Statement for the Record

On Behalf of the

American Bankers Association

Before the

Subcommittee on Consumer Protection and Financial Institutions

of the

U.S. House Financial Services Committee

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Chairman Waters, Ranking Member McHenry, and distinguished Members of the Committee, the American Bankers Association[1] (ABA) appreciates the opportunity to submit this statement for the record for today's hearing examining the interagency proposed rule to modernize the regulations that implement the Community Reinvestment Act (CRA). Importantly, we are still in the process of analyzing the proposal and discussing its potential impacts with our member banks. As such, the observations and recommendations contained in this Statement for the Record may be subject to refinement or change.

Access to capital is fundamental to economic opportunity in the United States. For this reason, banks support the CRA statute's objective of encouraging banks "to help meet the credit needs of the local communities in which they are chartered, consistent with the safe and sound operation of such institutions."[2] In fact, in 2020, banks provided more than $271 billion in capital to low- and moderate-income (LMI) communities.[3]

For several years, there has been broad, bipartisan agreement among policymakers, bankers, and consumer and community advocates that the CRA regulatory framework needs to be updated to reflect how technology has transformed the delivery of financial products and services. There is consensus that the banking agencies need to ensure that CRA expectations are transparent and that examiners interpret and apply CRA regulations consistently. And, there is wide recognition

[1] The American Bankers Association is the voice of the nation's $23.7 trillion banking industry, which is composed of small, regional and large banks that together employ more than 2 million people, safeguard $19.7 trillion in deposits and extend nearly $11.2 trillion in loans.

[2] 12 U.S.C. § 2019(b).

[3] Based on mortgages and loans to small businesses in LMI areas. See CRA Data, https://www.ffiec.gov/craadweb/national.aspx and HMDA data, https://ffiec.cfpb.gov/data-publication/2021.

that CRA activities can do more to financially empower underserved consumers and communities.

We support each of these objectives, and we anticipate that several aspects of the proposed rule would achieve them.[4] However, we are concerned that other elements of the proposal would *not* accomplish the goals of regulatory modernization. In fact, if not calibrated appropriately, the final rule could result in outcomes that are *contrary* to the agencies' intent, particularly as it relates to expanding access to credit for residential mortgages, small business loans, and community development financing.

Nevertheless, we remain optimistic that it is possible to improve the effectiveness and administration of the CRA in a manner that will help banks more effectively support customers and communities. To that end, we offer the following initial observations and recommendations, which reflect the perspective of the full range of bank business models.

A. Focus on Individuals and Areas Where Banks Can Have the Most Impact

There is consensus among CRA stakeholders that CRA modernization must reflect the digital transformation of financial products and services. While there is broad agreement on this concept, melding the CRA statute's focus on geography with the practicalities of the electronic age and the emergence of new bank business models is not a simple task. The banking agencies devoted extensive thought and data analysis toward developing a modernized regulatory framework that addresses these challenges. But, the proposal's creation of Retail Lending Assessment Areas is not the elegant solution that it appears to be.

By way of background, existing CRA regulations largely limit the evaluation of a bank's CRA performance to those geographic locations where the bank has a physical presence as well as the surrounding geographies in which the bank has originated or purchased a substantial portion of its loans. This definition was developed when brick and mortar branches were the primary means of delivering financial products and services.

To reflect the changes in how banking services are delivered, the proposal would require large banks (defined as those with more than $2 billion in assets) to delineate a new type of assessment area, known as a Retail Lending Assessment Area (RLAA), where the bank has a concentration

[4] In particular, we support the proposed preapproval process and list of qualifying activities for community development; the increased specificity regarding what qualifies for community development credit; and the combination of community development lending and investments into a single community development financing test. We also support providing CRA credit at the bank level for community development activities that a bank conducts outside of its assessment area(s). Finally, we appreciate the agencies sincere effort to tailor the proposal so as to avoid imposing regulatory burden on the smallest banks by adjusting the caps for Small Banks and Intermediate Banks to $600 million and $2 billion, respectively.

of home mortgage or small business lending where it does not have a physical presence. These RLAAs would consist of any MSA or the combined non-MSA areas of a state in which the bank originated (i) at least 100 home mortgage loans outside of its facility-based assessment areas (FBAAs) ***or*** (ii) at least 250 small business loans outside of its FBAAs in each of the two preceding calendar years. Importantly, a bank would be evaluated for its CRA performance for ***all*** of its major product lines in each RLAA, regardless of whether the bank surpasses ***either or both*** of the proposed thresholds.

