August 5, 2022

James P. Sheesley
Assistant Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429
Attention: Comments RIN 3064–AF81

Chief Counsel's Office
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

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 Madam or Sir:

Merrimack County Savings Bank (MCSB) primary regulator is the FDIC, we are a state chartered mutual savings institution, headquartered in Concord, NH with assets of approximately $1,229,389, as of June 30, 2022. MCSB is a subsidiary of New Hampshire Mutual Bancorp.

We thank you for your leadership and hard work to draft a proposal on which the stakeholders can provide feedback. We greatly appreciate all of the efforts for the OCC, FDIC and Federal Reserve Board to work together in a coordinated effort to develop a CRA rule that is issued on an interagency basis. This will allow for consistency among the financial industry.

Merrimack County Savings Bank committed to the goals of CRA and to meeting the credit and financial services needs of our customers and communities. We take pride in being a vehicle for economic growth. We are very much in support for CRA modernization. The CRA regulations and supervision have become outdated with today's consumers and evolving financial industry. The need to update CRA is even more crucial than ever as technology and the financial services industry continue to evolve.

However, the agencies' proposal did not allow sufficient time to adequately respond with a limited 90-day comment period for a 700-page proposal that makes sweeping changes to the CRA framework, which contains 180 questions and provides numerous alternatives with little guidance in many complex areas.

A 12-month implementation period is unrealistic and burdensome 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 (Section 1071). For our bank and likely many others, 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 unreasonable and impractical. We recommend that the 12-month implementation period be extended to at least a 24-month implementation period.

Further, this rushed comment and implementation period would *not* accomplish the goals of regulatory CRA modernization based on the information and data provided to date. The rule as proposed could result in outcomes that are conflicting to the intent of the CRA and the credit needs of our community and community development financing.

We offer the following comments to enable banks to more effectively support their communities under the CRA. With these concerns noted above, we offer the following comments on a limited number of the proposal's specific provisions. However, it is important to note that we were not provided sufficient time to prepare an adequate public comment response for such an important regulation with a large impact to our communities financial health.

We respectfully ask that the final rule simplify the highly complex, formulaic system of metrics, benchmarks, multipliers, and thresholds, and balance the formulaic approach with more flexibility to consider bank business models and particular community needs.

Credit Unions

There has been a remarkable transformation in the delivery of financial products and services since the CRA was enacted 45 years ago. In 2021, nonbanks originated approximately 72% of mortgage loans in the United 42 States. 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. Per data from S&P Global, banks are already much more likely than credit unions to have branches in at-risk communities. We request that the policymakers reconsider the entities that have community reinvestment responsibilities to include credit unions. Including credit unions would provide for more accurate data and trending.

Asset Size Thresholds

We appreciate that the proposal recognizes the capacity and constraints of Small and Intermediate Banks and that it would permit wholesale and limited purpose banks to be evaluated under a tailored version of the Community Development Financing Test. While we support evaluating Small Banks under the existing Small Bank lending test, unless they choose to opt into the Retail Lending Test. We feel that the threshold should be further increased to $1.0 billion due to the structure and complexity of the proposed Retail Lending Test required for intermediate Banks. Further, we recommend increasing the threshold for intermediate banks to $3.3B.

The existing definitions for Small Bank and Intermediate Small Bank were established in 2005, we have seen significant changes. At the end of 2005, there were 7,655 banks consolidated by holding company. The median asset size was $124.5 million, while the average asset size was $1.42 billion. As of Q1, 2022, there were 4,194 banks consolidated by holding company with median assets of $312.5 million and average assets of $ 5.4 billion.

At the very least, we recommend that the Intermediate Bank threshold be adjusted to reflect these changes. When the thresholds were established in 2005, 70.8% of banks qualified for the Small Bank test and 21.8% qualified for the Intermediate Small Bank test. Applying those same percentages to the distribution of bank asset sizes today, eligibility for the Intermediate Bank status should be capped at $3.3 billion.

The proposed thresholds will apparently result in 34% banks receiving a less than "Satisfactory" rating, according to the agencies' analysis of historical data and ratings. The reason for a rule change that could impose such a substantial negative impact on the industry should be fully explained, so that we may provide and educated and informed comment to the agencies.

Assessment Area

Current CRA regulations require a bank's assessment area to include the institution's main office, its branches, and its deposit-taking ATMs, as well as surrounding geographies in which the institution has originated or purchased a substantial portion of its loans. The proposal would retain this overall concept and would refer to these geographically-based assessment areas as "facility-based assessment areas" (FBAAs). We agree that an institution's physical location should continue to be a critical component of a bank's overall CRA obligations and recommend that the CRA permit partial county delineations.

Because bank resources are limited, especially in small and intermediate community banks, banks may have to choose between deploying staff to meet community development financing needs in distressed regions outside of the bank's assessment area and hiring additional staff to manage performance, data analytics, and reporting for a myriad of RLAAs that do not represent a material portion of the bank's retail loans. These outcomes represent form over substance and would be contrary to the CRA goal of encouraging banks to do more in struggling communities outside of a bank's assessment area.

To avoid these undesirable outcomes, we recommend that the agencies revise the proposal to create a framework that incentivizes banks to focus on locations where they can make a meaningful impact toward meeting the financial services needs of LMI communities.

