AMERICAN FINANCIAL SERVICES ASSOCIATION

August 5, 2022

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Re: Community Reinvestment Act, A Proposed Rule by the Comptroller of the Currency, the Federal Reserve System, and the Federal Deposit Insurance Corporation, Docket ID OCC-2022-0002, Regulation BB, Docket No. R-1769

To whom it may concern:

The American Financial Services Association ("AFSA")[1] appreciates the collective work of the Federal Deposit Insurance Corporation ("FDIC"), the Federal Reserve, and the Office of the Comptroller of the Currency ("the Agencies") to modernize the Community Reinvestment Act ("CRA") regulations. We write, on behalf of our members, to share our concerns about the inclusion of automobile loans as a mandatory part of the metrics-based Retail Lending Test in the Notice of Proposed Rulemaking ("NPR").[2]

In particular, the NPR would subject banks' automobile loans to a distribution analysis as if banks were fully in control over the geography and income levels of their borrowers. However, many banks primarily lend through an indirect auto loan model in which lenders have limited control because of the role played by dealers in the transaction. Moreover, banks constitute less than one-third of the auto finance market, giving them very limited leverage over the dealers who remain primarily responsible for marketing, negotiating with, and originating sales and financing for customers.

We share the Agencies' observation that increased access to automobiles can be important in specific areas where jobs are a significant distance from where people live and where public transportation is not readily available. We also agree that safe and sound automobile loans can serve as a means of building credit history. In many cases, car ownership means more financial

[1] Founded in 1916, AFSA is the national trade association for the consumer credit industry, protecting access to credit and consumer choice. AFSA members provide consumers with many kinds of credit, including traditional installment loans, mortgages, direct and indirect vehicle financing, payment cards, and retail sales finance.
[2] 87 Fed. Reg. 33,884 (June 3, 2022).

stability and economic opportunity. Nevertheless, these features do not sufficiently distinguish automobile loans from other types of non-mortgage consumer loans such that they should be treated differently. In sum, given the nature of the automobile finance market, the historical focus of the CRA on home mortgages and small business loans, and the overall goals of CRA modernization, the agencies should not evaluate automobile loans under the Retail Lending Test as proposed, and instead should evaluate auto loans the same way they evaluate other consumer loans.

Below, we address the four key points that the agencies should consider when working on the NPR. First, we summarize how direct and indirect auto lending works and the NPR's failure the address the differences between these two transactions. Second, we provide data that shows the limited role of banks in the market. Third, we highlight the difference between how auto loans are treated under the NPR as compared to other consumer loans and discuss why that is unwarranted. And finally, we evaluate the historical purpose of the CRA and how including auto lending is a departure from that purpose.

I. An Explanation of Indirect Auto Lending.

The NPR includes as a potential major product line under the Retail Lending Test the broadly defined category of "automobile loans." As the Agencies are aware, however, the purchase of an automobile may be financed through either a direct loan or an indirect loan, and these types of transactions are very different from each other in ways that are relevant to the CRA.

In a direct automobile loan transaction, the consumer typically applies for a loan directly from a lender, receives loan proceeds directly from the lender, and pays those proceeds to a dealership to purchase the vehicle.

In contrast, banks typically do not market indirect financing directly to consumers. Rather, banks provide information to dealers about the terms banks will finance. In a typical scenario, when the customer selects a vehicle for purchase, the *dealer* extends credit (*i.e.*, "credit sale") through a retail installment contract ("RIC") to finance the customer's purchase. The dealer solicits bids to purchase the RIC from multiple lenders. When a bank receives a bid solicitation for the RIC, the bank must decide whether to bid based on the consumer and deal structure elements presented by the dealer. In response, the bank provides an approval, makes a counteroffer, or declines to purchase the RIC. The dealer will then evaluate the bids tendered by the bank and other lenders, choose the lender to which it will sell the RIC, and complete the necessary steps to assign the RIC to the selected bidder. The benefit to the end consumer of using indirect financing is that the dealer does the work of finding financing for the customer.

As a result of the indirect financing arrangement, many banks engaged in automobile lending are dependent upon the marketing and sales strategies employed by dealers. This leaves banks with a limited ability to influence the percentage of low-or-moderate-income ("LMI") customers that decide to do business with any particular dealer. Banks cannot, for example, dictate the opening of a new dealership in an LMI census tract or control whether a dealership is sufficiently marketing to LMI customers. But even if a bank had the power to build a favorable dealership footprint, it still cannot control what credit applications the bank receives or whether a dealer selects the bank as a winning bidder. These decisions lie exclusively with the dealer on behalf of the consumer.

