Kim Saunders, President and CEO
National Bankers Association

Charting a Path to Prosperity and Inclusion for the Country's Minority Depository Institutions: 2019-2020 Legislative and Regulatory Agenda

The National Bankers Association (NBA) is the nation's leading trade association of the country's minority and women-owned financial institutions. Given the value proposition of our member banks to the communities we serve, we believe that our agenda reflects both the needs of our banks as well as the unique credit and financial services needs of the communities our banks serve. We are pleased to present our agenda for the 116th Congress – a living document that we hope will shape federal policymakers' agenda as it relates to our institutions and the consumers, small businesses, and communities that have come to rely on us.

Capital Access

Establish significant MDI participation in Treasury's Mentor-Protégé Program. The federal government contracts with a number of larger financial institutions for a broad range of banking services in connection with federal agencies and federal contracts. Treasury's Mentor-Protégé Program is designed to encourage partnerships between majority-owned mentor firms and minority-owned protégé firms – including majority and minority-owned financial institutions – in the administration of federal programs and federal government contracts and to establish minority institutions that will qualify as financial agents for the Treasury's fiscal services. We believe that this program provides an opportunity for our member banks to grow their businesses while also allowing larger financial institutions to share their expertise with the leadership of our member banks. To date, only one NBA member bank is a protégé firm. **We would urge the respective oversight subcommittees of the program to identify the root causes of the lack of participation in the program and what steps Treasury is affirmatively taking to encourage mentor and protégé participation in the program.**

Codifying the Treasury Mentor-Protégé Program. We fully support increased participation in the Treasury Mentor-Protégé Program. We also believe that codifying the program and requiring that the country's largest banks participate in the program could improve program participation and further diversify the federal government's banking relationships. **We therefore support legislative proposals codifying the program and requiring that the country's largest banks participate and report annually to Treasury on their participation and engagement with MDIs.**

Creating an MDI investment tax credit. The Community Reinvestment Act has long provided for credit for majority-owned financial institutions making CRA-qualified investments in MDIs – ranging from selling loan participations to equity investments in MDI holding companies. Unfortunately, this provision standing alone has not encouraged the volume of MDI-majority-owned financial institution activity that this CRA provision was intended to encourage. **We would urge Congress and federal regulators to consider potential enhancements to this**

particular provision of the CRA, including the development of an MDI investment tax credit that could be utilized by majority-owned financial institutions who also receive CRA consideration for investments in MDIs.

Increasing the federal government's participation in Treasury's Minority Bank Deposit Program. Our MDIs represent some of the smallest financial institutions in the banking industry. They often have limited branch footprints and a limited ability to reach new depositors outside of their geographic footprint – either directly through branches or in marketing resources – so mission-oriented depositors from nonprofits and governmental entities are often a reliable source of deposits for MDIs. Historically, Treasury's Minority Bank Deposit Program has been a reliable source of deposits for NBA member banks, but the federal government's utilization of the program has decreased dramatically in recent years. **We support the reintroduction of Congressman Meeks' bill codifying the Minority Bank Deposit Program, and we would urge that the measure be enacted this Congress. We also urge the relevant oversight subcommittees for this program to identify the particular causes of the program's decline and the affirmative steps Treasury will be taking to increase participation in the program.**

Amending the Investing in Opportunity Act to include Community Development Financial Institutions located in Opportunity Zones as possible Qualified Opportunity Zone Businesses. As the Investing in Opportunity Act (IIOA) is currently drafted, all financial institutions – including Community Development Financial Institutions (CDFIs) and MDIs that are located in Opportunity Zones – are exempted from being considered a Qualified Opportunity Zone Business (QOZBs). We believe that our member banks located in Opportunity Zones that have served these low and moderate-income communities should also be eligible to receive investments from Qualified Opportunity Funds. As a practical matter, we also believe that many of the existing businesses in our communities are not in a position to take on investments from a Qualified Opportunity Fund, but investing in our CDFIs and MDIs as QOZBs further enhances our ability to serve the operating businesses that are in Opportunity Zones. Expanding the scope of eligible QOZBs is consistent with the original intent of the IIOA, and investments in our member banks help support our mission-oriented lending in the communities the IIOA was intended to improve. **We therefore support any efforts to amend the IIOA to include MDIs and CDFIs located in Opportunity Zones as eligible Qualified Opportunity Zone Businesses.**

