MORTGAGE BANKERS ASSOCIATION

MBA Observations and Recommendations on Legislative Proposals before the House Financial Services Committee's Subcommittee on Consumer Protection & Financial Institutions "Better Together: Examining the Unified Proposed Rule to Modernize the Community Reinvestment Act." July 13, 2022

The Mortgage Bankers Association (MBA)[1] appreciates the opportunity to comment on legislative proposals noticed by the House Financial Services Committee's Subcommittee on Consumer Protection and Financial Institutions that were the focus of the July 13, 2022 hearing entitled, "Better Together: Examining the Unified Proposed Rule to Modernize the Community Reinvestment Act." MBA supports common-sense reforms of the federal Community Reinvestment Act (CRA), as applied to banks, that ensure appropriate credit is given for mortgage banking activities. MBA, however, opposes language in H.R. 2768, the *American Housing and Economic Mobility Act* as introduced by Rep. Emanuel Cleaver (D-MO), and within the discussion draft bill, the *American Community Investment Reform Act*, which would apply CRA mandates to non-depository lenders, such as independent mortgage banks (IMBs). Our comments below reflect that perspective.

Background

In recent months, regulators, legislators, and others in the public policy community have re-visited the structure and contours of the CRA, which was enacted in 1977 to encourage covered depository institutions to "demonstrate that their deposit facilities serve the convenience and needs of the communities in which they are chartered to do business," including "the need for credit services as well as deposit services." While various amendments to the implementing regulations have been made over the past forty years, major changes in the nature and provision of financial services have spurred some to call for more fundamental CRA modernization efforts.

Among the options being considered by Congress and state legislatures is an expansion of CRA requirements to apply to non-depository lenders, such as IMBs. The policy rationale for the proposed expansion is questionable – it overlooks the data on IMB performance in serving low- to moderate-income (LMI) communities and rests on a misunderstanding of the IMB business model as well as the purposes of the CRA.

[1] The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 390,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets, to expand homeownership, and to extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of more than 2,200 companies includes all elements of real estate finance: independent mortgage banks, mortgage brokers, commercial banks, thrifts, REITs, Wall Street conduits, life insurance companies, credit unions, and others in the mortgage lending field. For additional information, visit MBA's website: www.mba.org.

Robust Lending in LMI Communities
One of the main objectives of the CRA is to ensure reliable, sustainable lending to LMI borrowers and communities throughout the country by banking institutions. This is a laudable goal for banking policy – that insured depository institutions should serve the credit needs of LMI borrowers and neighborhoods in the communities from which they take deposits. Those arguing to extend CRA obligations to IMBs on these grounds, however, often ignore the fact that IMBs do not have direct federal benefits and already engage in substantial lending in LMI communities. In fact, IMBs as a sector compare very favorably to other types of financial institutions in this regard.

Based on Home Mortgage Disclosure Act (HMDA) data and the CRA files from the Federal Financial Institutions Examination Council (FFIEC), the Urban Institute found that IMBs have a higher LMI borrower share and LMI area share than banks, whether viewed by loan count or dollar volume.[2] Similarly, IMBs are the dominant originators in the government housing finance programs operated by the Federal Housing Administration (FHA), Department of Veterans Affairs (VA), and Rural Housing Service (RHS). In particular, the FHA program primarily serves LMI borrowers and accounts for a disproportionate share of lending to minority borrowers and first-time homebuyers. According to 2019 HMDA data, IMBs originated more than 85 percent of FHA loans, 74 percent of VA loans, and 69 percent of RHS loans. Further, IMBs originated nearly 67 percent of loans to minority borrowers and approximately 62 percent of purchase loans for LMI borrowers. Finally, IMBs served homebuyers with lower average purchase loan amounts ($264,000) than their depository counterparts ($298,000).[3]

Supporters of the legislation point to Massachusetts as a "model," because in 2006 the Commonwealth enacted a statute mandating CRA for nonbank mortgage lenders. The Massachusetts Division of Banks promulgated regulations in 2007 and conducted its first nonbank CRA exam in 2009. It is reasonable to conclude, therefore, that IMB lending in Massachusetts to LMI borrowers over the past decade should serve as a case study to assess its efficacy at stimulating more lending to LMI and minority borrowers by IMBs, compared to states without a nonbank CRA requirement. This inference is not supported by data.

If CRA for IMBs were an effective policy measure, the rules in Massachusetts would be expected to result in faster growth in IMB lending to LMI and minority homebuyers after implementation compared to states without CRA requirements for IMBs. A comparison of the key HMDA data points discussed above do not suggest that the Massachusetts law encouraged IMBs to increase their lending by more than in the rest of the states *without* CRA for nonbanks.

In Massachusetts, the proportion of mortgages to minority homebuyers made by IMBs increased from 27% in 2008 to 62% in 2020 – an impressive increase of 129% after the

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[2] Goodman, Laurie, Jun Zhu, and John Walsh, "The Community Reinvestment Act: Lending Data Highlights," Urban Institute, November 2018. Available at: https://www.urban.org/sites/default/files/publication/99427/community_reinvestment_act_lending_data_highlights_update.pdf.

[3] Mortgage Bankers Association, "Independent Mortgage Banks: Financing the American Dream." Available at: https://www.mba.org/Documents/Policy/22153_MBA_IMB_Summary_Report_2021.pdf.

enactment of CRA. Nationally, the IMB share of loans to minority borrowers grew from 33% in 2008 to 71% in 2020. In other words, Massachusetts did not outperform the national data over this time period. Similarly, the share of home purchase loans to LMI households in Massachusetts made by IMBs rose from 27% to 62% between 2008 and 2020 – a 129% increase. Nationally, IMBs accounted for 29% of LMI loans in 2008, and 67% in 2020. Again, IMBs in Massachusetts actually lagged the national growth in lending to LMI borrowers, despite the presence of the CRA requirement in the Bay State. If the Massachusetts CRA requirements had been effective, one would expect these gaps to have narrowed, not increased.

