MBa®
MORTGAGE BANKERS ASSOCIATION

October 29, 2021

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-2021-0014, OCC Community Reinvestment Act Regulations

To Whom it May Concern:

The Mortgage Bankers Association (MBA)[1] appreciates the opportunity to submit comments in response to the notice of proposed rulemaking (NPR) issued by the Office of the Comptroller of the Currency (OCC), which proposes to rescind the Community Reinvestment Act (CRA) rule issued in 2020 and replace it with rules adopted jointly by the Federal banking agencies in 1995, as amended.[2]

MBA appreciates and supports the OCC's proposal to rescind its 2020 CRA rule to pave the way for ongoing interagency work with the FDIC and Federal Reserve to propose a new joint rule to modernize and reform the CRA. MBA has separately joined a coalition comment letter addressing transition issues raised by the NPR. Our comments below, therefore, focus on ways the OCC and other banking agencies can jointly modernize the CRA and make changes to better serve low- to moderate-income communities.

We agree with the objectives of the OCC's 2020 final rule, "to make the CRA framework more objective, transparent, consistent in application, and reflective of changes in banking," in order to "make the CRA framework a better tool to encourage banks to engage in more activities to serve the needs of their communities, particularly in low- and moderate-income communities and other communities that have been underserved under previous versions of the CRA regulatory framework."[3] In addition, we believe that any final rule that reforms the CRA regulatory framework

[1] The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 330,000 people in virtually every community in the country. Headquartered in Washington, D.C., 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 1,700 companies includes all elements of real estate finance: independent mortgage banks, mortgage brokers, commercial banks, thrifts, REITs, Wall Street conduits, life insurance companies, credit unions, and others in the mortgage lending field. For additional information, visit MBA's website: www.mba.org.

[2] 86 Fed. Reg. 52026 (Sept. 17, 2021).

[3] 85 Fed. Reg. 34734, 34787 (June 5, 2020).

should be crafted to ensure that it is not unduly onerous, inconsistent, burdensome, or confusing, which could result in ineffective or non-functional rules that make it difficult for banks to comply and for regulators to implement.

Thus, we urge the OCC to continue to work with the banking industry and other stakeholders (including community groups and the mortgage industry) and consider various policy options or approaches that support those objectives. In addition, we want to share our views on certain of the approaches the OCC took in its now-rescinded June 2020 CRA rule that we hope will be useful in connection with any resulting joint CRA rulemaking. While not exhaustive, the list below touches on some of the areas we believe must be addressed in any final rule.

Qualifying Activities

We support the provisions in the OCC's 2020 CRA Rule that allow institutions to rely on the OCC's published list of qualifying activities, as well as the pre-approval process that has been established. The 2020 rule's addition of illustrative qualified activities and pre-approval process for otherwise unspecified activities offered greater certainty that banks and their community partners need. MBA encourages the OCC and other banking agencies to include similar provisions in any joint final CRA rules and clarify that the pre-approval process is not limited only to housing-related activities that could qualify for CRA.

Branch Based Activities

MBA encourages the OCC and other banking agencies to continue to continue to allow banks to receive CRA credit for activities engaged in by affiliates, provided these activities serve low- and moderate-income (LMI) individuals and communities and further the institution's CRA goals and objectives. Many banks engage in joint ventures and in some cases have affiliates engaging in beneficial CRA-eligible activities on their behalf. Eliminating CRA qualification for these activities would reduce the incentive for banks to work with community partners and other affiliates to engage in beneficial community development investments, activities, and programs. We, therefore, recommend that the OCC and other banking agencies retain the treatment of affiliate activities under the 1995 CRA Rules under which banks are permitted to elect to include affiliate activities in their CRA evaluations, subject to certain limitations.

In addition, we encourage the OCC and other banking agencies to examine ways to permit banks to receive CRA credit for activities that occur outside of current assessment areas provided these activities serve LMI individuals and communities and further the institution's CRA goals and objectives. This can usefully address the situations in cities with high concentrations of branches where there is significant competition for CRA activities, such as LIHTC projects and equity investments, that is limited to those relatively small areas of the country.

Treatment of Purchased Loans

MBA encourages the OCC and the other banking agencies to preserve the provisions of the 1995 CRA current CRA rules that provide banks with full CRA credit for the purchase of Mortgage-Backed Securities (MBS). MBS provide needed liquidity for lenders that make single-family and multifamily residential 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 should recognize the importance of new lending and investments, without also dampening purchases of MBS, which are important for the continued functioning of the secondary market.

Syndication

MBA believes that any revised CRA rules should continue to provide full recognition or separate evaluation for investments in LIHTC projects. To more accurately capture the impact of, and to incentivize, this activity going forward, we recommend that the OCC and other banking agencies also revise the proposed performance measurement approach to provide substantial CRA credit for non-balance sheet LIHTC.

There is ample support for the conclusion that much of the success and availability of Low-Income Housing Tax Credit (LIHTC) projects can be attributed to CRA. 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] As a result, preserving the qualification of valid equity investments, such as LIHTC projects of full CRA credit, maintains incentives for banks to engage in LIHTC program, which provides significant benefits to LMI communities.

In addition, while banks may invest in LIHTC projects, banks also serve a critical function with respect to the LIHTC program by sponsoring, and syndicating LIHTC. This involves considerable efforts in working with developers, the IRS, state housing finance agencies, and investors, and monitoring and managing the fund. Those efforts should be recognized in any CRA framework.

Expanded CRA Eligibility for Subsidized and Unsubsidized Multifamily Housing

MBA believes that it is important to encourage the financing of unsubsidized or workforce housing that is affordable to LMI households and recommends that CRA consideration be provided for financing that is targeted towards construction and renovation of such unsubsidized affordable units. An expansion of CRA recognition of multifamily lending 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. Making such loans that finance *unsubsidized* affordable housing results in a substantial benefit to the development of those communities, and so is deserving of CRA recognition.

* * *

MBA appreciates efforts that have been made by the OCC and by all the federal banking agencies to modernize and improve the CRA regulatory framework to make it more reflective of the original intent of the statute, and we also appreciate the agencies’ intent to work together to issue a joint rule. We urge the agencies to engage with and the mortgage industry to ensure that these

[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

objectives are met. If you have questions, require any additional information, or wish to discuss these comments, please contact Fran Mordi at fmordi@mba.org or Grant Carlson at gcarlson@mba.org.

Sincerely,

Pete Mills
Senior Vice President
Residential Policy & Member Engagement
Mortgage Bankers Association

Mike Flood
Senior Vice President
Commercial /Multifamily Policy & Member Engagement
Mortgage Bankers Association