Creating a fairer process of allocating New Markets Tax Credits. The New Markets Tax Credits Program is designed to allow Community Development Entities (CDEs) to invest in the communities that many of our member banks serve. Unfortunately, in over two decades of NMTC allocations, only three CDEs affiliated with our member banks have ever been awarded an NMTC allocation. As the NMTC application process is currently constituted, small MDIs

with limited resources and limited track records in the NMTC program are forced to compete with CDEs affiliated with large banks and other nonbank CDEs whose sole purpose is to apply for NMTCs leaving our institutions at a competitive disadvantage. **We support legislative efforts that would force the CDFI Fund to only allow like institutions to compete for NMTC credits, to set aside allocations for CDEs that have never been awarded an allocation, and to institute a formal "cooling off" period for repeat allocatees unless they agree to partner with CDEs who have never won an allocation in order to help other entities build a track record of receiving allocations and doing NMTC projects.**

Amending the Bank Holding Company Act to allow community banks under $3B to raise additional capital without fear of triggering the BHCA's change-of-control provisions. The Bank Holding Company Act's change-of-control provisions are triggered when an investment exceeds 25% of the institution's equity. For smaller institutions like our member banks, relatively small equity investments implicate the BHCA therefore limiting both the attractiveness of smaller banks for investors and the size of the investments that investors are willing to make in our member banks. The BHCA should be modified to allow for significant infusions of non-dilutive equity investments in our member banks. **We support legislative proposals that would exempt community banks under $3 billion from the 25% change-of-control provisions of the BHCA in an effort to both attract significant equity investments and to help protect the minority ownership status of our member banks.**

Amending Section 29 of the Federal Deposit Insurance Act to facilitate more MDI utilization of brokered deposits. As smaller institutions with a limited base of deposits, our member banks are always seeking opportunities to attract more stable, core deposits. Unfortunately, the incredibly broad interpretation that federal banking regulators have taken with respect to any third-party facilitating or placing deposits dissuades our banks from working with third parties who can connect them safe, stable, core depositors. **We support legislative proposals that would limit the application of Section 29 of the Federal Deposit Insurance Act (FDIA) to less-than-well-capitalized institutions and that narrowly define what constitutes a "brokered deposit" and a "deposit broker" to those deposits that actually pose a substantial risk to the Deposit Insurance Fund. We also support regulatory efforts underway at the Federal Deposit Insurance Corporation (FDIC) to revisit the FDIC's interpretation of relevant provisions of Section 29 of the FDIA such that is more permissive of third-parties working with community banks to access safe, stable, sources of deposits.**

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Right Sizing the Regulatory Environment in Recognition of the Unique Operating Challenges of MDIs

Reintroducing and passing the Financial Institutions Examination Fairness and Reform Act. Smaller institutions like ours do not often have the resources or the bandwidth to challenge material supervisory determinations. And even when they do, the lack of independence from the current regulators' ombudsman offices does not inspire confidence in our member banks that challenges to supervisory determinations will be given a full and thorough review. The NBA has supported previous proposals that would create an Independent Examination Review Director under the Federal Financial Examinations Institution Council where our member banks could appeal supervisory findings that we find problematic to an independent body. The current ombudsman structure lacks the adequate independence to challenge supervisory findings, and many of our member banks have not found working with the current ombudsmen helpful when issues arise during examinations. Larger institutions often have staff and resources committed solely to examinations, so we believe that this is a form of regulatory relief that would disproportionately benefit the country's smallest community banks. **We enthusiastically support the reintroduction of the Financial Institutions Examination Fairness and Reform Act and would urge that the measure be enacted this Congress.**