We agree that a modernized CRA regulatory framework should no longer rigidly adhere to physical presence as the sole basis for a bank's CRA evaluation. However, we have significant concerns with the RLAA as proposed. While it appears workable in theory, the 100/250 loan triggers pose several practical problems.

First, the loan volumes that would trigger a RLAA are not sufficiently material. As proposed, many banks would be required to create dozens—and in some cases well over one hundred—new assessment areas in geographies where the bank does not have a meaningful market presence or that are not central to the bank's broader business strategy.

For example, one of our members would go from 105 assessment areas today to 170 assessment areas under the proposed rule. Another community bank would go from 3 assessment areas today to over 60 assessment areas under the proposal. This increase in assessment areas may dilute the effectiveness of CRA activity by potentially diverting a bank's focus on areas where it could make a significant difference for LMI individuals and communities.

For this reason, we recommend that the agencies re-calibrate the proposal to create a regulatory framework that incentivizes banks to focus on locations where they can make a meaningful impact toward closing the wealth gap. Allowing banks to concentrate their efforts in areas where they have more substantial activity than the 100/250 loan thresholds is more likely to achieve the goals of CRA than requiring them to spread their efforts across numerous new assessment areas.

A related problem is that the proposal would scope in all of a bank's major product lines in each RLAA once the bank meets the trigger for only one product line. For example, if a bank makes 125 mortgage loans (thereby triggering an RLAA) and 75 small business loans, both products would be subject to the Retail Lending Test (provided the 75 small business loans are a major product line), even though the bank's small business lending volume is insufficient to trigger an RLAA on its own. In the spirit of focusing on lending that is material to the bank and to the community, we recommend that the Retail Lending Test not apply to a product that, by itself would not trigger a RLAA designation. In this same vein, we recommend that any final rule carefully calibrate what constitutes a major product line.

Second, the proposed thresholds could unintentionally incentivize banks to curtail retail lending in locations that are incidental to the bank's business strategy and where the bank does not actively market its loan products. For example, one of our members exceeds the 100 mortgage loan threshold in Boston even though the bank does not have branches in Boston and does not market its mortgage products there. Nonetheless, the bank would be required to add the Boston MSA as an RLAA and meet the same CRA performance benchmarks as banks with a branch in the city or that market their products in the area. Under these circumstances, some banks may choose to take a hard look at the costs and benefits of accepting loan applications from and managing a CRA program in a geography that is incidental to the bank's business strategy.

Third, while the agencies sought to tailor the proposal to reflect a bank's asset size and capacity, the proposed FBAA structure and weighting of the Retail Lending Test will disadvantage some bank business models. For example, one of our members has only one retail lending product. This book of business represents a mere 1.8% of the bank's total loan portfolio, yet the bank would be required to add 181 RLAAs. Moreover, this product line would comprise 45% of the bank's entire CRA rating even though it represents less than 2% of the bank's total loan portfolio. To be effective and workable, a final rule must take these types of situations into account.

In light of the foregoing concerns, we are evaluating potential alternatives to the RLAA construct. One option might be to evaluate non-facility-based assessment area lending at the bank level rather than creating many new RLAAs. Another option would be to adjust the triggers for delineating a RLAA based on a material loan count *and* market share. Regardless of the approach that the agencies ultimately take, regulators must be mindful of the unintended consequences that could result from major revisions to the assessment area construct.

B. Rebalance the Proposed Benchmarks and Rating Methodology

The proposal would raise the bar for the performance on the Retail Lending Test. As a result, a bank would have to exceed past performance in order to attain the same CRA rating that it received on a prior exam. Regulators believe that these heightened performance standards would incentivize banks to increase lending to underserved communities. This is an important goal. However, as explained below, the proposed benchmarks and ratings methodology may actually create a *disincentive* for certain types of lending and investment. For this reason, regulators must ensure that new benchmarks and ratings methodologies are calibrated appropriately.

First, in an attempt to standardize CRA evaluations, the proposal would apply the same performance metrics to all banks operating in an assessment area, regardless of whether the bank has a digital or a physical presence. Regulators should take great care to ensure any final rule does not competitively advantage or disadvantage certain business models.

