



October 29, 2021

Via Electronic Submission

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 undersigned trade associations (Associations) submit this joint comment letter in response to the Office of the Comptroller of the Currency's (OCC) notice of proposed rulemaking on Community Reinvestment Act (CRA) Regulations, Docket ID OCC-2021-0014 (Proposed Rule). Though some of the undersigned trades will likely submit additional, individual comment letters in response to the Proposed Rule, we all agree that it is necessary to speak with a singular voice on certain topics given their importance to OCC-regulated institutions.

As an initial matter, we thank the OCC for its thoughtful reconsideration of its 2020 CRA Rule and this proposal to rescind the 2020 CRA Rule, thereby reopening the pathway for a single, harmonized rule across all three prudential regulators – the OCC, Federal Reserve, and Federal Deposit Insurance Corporation (FDIC). As many of the undersigned trades have previously stressed individually and in our May 3, 2021 joint trades letter to the OCC, banks, community advocates, and policymakers overwhelmingly agree that the OCC should undertake CRA modernization jointly with the Federal Reserve and the FDIC.

Though we welcome the Proposed Rule in anticipation of a joint rulemaking, the proposal to revert almost completely to the 1995 CRA Rule presents unintended challenges for OCC-regulated institutions. While we understand the OCC's interest in establishing consistency across financial institutions as to governing CRA regulations regardless of an institution's prudential regulator, a complete reinstatement of the 1995 CRA Rule would be burdensome to OCC-regulated institutions that have made changes to their businesses in compliance with the OCC's 2020 CRA Rule and in a good-faith effort to align their operations with requirements of the 2020 CRA Rule. If the Proposed Rule were to be finalized, OCC-regulated institutions would have to invest time and resources to implement three significant changes in regulatory regimes

over the course of a few short years – a change from the 1995 Rule to the OCC’s 2020 CRA Rule, then a reversion to the 1995 CRA Rule, and finally to the forthcoming joint CRA rulemaking.

To the extent possible, we encourage the OCC to work to minimize these transitions, the associated burden, and the inevitable confusion that comes with so many transitions in a short time. The Associations recommend the OCC finalize a rule that seeks to balance the OCC’s interest in consistency with minimizing disruption to institutions and their reinvestment partners. The OCC indicated comfort with this approach in OCC Bulletin 2021-24, in which the agency noted that while it would not object to the suspension of implementation of provisions that had a compliance date of January 1, 2023 or January 1, 2024, it would continue to implement provisions that had a compliance date of October 1, 2020.

Qualifying activities. To achieve an appropriate balance, we propose that activities which qualify under either the 1995 or 2020 CRA Rule receive consideration during the transitional period. We want the CRA to stimulate as much financing for communities as possible, but neither the 1995 CRA Rule nor the 2020 CRA Rule would accomplish that on its own. For example, the 2020 CRA Rule adds important clarity on how unsubsidized affordable housing can qualify for CRA credit, replacing the 1995 CRA Rule’s ineffectively vague definition, and we have already started seeing some exciting new affordable housing investment based on the 2020 CRA Rule. More broadly, the 2020 CRA Rule’s addition of illustrative qualified activities and a pre-approval process for otherwise unspecified activities offer the greater certainty that banks and their community partners need. Conversely, the 1995 CRA Rule recognizes home mortgage loans in low- or moderate-income geographies without regard to borrower income, in contrast with the 2020 CRA Rule’s more restrictive policies on these issues.

We recognize that OCC’s current proposal to rescind the 2020 CRA Rule is not an appropriate venue to sort out every qualifying activity individually. It is appropriate that the inter-agency joint rulemaking process will determine which activities will ultimately qualify and it is not our desire here to pre-empt those decisions. Rather, we are concerned that too much regulatory churn in the interim will confuse both banks and their partners, thwarting more reinvestment. Accordingly, for purposes of a temporary transition, the best outcome for communities would be to err on the side of including more (and more clearly defined) qualified activities.

Affiliate activities. Consistent with this approach, we support the OCC’s proposal to “consider affiliate activities consistent with their treatment under the 1995 Rules and the guidance in the Q&As, which permit banks to elect to include affiliate activities in their CRA evaluations, subject to certain limitations.” Compliance with the portion of the 2020 CRA Rule concerning consideration for affiliate activities is currently delayed until April 1, 2022. The Associations encourage the OCC to adopt the approach outlined in the Proposed Rule and rescind the January 2021 interpretive letter regarding affiliate activities before April 1, 2022.

Strategic plans. We support the OCC’s proposal to allow institutions to implement strategic plans approved under the 2020 CRA Rule; however, it is unclear whether these institutions would be permitted to use the 2020 CRA Rule’s qualifying activities criteria to meet their strategic plan goals. Because the scope of qualifying activities under the 1995 CRA Rule is narrower than activities recognized under the 2020 CRA Rule, reverting to the 1995 CRA Rule may make it difficult for some institutions to meet strategic plan goals that the OCC approved pursuant to the 2020 CRA Rule. The OCC should continue to permit

these institutions to continue to utilize that rule's qualifying activities definitions during the entire term of the strategic plan.

Public notices and public files. Institutions should be permitted to comply with the public file and public notice standards under either the 1995 or 2020 CRA Rule. For those that already have transitioned into the 2020 CRA Rule's requirements, it would be burdensome to reverse course.

Overall, the Associations' recommendations would help minimize unintended burdens to OCC-supervised institutions as it would permit them to continue to comply with provisions for which they have already made changes to their operations. There would be no requirement for rapid realignment of business operations to return to compliance with the 1995 CRA Rule. The Associations note that there would continue to be consistency among institutions supervised by the OCC, FDIC, and Federal Reserve because the OCC-supervised institutions would continue to be in compliance with several provisions of the 1995 CRA Rule. Further, the provisions of the OCC's 2020 CRA Rule retained under our recommended framework are not so different from the comparable 1995 CRA Rule provisions such that they would cause major, material variance among financial institutions. The OCC has conducted examiner training with respect to these provisions and has been operating under an examination framework which reviews an institution's compliance with portions of both the 1995 and 2020 CRA Rules during this period of transition. The Associations propose that this continue throughout the transition period.

Finally, the Associations encourage the OCC to maintain open communication with supervised institutions throughout the transition period to resolve any issues that may arise, while remaining mindful of the need to provide flexibility to supervised institutions during this time.

The Associations look forward to the issuance of a proposed interagency CRA regulatory framework and we appreciate the OCC's consideration of our recommendations on how to approach/manage the transition period.

Sincerely,

American Bankers Association
Association of Military Banks of America
Bank Policy Institute
Community Development Bankers Association
Consumer Bankers Association
Housing Policy Council
Independent Community Bankers of America
Mortgage Bankers Association
National Association of Affordable Housing Lenders