Remarkably, the NPR does not address the indirect nature of the auto lending industry that clearly distinguishes it from the other major product lines to be included as part of the Retail Lending Test. The NPR's failure to recognize this distinction is especially remarkable because many banks that offer auto loans primarily do so through the indirect financing model.

II. Banks Are Not a Dominant Player in the Auto Lending Market.

The auto lending market is mostly composed of nonbanks and captive finance companies which are not subject to CRA evaluation. As of the first quarter of 2022, banks have only 29.11% market share of new loans or leases.[3] Captive finance companies—most of which are not subject to CRA requirements—have almost half of the market share. This market division has been fairly constant over time. The FDIC observed in 2019 that banks' share of outstanding auto loans had changed little from 2011 to 2018 and ranged from 33-35 percent.[4] Even some of the largest bank lenders have only a small percentage of the market.

This market dynamic gives banks even less leverage to influence dealers to increase their presence in LMI communities. Dealerships may simply take their business to nonbanks or captive auto finance companies, creating an uneven playing field within the automobile lending industry.

III. The Scrutiny Applied to Auto Lending Compared to Other Consumer Lending is Unsupported and Unwarranted.

Under the NPR, the CRA regulations would treat automobile loans differently from other consumer loans for the first time. The Agencies have indicated that they intend to evaluate all other consumer loans under the Retail Services and Products Test because those loans are "heterogeneous in meeting low- and moderate-income credit needs and are difficult to evaluate on a consistent quantitative basis."[5] But the Agencies do not adequately explain what it is about other consumer loans that make them uniquely heterogeneous in this way, or how or why automobile loans are somehow different, *i.e.*, what makes automobile loans, by contrast, homogeneous and more appropriate to evaluate on a quantitative basis.

The Agencies state only that automobile loans "can be important in areas where jobs are a significant distance from where people reside and where public transportation is not readily available," and that "[s]afe and sound automobile loans can also serve as a means of building a credit history."[6] Credit card loans are also a means of gaining access to credit and building credit history, yet they have been excluded from the Retail Lending Test. At the very least, absent more detailed justification for treating automobile loans differently than other consumer loans,

[3] Experian, State of the Automotive Finance Market Q1 2022, at Slide 12.
https://www.experian.com/automotive/auto-credit
[4] FDIC Quarterly 2019, Vol. 13, No. 4, at 38 (citing Experian Automotive and FDIC Analysis of Call Reports).
[5] 87 Fed. Reg. at 33,931 (June 3, 2022).
[6] *Ibid.*

automobile loans should be evaluated like all other consumer lending products, qualitatively under the Retail Services and Products Test and not quantitatively under the Retail Lending Test. This approach would allow the Agencies to better focus on the types of loan products available to LMI individuals in communities where owning an automobile is an essential aspect of economic mobility.

IV. Auto Lending as Departure from the Historical Focus of CRA.

The inclusion of auto lending as a mandatory part of the new Retail Lending Test would be a departure from the historical focus of CRA on wealth-building small business and mortgage credit needs.[7] Evaluating the distribution of automobile loans for the first time would put automobile lending at the core of CRA in a manner that does not reflect the statute's history or underlying purpose—to address redlining and counter urban flight.[8]

Although auto lending is an important consumer product, there is no indication that there are unmet auto lending credit needs, as financing is readily available for consumers. Auto lending also does not have the same wealth-building features because the underlying collateral is a depreciating asset.

Given the longstanding statutory and regulatory focus on home mortgage and small business loans, we respectfully submit that the Agencies have not presented sufficient evidence or justification to also include automobile loans as part of the mandatory, quantitative evaluation framework. For the reasons stated above, we strongly encourage the Agencies to adopt a qualitative approach to evaluate automobile lending because auto loans should be treated the same as other consumer loans.[9]

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We welcome dialogue with the Agencies to discuss these concerns and are committed to ensuring this CRA modernization effort achieves the goals of increasing credit to LMI communities in a safe and sound manner that is built to evolve with the industry. Please contact me by phone, 202-776-7300, or email, cwinslow@afsamail.org, with any questions.

Sincerely,

Celia Winslow

Celia Winslow
Senior Vice President
American Financial Services Association

[7] 58 Fed. Reg. 67,466, at 67,473 (Dec. 21, 1993) ("The legislative history of the Community Reinvestment Act reveals that Congress was primarily concerned with the availability of home mortgage loans and small business loans.").
[8] Bernanke (2007). *See also* 87 Fed. Reg. at 33,888 (June 3, 2022).
[9] 87 Fed. Reg. at 33,931-32 (June 3, 2022) (discussing treatment of consumer loans and seeking feedback on whether the Agencies should adopt a qualitative approach to evaluate automobile lending).