Second, the proposal is weighted too heavily on the Retail Lending Test, which would constitute 45% of a "large" bank's CRA rating.[5] Under this approach, a bank could not achieve an overall rating of Outstanding unless it receives an Outstanding rating on the Retail Lending Test, regardless of how well the bank performs on the Community Development Test.

The agencies believe that a weighting of 45% appropriately emphasizes retail lending to LMI individuals and communities. However, over-emphasizing the Retail Lending Test could have unintended consequences. For instance, if a bank believes an Outstanding on the Retail Lending Test is unattainable, that bank may choose *not* to pursue an Outstanding on the Community Development Financing Test since the bank would not be capable of achieving an overall rating of Outstanding. In other words, the proposed benchmarks could create a *disincentive* for banks to stretch and do more community development lending and investing. This would be a highly undesirable outcome, particularly for communities that desperately need revitalization and are located outside of the assessment areas of most banks.

Third, the proposed Retail Lending benchmarks may be unachievable and could incentivize unsafe and unsound risk taking. To obtain a High Satisfactory rating, a bank must meet 110% of the market benchmark or 90% of the community benchmark. For an Outstanding rating, a bank must meet 125% of the market benchmark or 100% of the community benchmark. Importantly, the proposal would evaluate banks on a relative basis rather than an absolute basis. While we are still analyzing the proposal, we are concerned that the proposed performance standards could create an unrealistic target, whereby it will be mathematically impossible for all banks in an assessment area to meet the proposed thresholds. In other words, the proposed performance standards would create an automatic bell curve of ratings distributions within the Retail Lending Test. In fact, according to the preamble to the proposed rule, 34% of banks would fail the Retail Lending Test in their RLAAs and 39% would only receive a Low Satisfactory rating.[6]

We strongly disagree with this approach. CRA performance benchmarks should be vigorous, yet achievable, and the expectation should be that all banks can meet or exceed the established standard—as is the case with all other consumer protection and safety and soundness regulations. Artificially high benchmarks could incentivize banks to engage in undue risk taking in order to comply with the regulation's performance standards. This would be disastrous for consumers, communities, and could increase risk in the financial system.

C. Provide an Adequate Transition Period

The agencies propose to incorporate a transition period comprised of multiple "applicability dates." For the most burdensome aspects of the proposal (including RLAAs, new performance

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[5]The proposal would weight the various performance tests as follows for large banks: 45% for Retail Lending Test performance score; 15% for Retail Services and Products Test performance score; 30% for Community Development Financing Test performance score; and 10% for Community Development Services Test performance score.

[6] See Appendix A for more information regarding potential ratings outcomes under the proposal.

tests, standards, and ratings, and data collection and reporting requirements), the agencies would provide a transition period of one year. However, twelve months is insufficient to implement the proposed changes for a rulemaking this comprehensive and complex.

In addition to parsing the highly-technical rule, banks will need to:

- Apply new and complicated formulas to their existing CRA programs;
- Establish administrative oversight over newly designated RLAAs and ensure that they are properly incorporated into the bank's CRA program;
- Ensure that all assessment areas (new and existing) meet the rule's newly-established performance benchmarks;
- Implement major data collection, recordkeeping, and reporting mechanisms that significantly exceed existing CRA requirements, including the establishment of data integrity procedures and controls; and
- Evaluate the cost-benefit of certain business lines and geographic markets in light of the burden that the new RLAAs and performance metrics create.

CRA implementation will be a very heavy lift on its own. But, the proposed 12-month implementation period is especially unrealistic given that banks will likely be required to implement the new CRA regulation in tandem with the CFPB's anticipated final small business lending data collection rule (Dodd-Frank Act section 1071). For many banks, the same staff will be charged with implementing both of these new regulations, particularly as it pertains to overhauling technology systems and standing up new data collection and reporting mechanisms. This dual implementation will make the time pressures of a 12-month implementation period particularly acute.

In fact, in anticipation of overlapping implementation periods for these major rules, some banks have initiated their compliance preparations ***prior to*** the issuance of final rules even though some of this effort may need to be unwound in the event a final rule deviates from the proposal. This is wasteful. Yet, extreme measures like this illustrate the operational challenges associated with unreasonable implementation timelines.

