August 4, 2022

Via Electronic Mail

Ann E. Misback, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

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

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: Community Reinvestment Act; Docket No. R-1769 and RIN 7100-AG29; RIN 3064-AF81; Docket ID OCC-2022-0002

To Whom It May Concern:

The Housing Policy Council[1] ("HPC") appreciates the opportunity to respond to the Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, and Office of the Comptroller of the Currency's (collectively, the "Agencies") proposed rule revising the Community Reinvestment Act regulations ("Proposal" or "Proposed Rule").[2]

HPC is focused on fostering and facilitating a practical and purposeful evolution for our housing finance system. We promote policies that advance a mortgage marketplace that is economically sound, protects and promotes the interests of all consumers, and allows private companies to flourish under a set of regulatory rules that are fair and balanced. To that end, our comments are focused on provisions of the Proposal that directly impact the single-family residential mortgage market. Our bank members have comments on many other aspects of the

[1] HPC is a trade association comprised of the nation's leading mortgage lenders, servicers, mortgage insurers, and title and data companies. HPC advocates for the mortgage and housing finance interests of its members in legislative, regulatory, and judicial forums. Our interest is in the safety and soundness of the housing finance system, the equitable and consistent regulatory treatment of all market participants, and the promoting of lending practices that create sustainable home ownership opportunities leading to long-term wealth-building and community-building for families.
[2] Community Reinvestment Act, 87 Fed. Reg. 33884 (June 3, 2022).

Proposal, and we refer to other industry trade associations for those comments. In particular, HPC does not support the Retail Lending Assessment Areas as proposed; we believe the proposed thresholds under the Retail Lending Test are too high; and we ask the Agencies to provide a longer implementation period.

In summary, and as detailed below, our comments are:

(1) Without specific adjustments, the Proposal's treatment of purchased loans will have unintentional, yet material, negative impacts on activities meant to assist low- and moderate-income ("LMI") consumers;
(2) The proposed definition of qualifying mortgage-backed securities will produce the intended outcome;
(3) Adjustments to the Retail Lending Test are required to avoid a disproportionate emphasis on large dollar lending; and
(4) The final rule should list special purpose credit programs ("SPCPs") as an example of a responsive credit program.

Tailoring of the Treatment of Purchased Loans is Needed to Avoid Unintended Consequences and Improve Transparency

The Agencies propose to evaluate a bank's record of helping to meet community credit needs through the origination and purchase of retail loans under the Retail Lending Test by counting an examined bank's purchased retail loans as equivalent to its retail loan originations. While purchased loans are not considered in determining retail lending assessment areas, purchased loans are counted under the retail lending volume screen, geographic distribution performance test, and borrower demographic performance test.

In general, HPC supports the Agencies' proposed treatment of purchased loans. The Agencies appropriately recognize that the aggregation of whole loans provides essential liquidity to the housing finance ecosystem. Banks that purchase loans from other banks and lenders, such as Community Development Financial Institutions, Minority Depository Institutions, and Housing Finance Agencies, provide cash flow that allows these important lending institutions to extend their capacity. Many of these financial institutions originate loans to LMI individuals and focus their business on LMI areas. If banks were not given CRA credit for the purchase of these loans, this critical channel for affordable lending would likely contract, harming the very communities and borrowers that the statute aims to serve. Additionally, CRA credit for purchased loans encourages banks to serve as correspondent lenders, performing a critical liquidity function for thousands of lenders in housing finance. Lastly, the current treatment of purchased loans allows lenders to test and learn about business opportunities in markets where they otherwise lack the on-the-ground resources to originate loans. If the Agencies were to adopt any significant new regulatory restrictions on the treatment of purchased loans, such as a seasoning requirement, the consequences to the primary lending market that serves LMI borrowers and communities could be severely negative. Additionally, any sort of required holding period to demonstrate CRA impact and credit for purchased loans introduces the potential for safety and soundness risks arising from both liquidity and interest rate risk at different points in the mortgage cycle.

