April 8, 2020

Via Electronic Submission

Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429
Attention: Comments, RIN 3064–AF22

Legislative and Regulatory Activities Division
Office of the Comptroller of the Currency
400 7th Street SW, Suite 3E–218
Washington, DC 20219
Docket ID OCC–2018–0008

Re: Proposed Community Reinvestment Act Regulations

Dear Madam or Sir:

The Indiana Bankers Association ("IBA") appreciates the opportunity to submit this letter in response to your request for comment on the Notice of Proposed Rulemaking ("Proposed Rule") issued jointly by the Federal Deposit Insurance Corporation ("FDIC") and the Office of the Comptroller of the Currency ("OCC") (collectively, "the Agencies") seeking to update and modernize regulations that implement the Community Reinvestment Act of 1977 ("CRA"). The IBA is the sole trade association in Indiana representing the banking industry, including approximately 124 state and nationally chartered banks, savings and loan associations, savings banks, and thrifts.

IBA members are committed to the goals of the CRA, and to meeting the credit and financial services needs of businesses and individuals in their communities. While our members continue to support community development, including those in low and moderate income ("LMI") areas, their efforts have been historically hindered by outdated implementation regulations and uncertain examination processes that undermine the CRA's objectives. We are encouraged by the Proposed Rule's promise to make the CRA a more effective tool through which our members can assist those individuals and businesses in areas of need.

We appreciate and are grateful for the Agencies' hard work to modernize the CRA regulatory framework to incent bank behavior that spreads the benefits of the CRA beyond those "hotspots" that are often saturated with CRA activity and into underserved areas with great need. Developing a regulation for an industry with dynamic business models subject to constant technological change is not easy—and we thank the Agencies for their outreach efforts and collaborative process with community and industry stakeholders.

I. Comment Overview

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The IBA supports the Agencies' efforts to improve and modernize the CRA and views the Proposed Rule as a significant step toward achieving that goal. Our comments are focused on the following key issues as applied to the Proposed Rule:

- Durability and Consistency**.** The Proposed Rule should result in durable, streamlined regulation from all three Federal Banking Agencies, that accounts for the major changes the banking industry has undergone not only since the last update to the CRA, but also for those changes the banking industry will undergo for the foreseeable future. It is critical that any regulatory change be designed to maximize consumer benefit while minimizing the cost of implementation to the banking industry to ensure valuable resources are not redirected from community reinvestment towards regulatory implementation and ongoing compliance.

- Clarity. As history demonstrates, substantive, wholesale updates to the CRA occur approximately once a decade. While the Agencies' efforts to modernize the CRA are greatly appreciated by our members, given the time between CRA updates and the scope of the Proposed Rule, any update to the CRA *must* be marked with clarity and transparency, providing our members with certainty regarding the applicability and meaning of the regulations implementing the CRA.

- Flexibility. Given the ever-changing nature of the banking industry, any Proposed Rule to the CRA must provide our members with flexibility to accomplish its community development goals. The rigidity of certain provisions of the Proposed Rule concern our members as they consider their ability to comply with new requirements imposed by the Proposed Rule.

II. CRA Rules Must Create a Durable and Consistent Regulatory Framework

Any proposed modernization of the CRA must solve existing industry-wide problems while limiting any additional regulatory burdens imposed on Hoosier banks. We encourage the Agencies to refrain from engaging in an ongoing regulatory amendment process to the CRA that will only serve to divert valuable financial resources away from CRA investments in underserved communities. Given our call for a Proposed Rule that is durable and consistent, we make the following suggestions to the Proposed Rule to ensure our members allocate their CRA resources in the most efficient manner possible.

- Adopt a Complete Interagency Final Rule. In order to provide a final rule in a manner that is most efficient for our members, the Agencies should strive to achieve a final rule with approval from all three regulators, and not merely the OCC and the FDIC. Accordingly, any final rule should include sign-off from the Federal Reserve. A modernization of the CRA will be incomplete without approval from all three bank agencies. Our members are concerned that a final rule approved by two of the three agencies will result in uncertainty and added administrative cost if they are required to adhere to a different standard promulgated by the Federal Reserve. Thus, it is our hope that the Proposed Rule will ultimately result in a joint rule issued by all three banking Agencies.

- Test the Proposed Performance Measures. The Proposed Rule attempts to modernize the way in which the Agencies assess and examine a bank's CRA activities by replacing the existing framework with one measured by the: 1) CRA Evaluation Measure, 2) Retail Lending Distribution Test, and 3) Community Development Minimum.