Banks are not the only entities that must dedicate substantial resources to meet the time pressures of a new CRA rule. Banks are dependent on software vendors and core providers to furnish services that will be necessary to implement a new CRA framework. Regulators should solicit input from these third parties regarding the time that will be necessary to develop the requisite coding, programs, and systems necessary for banks to implement a final rule. In the case of prior rulemakings involving HMDA and TRID, bank implementation and testing of vendor products was delayed because third-parties lacked sufficient time to develop systems changes for their clients. We urge the agencies to draw upon these experiences when establishing the implementation period for the final CRA rule.

For the foregoing reasons, we request that the agencies provide an implementation period of at least two years following publication of the final rule in the *Federal Register*. We also recommend that the agencies provide extensive interagency training and support to help banks understand and apply a new regulatory framework. Examiner training should also be conducted on an interagency basis.

D. Provide Sufficient Time for Banks to Provide Meaningful, Data-Driven Comments

Leadership of the banking agencies have repeatedly emphasized the need for robust public comments in order to best assure that a final rule is calibrated appropriately. As Acting FDIC Chairman Martin Gruenberg observed at during a recent panel discussion, "Nothing is perfect and it is a large, complicated rule. We assume there is a lot there that we didn't get right or may have missed or could be improved." [7]

Nevertheless, the agencies denied a request by ten banking trade associations to extend the proposal's comment period by only 30 days. We do not understand the agencies' rationale in denying this request or why the agencies are proceeding with a comment period that is too short relative to the scope and magnitude of changes being proposed. As history has demonstrated, complex regulatory overhauls that are rushed tend to have little staying power or require extensive amendments and/or interpretations. Revisions or clarifications during the already abbreviated one-year implementation period would make compliance even more difficult.

In recent years, multiple iterations of CRA modernization have created modernization fatigue. While there may be pressure to "just get it done," regulators, banks, and other stakeholders have come too far and worked too hard to rush the final stage of this important work. Communities, regulators, and banks would benefit from an updated regulatory framework that achieves this initiative's stated objectives *and* stands the test of time.

We will continue to work diligently to provide thoughtful comments on the overall framework that the agencies have proposed. However, policymakers should be aware that the 90-day comment period is insufficient for banks to provide fulsome, data-driven comments on the complicated formulas, benchmarks, and thresholds set forth in the nearly 700-page proposed rule. This is particularly the case for community banks that are classified as "large banks" for CRA purposes.

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[7] Regulatory panel discussion hosted by the Urban Institute. "Modernizing the Community Reinvestment Act: Ensuring that Banks Meet the Credit Needs of Their Communities." (June 3, 2022). https://www.urban.org/events/modernizing-community-reinvestment-act-ensuring-banks-meet-credit-needs-their-communities

E. Apply CRA-Like Requirements to Credit Unions and Other Financial Firms

The Subcommittee's evaluation of the interagency CRA proposal provides policymakers with the opportunity to make a holistic evaluation of CRA. There has been a remarkable transformation in the delivery of financial products and services since the CRA was enacted 45 years ago. In addition to the proliferation of electronic delivery channels, payment processing and loan origination are no longer within the exclusive purview of the local bank. In 2021, nonbanks originated approximately 72% of mortgage loans in the United States.[8] Non-bank origination of small business loans is also on the rise. Fintech lending to small businesses increased from $14 billion in 2018 to $20.4 billion in 2020.[9]

In like manner, the credit union industry continues to expand. Today's credit unions are a $2 trillion industry. Some credit unions have grown into regional and even national financial institutions that receive significant government benefits to serve LMI individuals, yet they are not required to demonstrate through measurable standards that they are meeting their service obligations.

Analysis shows that credit unions are increasingly targeting wealthy communities, serving wealthy consumers, and are a contributing factor to *widening* economic inequality. [10] Between 2012 and 2021, more than 70% of the branches of banks targeted for acquisition by credit unions were in upper- or middle-income census tracts, and only 13 branches out of almost 200 were in low-income tracts. Per data from S&P Global, banks are already much more likely than credit unions to have branches in at-risk communities—7.7x in poverty-distressed communities, 9.3x in distressed, underserved, or middle-income communities, 12.8x in remote rural communities, and 18.1x in communities experiencing population loss.

Perhaps even more concerning is the recent trend of credit unions buying community banks. Community banks pay taxes and comply with the Community Reinvestment Act, but once the transaction closes, the bank's CRA obligations cease to exist and the acquiring credit union has no CRA responsibility to the community. This outcome is nonsensical.

