees that an increased threshold would better tailor the rule to address the needs of community banks. The Fed noted, and MBA agrees, that it is very unlikely that small banks that will not be subject to the Community Development Test because of an increased threshold will significantly reduce their community development investments. Banks engage in community development investments and activities as an essential part of their business model, not only because they make business sense, but also because they are good for the community.

Unlike the OCC's final rule, the ANPR proposes to establish only a two-tier category of small and large banks, thereby eliminating the ISB category. While MBA understands the rational, which is that a simple two-tier system simplifies the rule, we are concerned that it would also eliminate a tier of graduated supervision, which could potentially reduce CRA tailoring for different banks. Furthermore, a two-tier system - where banks are either small or large - would blur the difference between large community banks, regionals and Large Banking Organizations ($100 billion or more in assets). Hence, MBA suggests that the ISB category not be eliminated. Rather, we suggest that a higher threshold, such as $10 billion, be set for ISBs, and these banks also granted some of the small bank flexibility, including exemption from tracking retail domestic deposits exemption from community development lending in smaller assessment areas, and exemption from the services components of the retail and community development tests. This will help reduce costs and burdens for a significant number of community-focused relatively small-sized ISBs. If however, the ISB category is eliminated, the final rule should include a "do-no-harm rule" that would explicitly apply to prevent any current ISBs from automatically becoming a large bank.

MBA recommends that the adopted small bank asset threshold be adjusted each year, to account for and bank consolidation, as well as inflation.

B. Retail Test

1. Calculation of Retail Lending Distribution Metrics

The ANPR proposes to use a geographic distribution metric to measure the number of a bank's loans in LMI census tracts within an assessment area. Under this metric, the total number of the bank's originated or purchased loans in LMI census tracts (numerator) would be calculated relative to the total number of the bank's originated or purchased loans in the assessment area overall (denominator). MBA supports the proposal to include mortgage loans to borrowers of any income level that are located within an LMI census tract in this calculation. We believe that this approach would help amplify the Bank's CRA activities within LMI communities, as intended by the CRA statute.

2. Definitions and Qualifying Activities

In analyzing the questions of what qualifying retail lending activities should be considered in specific assessment areas, and what targeted updates should be made to retail lending definitions and qualifying activities, the ANPR proposes to, among other things, use a clear quantitative threshold (suggested 15 percent) to determine whether a bank's home mortgage activities should be evaluated as a major product line at the assessment area level. MBA agrees that designating a major product line standard for purposes of using metrics to evaluate a bank's retail lending is appropriate and supports the Fed's proposed 15% threshold.

Further, MBA suggests that construction loans for 1-4 single-family residential housing should be included in the definition of home mortgage for this purpose. In effect, construction loans for single-family construction in LMI neighborhoods or to LMI borrowers would be evaluated under the same metrics as a home mortgage. Including this activity in the definition of home mortgage for which CRA consideration is available would encourage banks to make more of these loans, thereby ensuring greater access to construction financing for more borrowers and addressing housing supply issues. Moreover, this definition would allow small banks that opt into the Retail Test to be evaluated on their construction loan activities under the Retail Lending Subtest.

3. Treatment of Purchased Loans

As part of the determination of qualifying retail lending activities, the ANPR proposes to give CRA consideration for non- securitized home mortgage loans purchased directly from an originating lender (or affiliate). The stated goal of this approach is to strike "a balance between recognizing the importance of first-time purchases for originating banks that rely on other lenders to directly provide liquidity and addressing concerns about loan churning." The ANPR then specifically requests comments on whether the rule should provide CRA credit only for non-securitized home mortgage loans purchased directly from an originating lender (or affiliate) in CRA examinations, or whether the rules should continue to value home mortgage loan purchases the same way as loan originations but impose an additional level of review to discourage loan churning.

MBA believes the CRA rules should provide a level playing field for both purchases and originations. In effect, CRA credit should be provided both for home mortgage originations and purchases, so that there would be no bias between these two essential activities. While it is unclear what level of additional review the Fed plans to impose to discourage the so-called "churning", we strongly urge the Fed to be mindful of enacting any rule that would unduly impede the sale or purchase of mortgage loans, which would disrupt secondary market activities and create unnecessary or unintended complications for the mortgage finance market. One suggested way to deal with the "churning" concern could be to address it in individual examinations, rather than by crafting rules that would have a chilling effect on valid secondary market activities.