  Our members have expressed concern regarding the complexity of the new system of performance measurement and we respectfully request that the Agencies abstain from finalizing this portion of the Proposed Rule until the system has undergone pilot testing. Making wholesale changes to performance standards without first testing the roll-out of the program is imprudent and inefficient. We urge the Agencies to adopt a pilot program whereby banks willing to participate are afforded an opportunity to test out the updated performance standards. A pilot program provides the Agencies an opportunity to collect feedback and troubleshoot any issues before rolling out a new system for the entire industry.

- Modify the "Balance Sheet" Approach. The Agencies' proposal to base CRA credit on loans exhibited on a bank's balance sheet at the end of each month would result in additional administrative burden and fails to leverage processes our members currently use to report data for CRA credit. Currently, our members measure CRA performance based on loan originations and purchases. Our members recommend the Agencies revise the current Proposed Rule to include mortgage lending data that is based on origination amounts and loan purchase amounts. Implementing this suggestion will allow our members to leverage current obligations under the CRA and the Home Mortgage Disclosure Act and will not create additional regulatory burden.

  Revising the proposed balance sheet approach will also eliminate at least one unintended consequence under the Proposed Rule—a haircut for loans originated and sold within ninety days. The seventy-five percent haircut currently imposed by the Proposed Rule on loans sold within ninety days of origination will undermine our members' efforts to finance affordable housing. Our members strongly urge the Agencies to give full credit for loans originated and sold within ninety days.

- Make Consumer Loans Optional in CRA Examinations. Under the current CRA regulatory framework, banks are not required to include consumer loans in CRA evaluations unless those loans consist of a majority of that bank's lending, or if the bank has collected and maintained sufficient data on those loans. The Proposed Rule requires banks to include its consumer loans in any CRA evaluation. Mandatory inclusion of consumer loans represents an unnecessary expansion of CRA examination standards and imposes additional regulatory burdens on our members.

  A more efficient method of regulation would leverage those parts of the CRA regulatory framework that work and eliminate those portions that do not. The Agencies offer no substantive reason for the mandatory inclusion of consumer loans in CRA evaluations under the proposed framework. Our members will now be required to obtain and maintain data on consumer loans. This is not only unnecessary and inefficient, it will ultimately harm the consumer through the unavoidable increase in product fees that will be required to offset the associated regulatory compliance costs. We recommend that the CRA maintains its focus on home mortgage, small business, and small farm loans and maintain its current approach to consumer loans.

- The Proposed Data Reporting Requirements. The Proposed Rule makes several changes to the way CRA data is collected and reported. The proposed framework would result in a substantive increase in our member's CRA-related data reporting costs. First, and as noted above, the balance sheet approach for data reporting is inconsistent with the way our members currently structure their data systems. Our members will now be required to take several additional steps to pool data under the proposed framework. Additionally, our members have serious issues with the practical challenges associated with collecting domestic retail deposit data, which now requires deposit account and physical address information. Our members may be required to hire additional staff to maintain compliance with the CRA. We request that the Agencies revisit the extensive data reporting requirements imposed on our members under the Proposed Rules.

- Unintended Consequences for Hoosier Banks. The Agencies' Proposed Rule results in several unintended consequences that should be eliminated in the Agencies' final rule. Although we recognize that any rule as expansive as the Proposed Rule will likely result in a few unintended consequences, we urge the Agencies to consider addressing the following concerns:

    - Safety and Soundness. As noted above, the Agencies' Balance Sheet approach creates several administrative issues for our members, including the haircut our banks will take on loans originated and sold within ninety days. One potential outcome from the Agencies' aggressive haircut approach may be that banks reduce residential mortgage lending. Such an outcome would result in an increase of non-bank institutions participating in this business, resulting in a reduction of safety and soundness industry-

wide. A rule that results in a decrease in business and less safety and soundness can hardly be considered an efficient manner in which to regulate the banking industry.

- Volunteering**.** Included in the Proposed Rule is a modification to the way volunteer service is calculated under the CRA Evaluation Measure. Under the Proposed Rule, banks will be required to monetize volunteer services based on wage data provided by the Bureau of Labor Statistics. Such a monetization is likely to discount the value of volunteer services and may incent banks to make one single CRA investment instead of allowing employees to provide valuable assistance to nonprofit organizations in the community. Moreover, the proposed calculation requirements will impose additional and unnecessary administrative burden on bank staff. Staff will need to research the type of wages typically received for all of the volunteer service provided by every bank employee. It is not difficult to imagine one of our members foregoing volunteer service entirely due to the administrative burden imposed by the Proposed Rule. Involvement in the community is essential to all of our banks, but especially those in rural areas where the skills our members can provide are invaluable. The Agencies should be creating an environment where as many volunteer hours can be captured for the maximum benefit of all parties—not an environment where administrative burden saps our members' desire to help their communities.