Simplify the Retail Lending Test

The proposal would create a new Retail Lending Test for Large Banks and Intermediate Banks. The Retail Lending Test would evaluate whether the retail lending activities of the bank meet the needs of LMI individuals, small businesses, small farms, and individuals and businesses in LMI census tracts.

A bank's retail loans could be subject to evaluation in six categories: (1) automobile; (2) closed-end home mortgage; (3) open-end home mortgage; (4) multifamily; (5) small business; and (6) small farm loans. The test primarily would evaluate the distribution of a bank's retail loans in its assessment areas, and the geographies outside its assessment areas as a whole, across the retail lending categories that constitute "major product lines" for the bank within the assessment area.

The distribution of a bank's loans in major product lines in a given area would generally be evaluated across two dimensions: (1) a "geographic distribution" metric that would evaluate the bank's proportion of originated and purchased loans to borrowers located in LMI census tracts in the assessment area, and (2) a “borrower distribution” metric that would evaluate the bank’s proportion of originated and purchased loans to LMI borrowers, small businesses, and small farms in the assessment area overall, regardless of geography. For both metrics, the bank’s performance would be compared to the comparable proportion reported by all reporting lenders in the assessment area in a “market benchmark” and local demographics in a “community benchmark.”

For closed-end home mortgages, open-end home mortgages, multifamily loans, small business and small farm loans, a “major product line” would be defined as a retail lending product line constituting 15 percent or more of the dollar value of the bank’s retail lending in the respective geography. This definition has the potential to create situations where a product constitutes a major product line only in a limited number of markets, yet review of that product would not be material to a bank’s overall loan portfolio or aggregate CRA rating.

We recommend that the agencies determine a major product line at the bank level rather than the assessment area level. This would help to ensure that resources are not diverted from FBAAs and would avoid creating significant regulatory burden.

The agencies propose to align the CRA regulation’s 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 (Section 1071 rule). 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. Further, when these definitions become effective under a final 1071 rule, the agencies would use them to define “small business loan” and “small farm loan” in the CRA rule. Until then, the current definition of “small business loan” and “small farm loan” would remain in effect.

We recommend that the agencies define small business lending based on loan size (in keeping with the Call Report) rather than gross annual revenue. While we appreciate the agencies’ effort to develop a consistent definition for small business lending for purposes of the Section 1071 rule and for CRA, this would not address the fact that banks would still be required to report small business loans for purposes of the Call Report. As a result, banks would still be subject to multiple, inconsistent regulatory requirements for the same set of loans.

Further, basing small business lending on gross annual revenues of $5 million or less would interfere with the Community Development Financing Test by requiring that all small business lending be evaluated under the Retail Lending Test, even if it those loans have a community development purpose. This approach could create a significant disadvantage for banks in rural areas that have limited community development finance opportunities. We request that banks continue to have the option of having small business loans with a community development purpose be evaluated as either a retail loan or a community development loan.

Where an Intermediate Bank fails the retail lending volume screen, the agencies propose that the bank would not be limited to receiving only a conclusion of "Needs to Improve" or "Substantial Noncompliance" on the Retail Lending Test in that assessment area. Instead, the bank's outcome on the retail lending volume screen would be reviewed as an additional factor indicative of its lending performance that is considered when reaching Retail Lending Test conclusions for the assessment area.

We recommend that the agencies eliminate the retail lending volume screen because it inaccurately measures the banks capacity based solely on business model.

Community Development Financing Test

The proposal includes several helpful provisions pertaining to community development, including combining the community development lending and investment test, establishing a preapproval process by which banks can receive advance confirmation that an activity would receive CRA credit, proving a list of qualifying activities for community development financing test. The proposal provides credit for activities that support affordable housing for LMI individuals. 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, and for providing CRA credit at the bank level for community development activities that a bank conducts outside of its assessment area(s).

The proposal would no longer permit small business/small farm lending to be considered as economic development for CRA purposes. We request that we continue to have the option of classifying small business/small farm loans with a community development purpose as either a retail loan or a community development loan. We **do not** support the proposal's elimination of the jobs component (the "purpose" test) of the definition of "economic development".

We strongly support and are in favor or the agencies providing partial consideration for community development activities based on the share of LMI census tracts or LMI individuals that benefit from a particular project. Large scale community development initiatives such as hospital construction or expansion of broadband service are critical to the economic viability of many small towns and rural areas. Providing pro rata CRA credit for these activities would acknowledge the complexities associated with bringing services to populations spread over

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large distances and would incentivize banks to provide CRA financing for struggling regions that are located outside of a bank's assessment area, yet are in need of investment.

Closing Comments

We strongly encourage the agencies allow an implementation period of at least two years to implement following publication of the final rule in the Federal Register. We ask that the agencies provide extensive interagency training and support to help banks and examiners to understand and apply the new regulatory framework. Lastly, we urge the agencies to develop a realistic implementation so that CRA Final Rule does not become effective at the same time as 1071 to ease the burden of implementing two new complex rules at the same time.

We welcome the opportunity to provide additional information and input as the modernization effort proceeds and you allow for an extended period for proper comment.

Sincerely,

Wendy F. Clark

Wendy F. Clark
Vice President, Senior Compliance Officer