Tailoring Needed to Avoid Unintended Consequences for Purchased Government Loans

Despite the positive treatment of purchased loans under the Retail Lending Test, we are concerned that the Borrower Bank Metric[3] would unintentionally penalize banks for participation in government lending programs.[4] In particular, the purchase (or buyout) of seasoned government-insured loans from Ginnie Mae pools for the purpose of specialized servicing focused on foreclosure prevention may adversely impact a bank's CRA score even though this activity benefits LMI borrowers. For closed-end home mortgage loans, the Borrower Bank Metric is calculated by dividing the total number of the bank's originated and purchased closed-end home mortgage loans to low-income borrowers or moderate-income borrowers in the geographic area by the total number of the bank's originated and purchased closed-end home mortgage loans in that geographic area overall. Our concern is that the Borrower Bank Metric, as proposed, fails to clarify how purchases of seasoned loans to LMI borrowers (as determined at origination) are considered in the numerator of the Metric calculation.

Ginnie Mae securitization, the outlet for loans backed by FHA, VA, USDA, and Section 184 Indian Loan Program provides significant support to LMI borrowers both at the time of origination and throughout the life of the loan. Of note, loss mitigation for government insured mortgages in Ginnie Mae securities directly benefits LMI borrowers who are at risk of losing their homes.

The Ginnie Mae program rules require servicers (issuers) to make principal and interest payments to investors regardless of whether a borrower makes any payment to their loan servicer.[5] Ginnie Mae program rules allow mortgage servicers to purchase loans that are 90 days delinquent from its pools to enable servicers to reduce the advance obligations for delinquent principal and interest to Ginnie Mae security holders.

Additionally, Ginnie Mae requires that servicers purchase loans out of securities to modify the terms of a loan as part of loss mitigation activities. Although the issuer may have the borrower's income as of the time of origination, the issuer does not collect updated income at the time of buyout. Therefore, under the Proposal, a bank that buys out a delinquent Ginnie Mae loan, either for safety and soundness reasons or to assist delinquent borrowers with loan modifications, would be required to report the loan as a non-LMI purchased loan (including the

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[3]The Borrower Bank Metric is also referred to as the Borrower Distribution Metric.

[4] While our comments are focused on the Borrower Bank Metric, our comments apply broadly to the rule to ensure appropriate consideration of buyouts and purchases of seasoned government loans.

[5] See, e.g., Ginnie Mae MBS Guide 5500.3, Rev. 1, Chp. 4, Pt. 2, Sec. A.

loan in the Borrower Distribution Metric denominator, but not in the numerator), even though it very well may be a loan to a LMI borrower.

The lack of recognition of these activities does not align with the purpose of CRA (to assess banks' affirmative obligation to help meet the credit needs of their communities) and goals of the Retail Lending Test (using metrics and performance standards to evaluate a bank's lending to LMI borrowers, small businesses and small farms, and LMI neighborhoods in its assessment areas). Without refinement, the Borrower Bank Metric would not accurately reflect and evaluate a bank's lending to LMI borrowers, and it may significantly discourage lender participation in the critical USDA, VA, Section 184 Indian Loan, FHA, and Ginnie Mae Programs.

To avoid this material negative consequence, we recommend that the Agencies explicitly affirm that the borrower's income at origination, when available, (and therefore, LMI status) is the relevant income to report at the time of the buyout/purchase. Specifically, we ask the Agencies to stipulate that the purchase of a loan from a Ginnie Mae pool qualifies as a loan to an LMI borrower if the borrower was LMI at the time of origination. Loans without income (i.e. some government refinance products) would be excluded from both the numerator and denominator. This would sufficiently account for Ginnie Mae buyouts in both the numerator and denominator of the Borrower Bank Metric.

Alternatively, the Agencies could exclude Ginnie Mae buyouts entirely from the Borrower Bank Metric, and related thresholds, and instead expressly instruct examiners to consider performance context in connection with this metric when evaluating Ginnie Mae buyouts, including considering the borrower's income at origination.