C. Community Development Test

1. Community Development Financing Subtest

The ANPR specifically requests response to the question of whether community development loans and investments should be combined under the new Community Development Financing Subtest, and whether such an approach would provide incentives for stronger and more effective community development financing.

Under the Fed's current rules, community development loans and investments are separately evaluated. For large banks, community development loans are evaluated under the lending test, whereas qualified investments are considered separately under the investment test.

Hence, a bank would be eligible to receive separate considerations for both the number and dollar amount of community development loans originated as well as qualified investments made during the review period (plus remaining book value of those on the balance sheet).

The ANPR proposes to (i) evaluate community development loans and qualified investments together under a new Community Development Financing Subtest (which would fully recognize construction loans – including loans for multifamily housing); and (ii) revise the current practice of considering only community development loans originated during the review period, but not those held on balance sheet from prior review periods (which is inconsistent with the treatment of qualifying investments, where consideration is given to both qualified investments made during the review period as well as the remaining book value of qualified investments made during a prior review period).

Under the proposed subtest, new loans and investments made or originated during each year of an evaluation period, as well as loans and investments made or originated in a prior year and held on balance sheet would be jointly evaluated.

MBA agrees generally that the Fed's proposal to combine community development loans and investments under one subtest might provide more flexibility for banks to provide the type of financing—loans or investments—most appropriate to support their local communities without concern about meeting different evaluation criteria. While we support the concept generally, we are concerned that such an approach could have an unintended impact on equity investments, such as investments in in low-income housing tax credit (LIHTC) projects.

There is ample support for the conclusion that much of the success and availability of LIHTC projects can be attributed to CRA. As a result, eliminating a separate evaluation for LIHTC investments could be harmful. We are concerned that if the rule reduces CRA credit availability for valid equity investments, such as investments in LIHTC projects, there would be a reduced incentive for banks to engage in such activities, which would be detrimental to the community.

The Department of Housing and Urban Development (HUD) describes the LIHTC program as "the most important resource for creating affordable housing in the United States today."[4] While banks may invest in LIHTC projects, banks also serve a critical function with respect to the LIHTC program by sponsoring and syndicating LIHTC projects. This involves considerable efforts in working with developers, the IRS, state housing finance agencies, and investors, while also monitoring and managing the fund. The same is true with respect to new market tax credit (NMTC) projects.

MBA therefore, recommends that any proposed rule – regardless of whether it maintains current law or combines evaluation of community development loans and investments – provide full recognition or separate evaluation for investments in LIHTC projects, so that these projects continue to receive full CRA consideration under the community development test. In

[4] *Low-Income Housing Tax Credits*, HUD Office of Policy Development and Research (revised May 24, 2019); https://www.huduser.gov/portal/datasets/lihtc.html

addition, to more accurately capture the impact of, and to incentivize, this activity going forward, we recommend that the Agencies revise the proposed performance measurement approach also to provide substantial CRA credit for non-balance sheet LIHTC and NMTC sponsorship and syndication activity.

Further, MBA supports the proposal to treat community development loans made in a prior review period the same as qualified investments made in a prior review period that are still on the bank's books, under the community development financing subtest. MBA agrees that giving consideration to the book value of qualifying community development loans that remain on the balance sheet from prior evaluation periods, as is currently done for qualifying investments, would more effectively encourage banks to make and maintain longer-term loans that are beneficial for communities.

2. Community Development Services Subtest

The ANPR proposes a new Community Development Services Subtest that is intended to focus a bank's attention on the importance of community services in achieving effective community development. Under current law, community development services qualify for CRA consideration under one of the four prongs of the existing definition of community development: **Affordable housing; community services; economic development; and revitalization and stabilization**.

a. CRA Qualification for Affordable Housing

The ANPR proposes to establish more consistent standards for the four prongs under the current definition of community development with the goal of providing certainty and clarity for banks and communities about what activities will be considered for CRA and emphasize activities that are impactful and responsive to community needs. This letter will focus only on the <u>affordable housing</u> prong of the definition.