Safely transitioning the remaining MDIs out of TARP and CDCI. Like the communities we serve, our member banks were hit the hardest during the financial crisis and relied on the Troubled Asset Relief Program (TARP) and the Community Development Capital Initiative (CDCI) as lifelines to a sustainable post-crisis recovery. A number of our member banks are still in both programs. For those institutions still participating in these programs, they are subject to higher dividends that for many of them are potentially devastating. In light of the value of these institutions to the communities they serve and the success of both crisis-era programs, the NBA has an interest in working with Treasury to responsibly wind down participation in the program for our member banks on terms that are mutually beneficial to them and to Treasury. **We support oversight efforts to determine the steps Treasury is taking to ensure that small community banks like our member banks that remain in these crisis-era programs have obligations that are manageable and are given opportunities to safely transition out of both programs.**

Raising the FDIC's internal control mandate to $5 billion. For our member banks considering acquisitions or growing organically, the $1 billion internal control requirement presents a substantial outlay that dissuades them from growth they would otherwise pursue. We believe that this is a costly measure that is not necessary given that our institutions' internal control systems are constantly subject to examination. **We therefore support legislative efforts**

to exempt from FDIC-mandated internal control audits banks with assets of less than $5 billion.

Simplifying capital ratios for community banks. The NBA supports all efforts that acknowledge the limited bandwidth that community banks have internally to comply with what are often complex capital requirements. **We therefore encourage regulators to adopt a Community Bank Leverage Ratio of 8%. This is a standard that we believe provides a clear, bright-line standard that is aligned with Basel III and Prompt Corrective Action requirements.**

Further streamlining short call form reporting requirements. The current short call form reporting regime consumes the limited manpower of our member banks, and we support proposals that would further streamline call form reporting. **We support proposals that would modify the quarterly reporting regime by allowing for full-form quarterly reporting at mid-year and year-end but modified and shorter call forms for the other two quarters.** This ensures that our regulators get the information they need to examine our banks while minimizing the administrative burden associated with complying with call form reporting requirements.

Heightened oversight of prudential regulators' administration of Section 308 of the Financial Institutions Reform, Recovery and Enforcement Act. Section 308 of the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) requires that prudential regulators take affirmative steps to preserve the present number of MDIs, preserve the character of MDIs in cases involving mergers or acquisitions, provide technical assistance to prevent insolvency, promote and encourage the creation of MDIs, and provide for training, technical assistance, and educational programs for MDIs. As the number of MDIs decline and our institutions continues to encounter regulators – particularly during examinations – that do not seem to fully grasp the unique operating environment of institutions, we believe there are legitimate concerns that prudential regulators' promotion and preservation of MDIs under Section 308 to date has been insufficient. **We would urge the respective oversight subcommittees of Senate Banking and House Financial Services to hold hearings with the respective leadership of each of the prudential regulators, relevant trade associations and affected banks to assess the effectiveness of regulators' efforts under Section 308 of FIRREA to promote and preserve MDIs. We would also support legislative efforts to bolster federal agencies' efforts under FIRREA.**

Appropriately responding to bank overdraft policies. Legislative proposals seeking to regulate overdraft policies should always account for the unique operating environments of MDIs and the communities we serve. Our banks are often a bank of last resort for many

customers, and overdraft fees from consumer who choose to utilize them often subsidize free or low-cost bank checking accounts. Existing proposals would force our member banks to eliminate overdraft fees and increase their checking account fees. This inevitably forces some of our consumers away toward larger banks that can shoulder the cost of free and low-cost checking or exit the banking system altogether, become unbanked, and possibly resort to more predatory forms of short-term credit. **We, therefore, oppose existing overdraft proposals.**

Preserving the Economic Growth, Regulatory Relief, and Consumer Protection Act's HMDA exemptions for small mortgage lenders. We supported efforts last Congress to exempt smaller mortgage lenders from expanded HMDA reporting requirements, and **we oppose any efforts to rollback those exemptions this Congress**.