Moreover, we have similar concerns regarding the purchase of seasoned government loans. Several banks play a key role in the housing finance ecosystem, specializing in the purchase of delinquent, seasoned government loans. This arrangement allows smaller servicers, who lack the capacity to perform loss mitigation, to transfer the significant servicing demands related to delinquent loans, so that borrowers get the help they need from companies that specialize in this activity. This directly contributes to CRA's goal and should be counted under the Proposed Rule. Such purchases serve a high concentration of LMI borrowers and provide a path for successful loss mitigation and foreclosure prevention outcomes, promoting home retention and financial stability.

For the same reasons as discussed above for Ginnie Mae buyouts, these purchases likely would be treated as non-LMI in the metric because updated income information is not available or collected at the time of purchase. To avoid this adverse consequence, we ask the Agencies to clarify that the purchase of a seasoned loan that qualified as LMI at the time of origination would subsequently qualify as the purchase of an LMI loan. Absent explicit instruction, the proposed rule could be interpreted to require seasoned LMI loans to be included in the denominator of the Metric, but not be included in the numerator as an LMI loan. In addition, similar to the request made for Ginnie Mae buyouts, loans without income (i.e., some government refinance products) would be excluded from both the numerator and denominator. Without adjustment, banking activities that assist LMI borrowers and are aligned with the letter and spirit of CRA, would not be counted as such under the Proposed Rule.

If providing such clarity is not feasible, an alternative approach would be to exclude seasoned, purchased, government loans from both the numerator and the denominator in the Borrower Bank Metric. Accompanying this exclusion, examiners should have discretion to consider this activity when qualitatively evaluating a bank's performance.

Clarification is Needed to Prevent Inconsistent Examiner Discretion

The Agencies propose to allow an examiner discretion to adjust a retail lending conclusion where an examiner determines that loan purchases reflect loan churning. According to the Agencies, loan churning would occur where loans to targeted borrowers or census tracts were purchased and sold repeatedly by different banks, with the possibility of each bank receiving CRA credit equivalent to the banks that originated the loans. Our members agree that loan sales performed for the sole purpose of boosting activity for CRA rating does not meet the spirit of the CRA. However, limitations to contain loan churning need to be narrowly tailored to avoid unintended consequences on legitimate purchase loans (such as those cited above).

We appreciate the Agencies' recognition of the importance of purchased loans for liquidity and market opportunities. As proposed, examiners consider "information indicating that a bank has purchased retail loans for the sole or primary purpose of inappropriately influencing its retail lending performance evaluation, including but not limited to subsequent resale of some or all of those retail loans or any indication that some or all of the loans have been considered in multiple banks' CRA evaluations."[6] To ensure consistent application of the rule and transparency for those subject to the rule, we recommend the Agencies adopt a safe harbor – for example, loans purchased directly from the loan originator are not considered evidence of churning, but rather are intended to provide liquidity for the originator. Guidance should also emphasize that activity outside the safe harbor is not, per se, evidence of churning.

To further increase transparency, we ask the Agencies to provide more guidance for examiners to identify the type of loan purchase activity that should be considered "churning" and is therefore not eligible for CRA credit. We ask the Agencies provide examples of what would be or would not be considered churning. We believe further insight from the Agencies based on previous evaluations would help inform both examiners and banks subject to CRA.

The Rule Should Continue to Recognize the Importance of the Secondary Mortgage Market.

We appreciate the Agencies are proposing to maintain a policy that is consistent with current practice in the treatment of mortgage-backed securities ("MBS"). Under the Proposal, MBS would qualify as affordable housing when the security contains a majority of either single-family home mortgage loans for LMI individuals or loans financing multifamily affordable

[6] Proposed § __.22(e)(1).

housing that otherwise qualifies under the proposed affordable housing definition. Purchasing of such MBS would be considered a qualified community development activity.