Taken together, these statistics point to a clear conclusion — IMBs do not need any regulatory obligation or incentive in order to serve LMI borrowers and communities; they have a strong history of doing so that continues today. As a result, extending CRA coverage to IMBs is very much a policy solution that is detached from IMBs' willingness and ability to provide mortgage credit to LMI borrowers and communities.

Lack of Deposits to Reinvest
The CRA was designed to cover deposit-taking institutions that enjoy the benefits of federal deposit insurance provided by the Federal Deposit Insurance Corporation (FDIC). These institutions include national banks, savings associations, and state-chartered commercial and savings banks. The primary purpose of the Act is to ensure that if financial institutions accept deposits from a particular community or population, they also should lend to or invest in programs or activities that benefit that community or population. In other words, in exchange for receiving FDIC deposit insurance, these institutions should *reinvest* an appropriate proportion of these deposits in a fair and equitable manner — hence, the name of the Act.

In contrast to FDIC-insured institutions, IMBs do not accept deposits from their customers as a source of funds to lend or invest, and therefore are not beneficiaries of FDIC deposit insurance. IMBs instead use short-term borrowing, or warehouse lines of credit, to obtain the funds needed to originate mortgages. This borrowing is secured by the funded mortgages until the mortgages are sold to investors in the secondary market. As a result, the IMB business model is designed to *import* funds from global capital markets and lend those funds in local communities to support homeownership. IMBs do not take in deposits or other resources from these local communities, and therefore the concept of *reinvesting* does not apply. Rather, IMBs channel capital from outside the local community into productive uses within that community. At its core, this is an entirely different model of originating mortgages than the model used by banks, and it is not compatible with the underlying purpose of the CRA.

Lack of Access to Direct Government Support
Insured depositories also receive access to other forms of direct federal benefits. They are eligible, for example, to secure advances from the Federal Home Loan Banks (FHLBs), emergency loans from the Federal Reserve through the discount window, and access to the federal payments system. These programs provide both reliable liquidity on an ongoing basis and backstop funding in periods of stress.

IMBs, however, are ineligible for these government benefits. If an IMB faces liquidity strains, it cannot turn to FHLB advances or obtain funding from the Federal Reserve discount window. The operations of IMBs are not directly supported by federal backstops in the way that is true of insured depository institutions' operations. As such, imposing CRA obligations on IMBs as a means of compensating taxpayers imposes cost burdens on IMBs with no offsetting benefits.

Strengthened Regulatory Oversight
Another argument made in favor of a broader CRA that applies to IMBs centers on the idea that CRA examinations serve as a needed layer of additional federal oversight.

This view, however, is rooted in a pre-2008 regulatory framework and ignores the dramatic changes in both the state and federal oversight of IMBs over the past decade. In addition to more robust prudential standards that are applied by state regulators and counterparty risk standards that are applied by Fannie Mae, Freddie Mac, Ginnie Mae, and warehouse lenders, IMBs also are subject to the supervisory, investigative, and enforcement authority of the Consumer Financial Protection Bureau (CFPB). The CFPB examines IMBs with respect to their fair lending practices and their compliance with consumer-facing regulations.

Further, the regulatory framework in place in the mortgage market today effectively has eliminated the damaging types of products that contributed to the financial crisis — for lenders of all types. The CFPB's ability-to-repay rules and the accompanying Qualified Mortgage standard, for example, better ensure thorough documentation of borrower income, assets, employment, and debt, as well as promote product features that are more likely to foster long-term homeownership for consumers.

In contrast, CRA examinations are not the mechanism by which to ensure high-quality lending. Such an argument conflates the purpose of the CRA and fails to recognize the far-superior post-crisis methods for overseeing underwriting practices that now are in place for all lenders. Again, the CRA simply is the wrong solution to the concerns raised in this context.

Conclusion
The Community Reinvestment Act is an important pillar of our federal banking policy. It works hand in glove with fair lending laws – which apply to all lenders regardless of charter – to ensure that LMI borrowers and communities have access to mortgage credit on a fair and equitable basis. Indeed, all lenders should serve such borrowers and communities, and discrimination in any form should not be tolerated. The CRA is a vital component of this policy objective, though advocates of extending CRA to IMBs should remember that the CRA has a far more specific purpose. The CRA is meant to ensure that financial institutions accepting deposits from a particular community or population reinvest those deposits in that community or population.

IMBs do not accept deposits, nor are they the beneficiaries of direct taxpayer backstops for their ongoing operations. They have a proven track record of strong and reliable lending to LMI borrowers and communities and are subject to the same consumer-facing regulations as depository institutions, which ensures sound underwriting and high-quality lending.

Subjecting IMBs to the CRA therefore would impose costs on IMBs that are unlikely to produce significant incremental benefits, given the important role IMBs already play in serving LMI borrowers. The experience in Massachusetts with its nonbank CRA requirements appears to validate that it has had little impact on increasing LMI lending by IMBs relative to all other states without such a requirement. As such, a federal CRA requirement on IMBs is likely to prove an ineffective and misguided policy choice – one with significant costs but little upside benefits.

Thank you in advance for your consideration of the views expressed within this statement for the record. As always, MBA stands ready to work with Members of the Committee to ensure a robust housing market that is accessible, affordable, and sustainable – and works to benefit all borrowers, renters, and other critical stakeholders.