Modifying BSA/AML reporting requirements with small community banks in mind. Like many other reporting requirements, the NBA fully acknowledges the need to ensure that law enforcement and banking regulators have the information they need to combat illicit financing and money laundering and adequately supervise our financial institutions. We still believe that these interests should be balanced with the administrative realities of small community banks complying with BSA/AML requirements. **We therefore support BSA/AML relief proposals that raise the currency transaction report threshold from $10,000 to $30,000, raising the threshold for Suspicious Activity Reports from $5,000 to $10,000, and a requirement that beneficial ownership be collected and verified by the relevant governmental entity when a legal entity is formed – not when they seek to initiate a banking relationship with our banks.**

Fully Supporting the Community Development Financial Institutions Fund

Protecting the CDFI Fund and Expanding its Budget. The majority of our member banks are also Community Development Financial Institutions (CDFIs). Our members regularly take advantage of a number of CDFI Fund programs – particularly the Bank Enterprise Award, the Training and Technical Assistance grants, Capacity Building Initiative, and to a lesser extent, the New Markets Tax Credits Program. **We oppose all efforts to eliminate the CDFI Fund's funding, and we support the across-the-board expansion of the CDFI Fund's programming.**

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Leveling the Playing Field on Data Security and Privacy

Bringing about regulatory parity between banks and nonbanks on privacy and data security. The weakest link in the consumer data collection, transmission, and storage ecosystem are nonbanks who do not have to comply with a federal supervisory regime or have to comply with the Gramm-Leach-Bliley Act (and its implementing regulations). **We fully support all legislative proposals that would bring parity to the data security practices of nonbanks making them on par with those that our member banks have to comply with.**

Creating cost recovery mechanisms for community banks to recover the costs of responding to data breaches. Our member banks incur the costs of data breaches in reissuing debit and credit cards, as well as the losses associated with the breach. We often serve as the first line of defense in responding to data breaches. There is limited recourse for our banks for recovering these costs outside of the costs that are reimbursed through payment brand contracts. As resource constrained institutions, every dollar counts, and these costs can be particularly disruptive. **We support proposals that would make tax deductible the costs associated with data breaches that are not reimbursed by their payment brand contracts.**

Creating a single, national data breach notification law that includes notification to bank regulators. We support efforts that create a clear, single, federal standard for how breached entities notify consumers and regulators. Of particular importance to the NBA is timely notice to bank regulators such that our member banks can respond quickly to data breaches. **We believe that any comprehensive data security legislation should include a clear, single national standard for breach notifications that includes notifying our prudential supervisors.**

Government Sponsored Entity Reform and Preserving Mortgage Market Liquidity

Enacting sustainable Government-Sponsored Entity reform and preserving community bank access to secondary mortgage markets. Any Government-Sponsored Entity (GSE) reform proposal should make explicit considerations for smaller, community-based mortgage lenders that include retaining the cash window that smaller lenders currently utilize through Fannie Mae and Freddie Mac and ensuring that any proposal does not support volume discounts that place smaller lenders at a competitive disadvantage. **We fully support efforts to recapitalize the GSEs and release them from conservatorship, but only so long as they retain clear access to the cash window that our lenders have come to expect.**

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A Tax Code that Acknowledges the Unique Operating Environment of our Banks

Creating cost recovery mechanisms for community banks to recover the costs of responding to data breaches. As noted above, our member banks have little recourse for recovering the costs associated with data breaches that are not reimbursed by their payment brand contracts. **We support proposals that would allow banks to deduct the costs associated with data breaches that are not reimbursed by their payment brand contracts.**

Creating an MDI investment tax credit. As we note above, the Community Reinvestment Act has long provided for credit for majority-owned financial institutions making CRA-qualified investments in MDIs – ranging from selling loan participations to equity investments in MDI holding companies. Unfortunately, this provision standing alone has not encouraged the kinds of investments in MDIs that the CRA provision was intended to encourage. **We would urge Congress to consider developing an MDI investment tax credit that could be claimed in tandem with CRA credit majority-owned financial institutions making CRA-qualified investments in our member banks.**

Keeping Existing Corporate Tax Rates. The corporate tax rate of 21 percent created by the Tax Cuts and Jobs Act has been beneficial to NBA member banks. Rising compliance costs and constrained revenue sources make tax relief all the more meaningful for our member banks. **We therefore oppose any efforts to increase the corporate tax rate.**

Better Supporting MDIs Critical Role in Financing Entrepreneurs of Color and the Meeting the Unique Needs of Distressed Communities

