National Bankers Association

October 13, 2021

The Honorable Lael Brainard
Governor
Federal Reserve Board of Governors
2051 Constitution Avenue NW
Washington, D.C. 20551

Dear Governor Brainard:

On behalf of the National Bankers Association (NBA) I would like to thank you for engaging with our member institutions in advance of new proposed changes to the Community Reinvestment Act (CRA). As you know, the NBA is the leading trade association for the country's Minority Depository Institutions (MDIs). Key to our mission is serving as an advocate for MDIs on all legislative and regulatory matters concerning and affecting our member institutions as well as the communities they serve. Most of our member institutions are also Community Development Financial Institutions (CDFIs), and many have become banks of last resort for consumers and businesses who are underserved by traditional banks and financial service providers.

The NBA strongly supports the purpose and objectives of CRA. Enacted 40 years ago, CRA has been instrumental in ensuring LMI communities have access to credit and financial services, but the last significant regulatory overhaul of CRA occurred two decades ago. In that time, the financial services industry has radically changed but CRA has not. We strongly support modernization that both ensures CRA does not lose its effectiveness in LMI communities and creates a regulatory framework that streamlines financial institutions' ability to comply. We believe the success of CRA reform should be measured by whether it results in more credit and services delivered to LMI communities without creating unnecessary regulatory burdens on the very financial institutions that best serve these communities.

Federal regulators and Congress have recognized that MDIs play an important role in addressing the need for financial services in minority communities. Regulators have also been charged by Congress to regulate in a way that promotes and preserves MDIs. This was done to help remedy past practices by the banking industry and the Federal government that have made it difficult for minorities to achieve financial success. Despite this imperative, CRA rules, as currently written, are applied in a way that put MDIs at a disadvantage compared to mainstream banks. Additionally, it forces MDIs that already serve LMI and minority communities to hyper focus on those communities.

As previously noted, our mission-driven banks already serve LMI communities and most of the Association's member institutions are also CDFIs which requires that they annually certify that no

less than 60% of their lending activity occurs in LMI communities. In many instances, the work that the Association's member institutions do to retain their CDFI certification would either be sufficient for meeting their CRA obligations or would include activities that should largely be a CRA qualifying activity. Unfortunately, there is no reciprocity between the CDFI certification, data collection, reporting, and recordkeeping process and the requirements of CRA examinations despite clear overlap in objectives and qualifying activities for both CRA and CDFI certification requirements. We believe that regulators should use this new proposed rule as an opportunity to change this dynamic.

Many of our smallest member institutions that are CDFIs expend significant staff and financial resources to comply with competing regimes that should otherwise be aligned. The proposed regulations do not provide accommodations for CDFIs that would streamline their CRA obligations or allow CDFIs to enjoy a rebuttable presumption of CRA compliance of at least a "Satisfactory" rating. We believe that past proposed regulations consistently missed the opportunity to eliminate – or at least reduce – the regulatory burdens that mission-driven lenders face and to harmonize what should be complementary regulatory regimes. Specifically, we recommend the following accommodations for MDIs in meeting their CRA obligations:

- MDIs should be able to submit their Annual Certification and Data Collection Report Form and be deemed in compliance with both the existing and any newly proposed CRA reporting, data collection, and reporting requirements; and
- Being deemed in compliance shall constitute a "Satisfactory Rating" given the kinds of investments and the scale of investments (60% of a CDFI's financing activities must occur in LMI areas) necessary to obtain and maintain CDFI certification.

While we hope regulators will exempt MDIs from the current CRA regime based on their mission and CDFI compliance, if that is not possible, we hope the following recommendations are considered in the base text of any new proposed rule. First, provide clarity around the description of CRA qualifying activity regarding MDIs. To this end, we recommend modifying the current language to include "capital investment, deposits, loans, all loan participations, other financial and nonfinancial support, or other ventures undertaken…". We believe this will eliminate any ambiguity with examiners that the full range of non-MDI bank support to MDIs is always CRA-qualified activity. We also support MDIs support of other MDIs as CRA qualifying activity.

Second, we feel it is important for the CRA to provide a multiplier for capital investments in MDIs – irrespective of an MDI's location. The soon to be withdrawn rule addresses this issue with respect to the kinds of activity that potentially warrant CRA multipliers, and we hope this language is included in the revamped rule. Our institutions over-index in the impact that our activity has in meeting the credit needs of LMI and communities of color. And, like many minority-owned businesses, our member institutions often encounter significant barriers to raising capital due in part to the mission-oriented lending our banks engage in. The Act has long provided for CRA credit for capital investments in MDIs, but the instances where institutions have taken advantage of this provision has been sporadic at best. To that end, we believe that a multiplier for capital investments in MDIs above a specified minimum threshold sends the appropriate signal to potential bank investors, and it directly supports the community development work that CRA seeks

to encourage and that MDIs already engage in. We also recommend that capital investments in MDIs always be CRA-eligible multiplier effect activity, even if an MDI is not in the CRA assessment area of the institution making the capital investment. This accounts for the limited geographic reach of many MDIs, and if adopted, would maximize the potential opportunities for CRA-qualified capital investment in MDIs. Finally, any final rule should vary the multiplier across qualifying activity with an MDI such that capital investments receive the highest multiplier.

We strongly believe these long overdue changes will lead to a more robust MDI sector and allow regulators to adhere more closely with their charge to preserve and promote MDIs. The Federal government has provided significant relief during the course of the pandemic aimed at mitigating the economic impact on the low-and-moderate-income communities that our member banks serve. Our institutions are increasingly well positioned to allow these communities to rebuild, and we would not want to divert much needed capital from this effort to comply with a reporting regime that truly speaks to the very reason we exist.

We appreciate the opportunity to share our views with you and look forward to serving as a resource.

Sincerely,

Nicole A. Elam
President and CEO
National Bankers Association