In light of the foregoing market developments, policymakers should reconsider the entities that have community reinvestment responsibilities. As Federal Reserve Chairman Jerome Powell observed, "like activity should have like regulation….Consumers require protection and low-

[8] https://files.consumerfinance.gov/f/documents/cfpb_2020-mortgage-market-activity-trends_report_2021-08.pdf
[9] https://cdn.advocacy.sba.gov/wp-content/uploads/2022/02/15122206/FinanceFAQ-Final-Feb2022.pdf
[10] https://fedfin.com/wp-content/uploads/2020/07/FedFin-Paper-The-Credit-Union-Equality-Commitment-An-Analytical-Assessment.pdf

and moderate-income communities require credit support, regardless of the nature of the institution."[11]

F. Looking Forward

Thank you for the opportunity to comment on potential revisions to the regulations that implement the CRA. We appreciate the Subcommittee's continued interest in the modernization effort. Updates to this regulation are long overdue, and we remain optimistic that it is possible to improve the effectiveness and administration of CRA on an interagency basis. We welcome the opportunity to provide additional information and input as the modernization effort proceeds and we finalize our comment letter on the proposed rule.

[11] https://ncrc.org/ncrc-ceo-jesse-van-tol-with-federal-reserve-board-of-governors-chair-jerome-powell-at-the-2021-just-economy-conference-may-3-2021/

Appendix A: Agency Analysis of Bank Performance Under the Proposed CRA Performance Standards

Table 10 to Section ___.22. Distribution of Estimated Retail Lending Conclusions among Banks by Asset Size, without applying the Retail Lending Volume Screen

	Assets <$600m		*Assets $600M-$2B*		*Assets >$2B*	
	Freq.	Percent	Freq.	Percent	Freq.	Percent
"Substantial Noncompliance"	1	1%	0	0%	0	0%
"Needs to Improve"	27	14%	5	7%	3	7%
"Low Satisfactory"	48	24%	28	38%	17	40%
"High Satisfactory"	61	31%	32	43%	18	43%
"Outstanding"	61	31%	9	12%	4	10%

Notes: Table 10 shows the estimated distribution of Retail Lending Test conclusions based on agency analysis of home mortgage and small business lending, deposits, and demographic data from the CRA Analytics Data Tables. Institution-level conclusions were derived from the weighted average of assessment area level recommended conclusions. The boundaries of facility-based assessment areas for small and intermediate-small banks were derived from data collected from the bank's performance evaluation. The boundaries of facility-based assessment area for large banks were derived from a combination of the data collected from the bank's performance evaluation and its reported assessment area data. Analysis included banks that had a CRA examination begin in 2018 or 2019, and excluded wholesale, limited purpose, and strategic plan banks. Bank asset categories were assigned using the annual average of the prior two years of quarterly assets relative to the examination year. Percentages were rounded to the nearest whole number.

Table 11 to Section __.22. Distribution of Reporter Bank Assessment Area Estimated Retail Lending Conclusions, by Location

	MSA		*non-MSA*	
	Freq.	Percent	Freq.	Percent
"Substantial Noncompliance"	46	1%	33	2%
"Needs to Improve"	796	16%	284	16%
"Low Satisfactory"	1669	33%	484	27%
"High Satisfactory"	1803	35%	638	35%
"Outstanding"	760	15%	359	20%

Notes: Table 11 shows the estimated distribution of Retail Lending Test conclusions based on agency analysis of home mortgage and small business lending, deposits, and demographic data from the CRA Analytics Data Tables, over the years 2017-2019. Assessment area-level recommended conclusions are shown. The boundaries of assessment areas were estimated using reported assessment areas, along with the restrictions that assessment areas must generally lie entirely within a single MSA or the non-MSA portion of a single state, and generally consist of (at least portions of) a contiguous set of counties. Analysis included 606 banks that were both CRA and HMDA reporters, and excluded wholesale, limited purpose, and strategic plan banks. Percentages were rounded to the nearest whole number.

Table 12 to Section ___.22: Distribution of Estimated Reporter Bank Retail Lending Conclusions, in Retail Lending Assessment Areas and Outside Retail Lending Areas

	Retail Lending AA		Outside Retail Lending Area	
	Freq.	Percent	Freq.	Percent
"Substantial Noncompliance"	37	2%	11	2%
"Needs to Improve"	531	32%	175	29%
"Low Satisfactory"	646	39%	268	45%
"High Satisfactory"	360	22%	129	21%
"Outstanding"	96	6%	21	3%