Creating a more favorable regulatory environment for community bank small dollar lending. The Credit Union National Administration's successful small-dollar program for credit unions through the PALS program and the findings from the FDIC's Small-Dollar Loan Pilot Program should provide the basis for regulators to consider a small-dollar regulatory regime tailored to community banks like our member banks. We believe that the popularity of predatory small-dollar products creates both a moral and business imperative for policymakers to finds ways to create a regulatory regime that would allow our institutions to create small dollar products that are mutually beneficial for our members and our communities. The NBA includes member banks that have developed their own innovative small-dollar products that give our communities a responsible alternative to predatory small dollar loans. **We believe that sandbox approach that would allow community banks to develop small-dollar products that allows for responsible and affordable small-dollar credit tailored to the credit needs of our members would be a welcomed next step in carving out a role for mission-oriented lenders to provide responsible small-dollar alternatives.**

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Supporting cannabis banking. Cannabis is legal in a number of states where our member banks operate. No business can operate at scale without easy access to small business banking services, but unfortunately, many of our member banks refrain from banking cannabis-related businesses because of fear of reprisal from banking regulators and federal law enforcement. **We fully support legislation that creates safe harbors of financial institutions that seek to service cannabis-related industries in states that have legalized cannabis in any form.**

Moving forward with Section 1071 rulemaking with appropriate exemptions for MDIs who have a demonstrated track record of serving entrepreneurs of color. Many of our member banks are the banks of choice for minority-owned businesses in their community, so our banks often hear first-hand how difficult it is for diverse entrepreneurs to find banks outside of our membership. We support the intent of Section 1071 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, as we believe that collecting key borrower data is the right first step in ridding our small business credit markets of discrimination. We also believe that community-based lenders like our MDIs and CDFIs that are doing the lion's share of the small business lending to diverse entrepreneurs and who are already subject to extensive reporting requirements on their lending requirements should be exempted from these reporting requirements. **We therefore support future efforts to move Section 1071 forward with appropriate considerations for financial institutions like our member banks that are leading the way on small business lending to entrepreneurs of color.**

Establishing more small lending partnerships between MDIs and the Small Business Administration. NBA member banks have an established track record of Small Business Administration lending and serving the needs of minority-owned businesses. The Small Business Administration, unfortunately, has a track record of not always meeting the credit needs of minority businesses. We believe that NBA member banks can play role in bridging the gap between the SBA and diverse entrepreneurs through more strategic partnerships between the SBA and NBA member banks similar to the SBA's partnership with NBA member Liberty Bank and Trust. **We, therefore, urge the SBA and the respective Small Business Committees to encourage more of these MDI-SBA partnerships to improve the SBA's lending to minority-owned businesses.**

Forcing regulators to adopt regulations clarifying the "True Lender" and overruling the "Madden Rule." As more of our member banks consider potential partnerships with marketplace lenders and other fintechs to expand our banks' footprint with respect to various consumer loan products, having regulatory clarity regarding the Madden Rule and the True Lender doctrine is vital. For many of our members with limited branch footprints and digital relationships, partnerships with fintechs allows our member to enter into white label and other

arrangements that allow our banks to provide more products to a broader audience. The lack of clarity in this regard makes it incredibly difficult to move forward with the kinds of fintech partnerships that our member banks would like to pursue. **While we support legislative efforts to bring about clarity, we believe that Congress should urge the federal banking regulators to issue rules re-establishing both doctrines.**

Prioritizing Faster Payments. For many of our customers, being able to settle and clear payments can be the difference between an eviction notice and staying in their apartment or between making a car payment or having their car repossessed. Faster payments are both a business imperative for our banks and a practical necessity for many of our customers. **We fully support the Federal Reserve's leadership to date around faster payments, including potentially the development and operation of real-time interbank settlement 24 hours a day, seven days a week, 365 days a year (24x7x365); or, in creating liquidity management tools enabling transfers 24x7x365 for real-time interbank settlement of faster payments. We would also support efforts from Congress urging the Federal Reserve to continue making progress in establishing the Federal Reserve as an alternative payment settlements provider for community banks in order to facilitate reliable and affordable access to real-time interbank settlement services and transfers.**