August 10, 2020

Acting Comptroller Brian Brooks
Office of the Comptroller of the Currency
400 7th Street SW
Suite 3E–218
Washington, DC 20219

Chair Jelena McWilliams
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

Board of Governors Chair Jerome H. Powell
Board of Governors of the Federal Reserve
1850 K St. NW
Washington, DC 20006

Re: Treatment of Paycheck Protection Program Loans & COVID-19 Responses Under Community Reinvestment Act Regulations

Acting Comptroller Brooks, Chair McWilliams, Chair Powell:

The Consumer Bankers Association (CBA)[1] appreciates the recent engagement by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency (collectively, the Agencies),[2] regarding facilitation of the Small Business Administration's (SBA) Paycheck Protection Program (PPP) and other COVID-19 responses. CBA member institutions have responded in full force to the unprecedented COVID-19 pandemic and continue to serve communities in need during this trying time. Accordingly, CBA urges the Agencies to ensure Community Reinvestment Act (CRA) examiners provide positive CRA consideration for PPP loans in the most efficient manner possible

[1] The Consumer Bankers Association is the only national trade association focused exclusively on retail banking. Established in 1919, the association is now a leading voice in the banking industry and Washington, representing members who employ nearly two million Americans, extend roughly $3 trillion in consumer loans, and provide $270 billion in small business loans.

[2] *See* Federal Reserve, FDIC, and OCC, Joint Statement on CRA Consideration for Activities in Response to Covid-19 (March 19, 2020), *available at* https://occ.gov/news-issuances/bulletins/2020/bulletin-2020-19a.pdf (the Joint Statement). *See also*, Federal Reserve, FDIC, OCC, CRA Consideration for Activities in Response to Coronavirus Frequently Asked Questions (FAQs) (May 27, 2020), *available at* https://www.federalreserve.gov/supervisionreg/caletters/CA%2020-10%20Attachment%20CRA%20Consideration%20for%20Activities%20in%20Response%20to%20COVID-19%20FAQs%20-%20Final.pdf (the FAQs). *See also* Federal Reserve, FDIC, and OCC, Agencies Encourage Financial Institutions to Meet Financial Needs of Customers and Members Affected by Coronavirus (March 9, 2020), *available at* https://www.occ.gov/news-issuances/news-releases/2020/nr-ia-2020-30.html.

and allow banks to report these loans as Community Development loans without further documentation.

Indicative of the impressive work banks have performed throughout the COVID-19 pandemic is our involvement in SBA's PPP loans. Over the course of a few weeks, CBA members funded hundreds of billions of dollars to businesses across the country. Banks moved team members from every aspect of their institution who worked around the clock to set up the program in rapid fashion. After the program was established, even more was required of banks as they processed tens of thousands of loans in a few days. Without banks' response to this program, tens of thousands of small business across the country would have faced financial ruin, and many Americans would have lost their jobs. In fact, the federal government's primary purpose of PPP loans was to quickly support job retention and stabilization, and CBA members once again stepped up to serve businesses and consumers alike.

CBA understands the rapid nature and response to the PPP has created some unavoidable questions and grey areas surrounding treatment of PPP loans, including for CRA purposes. In practice, the vast majority of these loans will meet CRA standards and carry a community development purpose. To best serve communities, CRA examiners should provide positive CRA consideration for these loans in the most streamlined and efficient manner possible. Neither banks nor examiners should be burdened to look at documentation for each loan to determine if they meet a community development purpose.

The Agencies' FAQs[3] indicate PPP loans greater than $1 million may qualify as community development loans if they also have a primary purpose of community development under the CRA.[4] However, as indicated by the Joint Statement and confirmed through examiner discussion, banks must still work with their examiners to prove community development purpose on each of these loans to receive the applicable consideration. This process creates yet another major obstacle for banks looking to qualify the activity and report them accurately by March 1 of next year as Community Development loans. We believe many of these loans and the PPP inherently meet the community development purpose outlined in the guidance and CRA.

First and foremost, the primary purpose of PPP loans is job retention (the program requires at least 60% of loan proceeds must be used for payroll costs). This alone should qualify the loans as community development responsive to an emergency nationwide disaster, without further documentation or verification, as loans made under the program inherently meet the purpose of community development. Banks should not be forced to research and collect documentation on each loan and then rely on examiner subjectivity to determine if the massive support provided to communities as a response to COVID-19 will qualify as community development. At a minimum, we believe the agencies should presume that any PPP loan greater than $1 million to a business in a low- to moderate-income geography or a distressed or underserved nonmetropolitan middle-income census tract has a positive CRA impact. Banks will then know upfront to report those as Community Development loans and expect to receive positive CRA consideration.

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[3] Response 5, Community Reinvestment Act Frequently Asked Questions Related to COVID-19, FDIC, Federal Reserve, OCC, May 27, 2020.
[4] *See* FAQs, Response #5.

In addition, the Agencies have historically granted favorable CRA treatment for activities that revitalize or stabilize a designated disaster area (DDA) for activities related to disaster recovery that attract new or retain existing businesses or residents.[5] As a result of COVID-19, Federal Emergency Management Agency (FEMA) has issued major disaster declarations for all 50 states, the District of Columbia, and certain U.S. territories.[6] Accordingly, PPP loans should qualify under this standard, as activities responsive to the needs small businesses affected by COVID-19 within the DDAs declared by FEMA, as long as they are consistent with safe and sound banking practices. Consistent with the Joint Statement, as well as prior communications on disasters and national emergencies, such positive CRA treatment would serve the long-term interests of the affected communities and the financial system. We further believe this was the original intent of the Joint Statement issued March 19, 2020.[7]

As many institutions have already greatly reallocated resources and innumerable staff to participate in the PPP, requiring further verification on these loans will only inundate banks with unnecessary regulatory burden, rather than applying those resources to further serve communities during this trying time. Banks need an efficient process to qualify PPP loans for positive CRA consideration so they can move on to addressing the developing needs of their communities.

Further, as shown through the massive and unprecedented effort funding the PPP entailed, participation in the program should receive consideration as an innovative lending practice, regardless of whether the bank had an SBA lending program prior to the program's initiation. While many banks did not yet have an SBA lending program, even those that did pushed through more loans in a few weeks than they had in decades prior. The PPP is unique from existing SBA loan programs and required innovative practices to launch quickly to best meet the needs of businesses and their communities.

CBA appreciates the challenges the COVID-19 pandemic and applicable response create for all involved. However, to best ensure banks can continue to serve our communities throughout this crisis, and to provide due consideration for the magnitude of our member's efforts, we respectfully request that all loans made under the PPP qualify for positive CRA consideration and further, may be reported as Community Development loans. We greatly appreciate your willingness to discuss these issues with our members, and please do not hesitate to reach out if we can be of further assistance.

Sincerely,

Richard Hunt
President and CEO
Consumer Bankers Association

[5] *See* 12 CFR 25.12(g)(4)(ii) (Defining community development to include designated disaster areas (DDAs))
[6] *See* https://www.fema.gov/news-release/2020/03/19/coronavirus-covid-19-pandemic-eligible-emergency-protective-measures.
[7] *See* Joint Statement on CRA Consideration for Activities in Response to COVID-19, FDIC, Federal Reserve, OCC, March 19, 2020.