The ANPR proposes revisions to current law intended to further the important goal of ensuring strong incentives for banks to provide community development loans and investments for the creation and preservation of affordable housing, both rental and owner-occupied. MBA supports this goal, especially as it helps amplify efforts by our members to engage and participate in activities that promote minority homeownership and wealth building.

i. Affordable Housing – Subsidized and Unsubsidized

The ANPR specifically requests response to the questions of (i) whether to include for CRA consideration subsidized affordable housing, unsubsidized affordable housing, and housing with explicit pledges or other mechanisms to retain affordability in the definition of affordable housing; and (ii) how unsubsidized affordable housing should be defined.

In general, the definition of community development includes affordable housing (including multifamily rental housing) for LMI individuals. The fact that LMI individuals benefit, or are more likely to benefit from the housing, is a precondition for qualifying as affordable housing, which then provides CRA consideration for affordable housing where the expressly stated intent of the housing unit is community development. However, the rules are unclear about whether unsubsidized affordable housing is included in this definition of community development – even though a substantial volume of unsubsidized affordable housing is targeted to LMI individuals.

1. Subsidized Affordable Housing

The ANPR maintains current law inclusion of subsidized affordable housing in the definition of community development, but amends its definition, which is currently specifically tied to LMI individuals. The proposed definition would include "any housing unit that is "purchased, developed, rehabilitated, or preserved in conjunction with a federal, state, local, or tribal government affordable housing program or subsidy, with the bona fide intent of providing affordable housing." In contrast to current definition, the proposed definition better reflects the purposes and goals of affordable housing units.

This amplified definition would capture housing (rental or homeownership) that is subsidized under various programs (such as State and local government affordable housing subsidy programs, LIHTC, HUD and Agriculture programs). MBA supports expanding the definition to provide CRA consideration for financing that is geared towards housing that is subsidized under various programs, rather than only housing that is targeted towards LMI individuals. This would incentivize bank investments in these programs, which would in turn further CRA goals of community development.

2. Unsubsidized Affordable Housing

As the ANPR describes, the Fed is considering several options to clarify that the affordable housing prong of the community development definition includes the financing of certain unsubsidized affordable housing units and projects— both the preservation of existing units and the production of new unsubsidized affordable housing.

As a proxy for tenant income certification, the Fed is considering a definition for eligible unsubsidized affordable housing requiring that:

> The rent be affordable; *and*
>
> the unit(s) be located in either an LMI geography or a geography where the median renter is LMI.

MBA agrees that it is important to encourage the financing of unsubsidized affordable housing and that CRA consideration should be provided for financing both the preservation of existing units and as the construction and renovation of unsubsidized affordable units. This would appropriately incentivize institutions to, for example, finance workforce housing that would allow public employees, such as teachers, police officers, and firefighters, to live close to the communities they serve.

To broaden the scope of communities that may benefit from these incentives, however, we urge the Fed to remove the proposed geographical restriction in the definition of "eligible unsubsidized affordable housing." That change would enable banks to receive CRA consideration for unsubsidized affordable housing that is *not* located in either an LMI geography or a geography where the median renter is LMI, so long as the rent is affordable. We believe it would be appropriate to use CRA to incentivize banks to finance unsubsidized affordable housing that helps address the needs for affordable housing in these other communities as well.

As the ANPR notes, the Fed is considering basing affordability or whether rent is less than or equal to 30 percent of area median income (AMI), or possibly using HUD Fair Market Rents (FMR) or LIHTC rents to determine affordability. The Fed is also considering incorporating possible reliance on explicit pledges or other mechanisms to reasonably ensure that the housing remains affordable throughout the time it receives CRA consideration.

MBA strongly supports efforts to maintain and increase affordable rental housing, and we suggest that the Fed may want to look at the issue of affordability more broadly. The governments' support of affordability would be greatly improved (as would ESG (Environment, Social, and Governance) investment, etc.) with a more standardized or harmonized set of definitions of affordability across the banking agencies, HUD, LIHTC, the Government Sponsored Enterprises, and others.