- Reciprocal Deposits. The Proposed Rule modifies the definition of Retail Domestic Deposits and excludes certain types of deposits from the definition. Our members respectfully request that Reciprocal Deposits be excluded from the definition of Retail Domestic Deposits. Including Reciprocal Deposits in the definition of Retail Domestic Deposits may subject our members to CRA obligations in places far from their central locations. Such subjection is another example of an unintended consequence that can be easily eliminated before the Proposed Rule's final promulgation.

As noted above, before finalizing the Proposed Rule we urge the Agencies to consider whether the changes to the CRA framework present the most durable and consistent way to regulate the banking industry. In several areas, the Proposed Rule may result in an increased regulatory burden, instead of a sustainable and consistent regulatory framework that works for all portions of the industry. While we support the Agencies' intentions regarding the modernization of the framework, we encourage them to leverage those regulations that are effective and improve on those portions that are not.

III. The Proposed Rule Requires Further Clarity

Our members appreciate the tremendous undertaking the Agencies went through to craft a substantive rule with such a wide scope. However, we strongly urge the Agencies to provide additional clarity on several portions of the Proposed Rule. Those provisions which require additional clarification are outlined below.

- CRA Evaluation Measure**.** As noted above, our members are concerned about the CRA Evaluation Measure's dependence on a bank's balance sheet to determine its CRA activity. Part of this concern relates to confusion surrounding how the Evaluation Measures will work in practice, and how the proposed bench marks are calculated. We request that the Agencies include examples of how the CRA Evaluation Measure will work in practice, along with underlying formulas used to calculate a bank's final CRA rating under the proposed framework.

- Scope of the Haircut. As described above, our members are opposed to the proposed 75% haircut on loans sold ninety days after origination. The introduction to the Proposed Rule at 85 FR 1214 states that the haircut applies to "qualifying loans" sold within ninety days, while 25.06(d)(2) of Proposed Rule states that the haircut applies to "qualifying retail loans." Our members request that the finalized rule clarify whether the meaning of the distinction between the two, if any.

- Out of Assessment Area Activities. Any final rule should also provide clarity regarding how the Agencies will factor Out of Assessment Area Activities in the final CRA evaluation measure. Currently, qualified activities outside of a bank's assessment area will only receive credit if the bank has already accounted for needs within its assessment area. Additionally, our members face significant uncertainty regarding whether certain development

activities occur within broader statewide or regional areas ("BRSA"). Currently, our members do not receive confirmation regarding whether they received CRA credit for BRSA activities until the examination occurs. This uncertainty has contributed to the overconcentration of CRA activities in certain "hotspots", often at the expense of our rural members. The final rule should provide clarity in a manner sufficient to address these issues.

- Retail Lending Distribution Test. The Proposed Rule creates the Retail Lending Distribution Test, which functions as the second prong of the new CRA performance framework. Our members strongly recommend additional clarification be provided regarding the methodology surrounding the establishment of distribution benchmarks. Additionally, the "pass/fail" nature of the Retail Lending Distribution Test negatively impacts banks with limited assessment areas. Our rural members with smaller assessment areas may be at risk of receiving a "Needs to Improve" rating. We strongly recommend the establishment of gradations to implement the Proposed Rule's Retail Lending Distribution Test.

- Modify the Small Bank Threshold. Under current CRA rules, banks with $313 million or less in assets ("Small Banks") are examined under a simplified scheme based on the institution's lending. Banks with assets between $313 million and $1.305 billion ("Intermediate Small Banks") are also examined under the Small Bank lending framework and the community development test. Under the Proposed Rules, banks with less than $500 million may opt into the General Performance Standards or the Small Bank test for examination purposes. Those community banks with assets between $500 million and $1.305 billion will be subject to additional unnecessary burden. The Agencies have not provided any distinguishable rationale for this decision. Our members strongly recommend that the Agencies continue operating under the current framework by allowing Small Banks and Intermediate Small banks to opt into the General Performance standards if they so choose.

In sum, our members strongly urge the Agencies to clarify the aforementioned parts of the Proposed Rule, along with any additional clarifications requested by members throughout the industry. Given the frequency with which CRA implementation provisions are updated, clarity on these provisions will provide a significant benefit to our members and limit the need for future rulemaking.