We support the definition of qualifying MBS as proposed in §_.13(b)(4). However, for MBS that do not have a majority of LMI mortgages, we recommend that the MBS would qualify as an investment in affordable housing on a pro rata basis. For example, if 40 percent of loans in an MBS are loans to LMI borrowers, that percentage (here, 40 percent) is what would qualify as an investment in affordable housing. Such an approach will encourage additional support of affordable housing and appropriately provide CRA credit for such activity and investment. In addition, MBS may meet the definition of a community development activity under another provision, such as if the bona fide intent of the activity is a community development purpose under §_.13(a)(1)(ii).

The Singular Focus on Total Loan Dollar Volume Contradict the Purpose and Goals of CRA

HPC disagrees with certain elements of the Retail Lending Test that focus solely on loan dollar volume rather than loan count, as such a singular focus runs afoul of the CRA's purpose and generates excess credit for certain product lines. Specifically, under the Proposal, a "major product line" is a retail lending product line that constitutes 15 percent or more of the dollar value of the bank's retail lending in the respective geography.

Determining whether a retail product is a "major product" solely on the dollar value skews the test towards certain products. Loan products that average larger dollar amounts (i.e., closed-end home mortgage) would be much more likely to be a major product than other retail lending products (e.g., small business loans). In addition, such a calculation places a greater emphasis on loans with higher dollar amounts, which runs afoul of the CRA's focus on LMI borrowing.

The impact of this major product line test is compounded by the proposed weighting of the scores. The scores a bank receives on each of its major product lines in an assessment area would be weighted by the dollar volume of lending the bank engaged in for that product line within that assessment area, so that the assessment area conclusions reflect performance in each of a bank's major product lines, with more weight assigned to a bank's larger major product lines. The result is a skewed emphasis on closed-end home mortgages, and in particular, closed-end home mortgages with larger principal amounts.

Our concern is that the major product line test minimizes the importance of small-dollar mortgage lending – an activity that the Agencies highlight (elsewhere in the Proposal) for serving LMI borrowers, particularly in markets that do not have mortgage as a major product line or where the weighting is not significant. The Agencies recognize that small-dollar mortgages for lower-value properties can often be challenging for consumers to obtain, in part because originating these loans generally costs as much yet generates less revenue for a bank than originating larger loans. The major product line test may only exacerbate this issue. Additionally, the Agencies acknowledge that "small-dollar mortgages are especially important for low- and moderate-income first-time homebuyers, who may not be able to afford a down payment or monthly payments for a more expensive home. In addition, access to small-dollar mortgages is vital for individuals in areas where housing prices are generally lower, including many rural communities."[7]

The major product line, and the weighting of the product line scores, is contradictory to the purpose of the CRA and the Agencies' own stated interests in encouraging small-dollar mortgage lending. We recommend the Agencies adjust the major product line test to consider both the loan dollar volume and the loan count.

The rule should list SPCPs as an example of a responsive credit program.

The Agencies seek feedback on whether the regulation should list SPCPs as an example of a responsive credit product or program that facilitates mortgage and consumer lending targeted to LMI borrowers, and therefore would be considered favorably under the Retail Services and Products Test. We encourage the Agencies to specifically list SPCPs as an example of a responsive program, as they can be a highly effective way to assist underserved individuals and neighborhoods. Such a specific positive reference to SPCPs in the rule would likely encourage more banks to utilize SPCPs – a result that would benefit more LMI borrowers and neighborhoods. Inclusion of SPCPs in the rule further supports efforts by the Agencies, the Consumer Financial Protection Bureau, and the Federal Housing Agency to provide regulatory clarity and encouragement for more use of SPCPs to address special social needs. Developing and implementing a SPCP is a substantial undertaking for banks, and the Agencies should encourage these efforts through the provision of CRA credit under the Retail Services and Products Test.

Conclusion

Thank you for the opportunity to comment on this Proposed Rule. Should you have any questions regarding these comments, please contact Matthew Douglas, Vice President of Mortgage Policy, at 202-589-1924.

Yours truly,

Edward J. DeMarco

Edward J. DeMarco
President
Housing Policy Council

[7] 87 Fed. Reg. 33884, 33966.