Finally, we appreciate that the Fed is considering definitions of affordable that may be used in lieu of certifying tenant income, which can be impractical.[5] As an operational matter we urge that any definition of affordability, including continuing affordability, be specified in terms that can readily be determined based on documentation that is available at origination, supplemented with reasonable periodic reporting. In addition, any definitions of affordability should be readily applicable to affordable units located in properties that contain a mixture of units that are affordable for different levels of income, to recognize the role mixed-income properties can play in addressing the need for affordable rental housing.

ii. CRA Credit for Development and Construction Loans for Affordable Housing

In addition to supporting the expanded definition of subsidized affordable housing, MBA supports the ANPR's proposed definition of community development to include affordable housing activities defined as those considered to be particularly responsive to the needs of LMI individuals and communities. In defining affordable housing activities for this purpose, MBA recommends that the Fed include development and construction loans to for-profit entities that are used to create new, for-sale affordable residential homes in an LMI census tract of a bank's assessment area and are affordable to LMI borrowers. Essentially, the test for CRA qualification would be whether the activity financed has a primary purpose of community development and is intended for households earning 80 percent or less of AMI.

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[5] See 85 Fed. Reg. at 66445 ("These two criteria [that the rent be affordable and the unit be located either an LMI geography or a geography where the median renter is LMI] are intended to be a proxy for tenant income certification to determine that the housing benefits LMI households; as many owners and managers of buildings with unsubsidized, yet affordable units, do not certify tenant income on an ongoing basis, that information might not be available to examiners.").

This test should be applied under the Retail Lending Subtest for small banks that opt into only the Retail Test under the metrics.

b. Mortgage-Backed Securities Related to Affordable Housing

The ANPR raises a question on what the appropriate CRA treatment of mortgage- backed securities (MBS) should be. Under current rules, banks receive CRA credit for purchases of MBS backed by loans that finance subsidized multifamily rental housing, loans for mixed-income housing that includes affordable housing for LMI families, or loans to LMI borrowers.

We do not believe that it is appropriate to limit the amount of MBS purchase that would qualify for CRA credit. While MBA appreciates the potential concern that providing full credit for MBS purchases could encourage banks to rely exclusively on MBS purchases, rather than engaging directly in more community development activities, MBS remains a critical component of the CRA ecosystem and MBA would not support a rule that imposes any limitation on CRA credit for MBS purchases.

MBS provide needed liquidity for lenders that make home mortgages so that they can make more of these loans, further helping the community. Moreover, the fact that the MBS are backed by loans that finance valid community development lending and investments supports giving them full CRA credit. The rule could be crafted to recognize the importance of new lending and investments, without dampening purchases of MBS, which are important for the continued functioning of the secondary market.

D. Providing Additional Clarity

a. Provide Example List of Qualifying Activities

The ANPR proposes that the Fed would publish an illustrative, non-exhaustive list of activities that would be eligible for CRA consideration. The goal here, similar to the OCC in its final rule, is to improve upfront certainty relative to what activities qualify for CRA consideration, which will provide stakeholders with additional transparency and consistency on what, how, and where activities are evaluated.

MBA supports the publication of a non-exhaustive list of illustrative examples of activities that qualify for CRA credit. This would reduce unnecessary uncertainty and provide a welcome increase in transparency as to how institutions might meet their CRA requirements, including transparency as to qualifying mortgage finance activities. Making the list illustrative and non-exhaustive will help establish the understanding that other innovative (but unlisted) activities are not precluded from CRA consideration.

Moreover, a list of qualifying activities could facilitate institutions' efforts to engage in a broader set of community development actives benefiting LMI communities beyond their currently CRA qualifying activities.

Initially, the illustrative list could be based on activities that have already been qualified for CRA credits, and then updated frequently with activities that are submitted for pre-approval and subsequently qualified for CRA credits. The list should be published in the Federal Register (and posted on the Fed's website), and updated as frequently as every six months In addition, the Fed should make it clear that publishing such a list does not create a situation where stakeholders are dissuaded from engaging in innovative activities simply because they are not included in the current listing.

b. Pre-Approval Process for Qualifying Activities

The ANPR proposes to develop a formal process for providing feedback to stakeholders on whether proposed activities would receive CRA consideration. Under current rules, banks submit community development activities that have already been undertaken sometimes without any confidence these activities are eligible as part of their CRA examinations.