IV. The Proposed Rule Must Provide Banks With Greater Regulatory Flexibility

The Proposed Rule contains several provisions that present significant compliance challenges for our members. We ask that before finalizing the Proposed Rule the Agencies consider allowing for a greater degree of flexibility to account for the ever-changing landscape of the banking industry. The following provisions are of greatest concern to our members:

- The Two Percent Community Development Minimum. Currently, banks wishing to obtain a Satisfactory rating must satisfy the 2% Community Development Minimum. Our members are concerned that certain rural areas will not allow them to meet the thresholds set by the Proposed Rule because these areas lack partners suitable for CRA activity. Elsewhere, certain hyper- concentrated CRA "hotspots" have emerged in areas where much CRA activity. The competition created by these hotspots price certain banks out of the market. The Proposed Rule should ensure that local factors are accounted for at the beginning of any CRA exam. Finally, the "pass/fail" nature of the Community Development Minimum concerns our members. Like the Retail Lending Distribution Test, we strongly recommend the Agencies replace the "pass/fail" nature of the Community Development Minimum with a graduated scale.

- Different Evaluation Standards for Banks of Varying Sizes. Currently, the CRA regulatory framework recognizes that banks of differing sizes should be treated differently. Our members appreciate that the Agencies do not take a one-size-fits-all approach to the CRA. Although the Proposed Rule seeks to modernize the CRA, it fails to account for the dynamism within the banking industry in one key aspect. The "pass/fail" nature of the Retail Lending Distribution Test and the Community Development Minimum treats smaller community banks the same as large banks operating throughout the country. As noted above, we recommend that the Agencies retain graduated scales for banks of various sizes in order to maintain a certain level of flexibility within the framework that accounts for the size and scope of banks within the industry.

- Promote the Strategic Plan Option. Under the current CRA framework, banks are able to submit to assessment under a strategic framework that has been created with public input and approved by the Agencies. These plans allow our members to operate with increased flexibility and we are pleased to see the Agencies have retained the Strategic Plan Option. We believe the Agencies should promote the Strategic Plan Option to a greater degree by providing clarity regarding whether banks utilizing the Strategic Plan Option are also subject to the generally applicable performance standards. Moreover, given the flexibility provided by the Strategic Plan Option, we encourage the Agencies to assist banks by providing additional information outlining steps required to properly utilize this approach. The Strategic Plan Option offers additional flexibility to our members and should be utilized more efficiently as a tool that helps banks accomplish their CRA goals.

As noted above, our members strongly recommend that the Agencies adapt certain provisions within the Proposed Rule to allow for greater flexibility within the CRA regulatory framework. Our members are party of a diverse and ever-changing industry that requires as much flexibility as possible. Portions of the Proposed Rule are too rigid and fail to account certain differences within the banking industry.

V. Our Members Support Several Portions of the Agencies' Proposed Rule

The IBA and our members support many provisions in the Proposed Rule and are appreciative of the seriousness with which the Agencies approached the modernization of the CRA. To that end, our members wish to emphasize those portions of the Proposed Rule that enjoy their support.

- Pre-Approved List of Qualified Activities. The Proposed Rule would establish a publicly available, non-exhaustive list of activities that qualify for CRA credit. Our members support the creation of this list because it increases clarity and transparency while decreasing uncertainty regarding whether certain activities may qualify for CRA credit.

- Pre-Approval Process. Banks under the proposed framework will have the ability to confirm with regulators whether a certain activity may qualify for CRA credit. Our members support the inclusion of this portion of the rule. As with the pre-approved list of qualified activities, receiving pre-approval from the Agencies for certain CRA activities ensures that a bank's resources are being used effectively and flexibly. Our members strongly support the inclusion of the pre-approval process under the Proposed Rule.

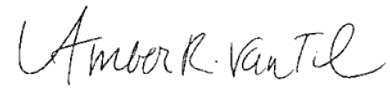
Our members appreciate the lengths to which the Agencies went to ensure the Proposed Rules are effective for all stakeholders in the banking industry. The IBA supports the inclusion of the provisions of the Proposed Rule and encourage the Agencies to approach all of the aforementioned provisions with the same degree of efficiency, clarity and flexibility exhibited in the provisions accounted for in this section.

VI. Conclusion

We urge the Agencies to carefully consider the comments received by the various stakeholders in the banking industry regarding the Proposed Rule updating the CRA. We also invite the Agencies to urge the National Credit Union Administration ("NCUA") to apply CRA-like requirements to credit unions across the country. Although we recognize doing so requires an act of Congress, the Agencies should continue communicating with the NCUA to ensure credit unions continue to serve the primary goals of the Federal Credit Union Act.

The IBA appreciates the opportunity to comment on behalf of our members.

Sincerely,



Amber Van Til
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