As stated in MBA's comments on the OCC/FDIC 2019 NPR, MBA supports a pre-approval process that would allow banks to submit proposed activities and obtain a determination about CRA eligibility prior to engaging in the activity. Allowing banks to receive a confirmation on whether an activity qualifies for CRA credit prior to engaging in such activity removes much of the uncertainty under the current rules that potentially limits the type and scope of beneficial CRA activities the bank could engage. . A pre-approval process would be a welcome improvement on current rules, as it would provide more certainty for banks (as well as the communities they serve).

This pre-approval process should be applicable to a broad category of activities under the community development test. Finally, we recommend that the final rule establish a clear Agency response period (e.g., no more than 60 days) for requests for a prior determination of CRA activity eligibility so that the process itself does not serve as an obstacle to engaging in impactful, innovative activities. While we acknowledge that this would require allocation of necessary resources and infrastructure to reasonably ensure adherence to this 60-day response time frame, we believe that innovation among banks is critical to the success and continuing positive benefits of CRA. Unless the response time is kept to a short time frame (no more than 60 days), this process would be of little use for banks if protracted review and approval periods unnecessarily delay market sensitive activities.

E. Other Comments

1. Helping to Free up Capital for More Loans to LMI Borrowers

The ANPR specifically requests input on "other alternatives that would promote liquidity by freeing up capital so that banks and other lenders, such as CDFIs, can make additional home mortgage loans to LMI individuals." As noted previously, a robust secondary market is essential to making mortgage loans. MBA strongly believes that selling and purchasing securitized or un-securitized mortgage loans promoting liquidity, which helps to free up the necessary capital for making more home mortgage loans to LMI individuals.

MBA reiterates our support for providing full CRA credit for MBS purchases, as well as for origination or purchase of home mortgage loans. Although the OCC final rule made improvements to the proposed treatment of mortgage loans that are sold after origination, the Fed's proposal goes much further. The decision of whether to sell mortgage loans should be a neutral business decision, rather than a decision that should be based on CRA considerations. Thus, we fully support a final rule that would provide full CRA credit for mortgage loans, regardless of whether or when the loan is sold after origination. Not only would such a rule ensure that CRA considerations do not interfere with secondary market activities, it also would help promote liquidity for mortgage lending activities to LMI borrowers.

2. Small Balance Loans

Further, MBA recommends that any final CRA rule provide full and separate CRA credit for small balance mortgage loans. MBA has long been a proponent of providing incentives for small balance loans, as we believe they help promote minority home ownership and wealth building. Many LMI borrowers need access to low balance loans. Providing separate CRA credit for these loans will incentivize lenders to originate as well as purchase such loans, which will help support more LMI home ownership opportunities.

3. Agency coordination

MBA continues to stress the importance of all three banking agencies collaborating on efforts to modernize the CRA regulatory and supervisory framework. We agree that many parts of the regulations are outdated, and support efforts to modernize the regulatory framework. However, unless the agencies work together on this effort, industry and stakeholders run the risk of spending a significant amount of time addressing separately issued proposals and might end up being subject to final rules that are not aligned. In addition to the potential for creating non-uniform rules that result in unnecessary complexities for banks that must implement the rules, having multiple sets of CRA rules also creates significant complicating issues and confusion for the communities and individuals that are the beneficiaries of the CRA. This is counter-productive to the goals of CRA.

All three banking agencies are in agreement on the need to improve and modernize the CRA framework and have been working collaboratively on this endeavor for the last few years. MBA strongly encourages the agencies to return to a joint effort on this important issue. The CRA is a vital tool for both banks and their communities, and we believe that operating under uniform or consistent rules is an important part of ensuring that banks continue to meet their CRA obligations and the intended beneficiaries obtain the benefits.

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IV. Conclusion

MBA appreciates the Fed's efforts to modernize the CRA rules to recognize the changes that have occurred in the banking industry over time. We support the goal of making the regulations more reflective of the original intent of the legislation and share the Fed's objectives of better targeting and delivery of community reinvestment activities based on the changing needs of communities across the country, particularly those that are historically underserved. We also support the Fed's efforts to provide additional transparency, predictability, and clarity of compliance with the requirements of the CRA.

We look forward to continuing constructive engagement with the Fed (and the other banking agencies) to develop a modified CRA regulatory framework that banks can comply with, regulators are able to consistently implement, and benefits communities and LMI individuals.

Sincerely,

Mike Flood
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