



Charting a Path to Prosperity and Inclusion for Minority Depository Institutions: 2023 Legislative and Regulatory Agenda

The National Bankers Association (NBA) is the nation's leading trade association for the country's minority depository institutions (MDIs). Given the value proposition of our member banks to the communities we serve, we believe that our updated 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 118th Congress that reflects the progress made in 2022 as well as our work ahead in 2023. This is 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.

The creation of the Emergency Capital Investment Program and the \$3 billion increase in funding to the CDFI Fund has helped banks like those within the NBA scale up and increase access to credit for individuals and small businesses in low-to-moderate income (LMI) communities. The Bipartisan Infrastructure Bill also provides billions of targeted dollars that can be instrumental in addressing the needs in our communities created by a changing climate and systemic climate injustice. The NBA applauds the Congress for the adoption of these important measures and very much looks forward to continuing to work on additional legislation to ensure that our communities – hardest hit by the pandemic and systemic inequity – experience lasting, material changes that will support a broad and deep economic recovery for all Americans.

CAPITAL PRIORITIES

Tier 1 Capital, or the equity invested in a bank, is the most critical component of the resilience of any bank, and it is what allows banks to grow and scale. MDIs, particularly African American MDIs, have historically lacked access to capital markets that would allow them to scale. So while our member banks maintain more than adequate capital from a ratio perspective, the total amounts of capital available have led to them being undersized when compared to the needs and demands of the communities they serve. It is with this need in mind that we support the following federal initiatives in 2023.

MDI Investment Tax Credit

The Association believes that a tax credit for equity investments in MDIs would further encourage all investors to make equity investments in our institutions. Given our institutions' track record of impact investments in the LMI, minority and under resourced communities we serve, we believe that our institutions work confers enough of a benefit on LMI communities that an investment tax credit is warranted. We look forward to working with House and Senate sponsors to introduce MDI investment tax credit legislation this year.

CDFI Award Tax Relief

The Community Development Financial Institutions Program (CDFI Program) actively works to enhance the ability of CDFIs to address financial inclusion issues by investing federal resources – which are matched with private funding – in CDFIs working to serve low-income and underserved people and communities. The CDFI Program offers both Financial Assistance and Technical Assistance awards to CDFIs. Technical Assistance grants are offered to CDFIs and Certifiable CDFIs to build their organizational capacity. Financial Assistance awards are made in the form of loans, grants, equity investments, deposits, and credit union shares, which CDFIs are required to match dollar-for-dollar with non-federal funds. This requirement enables CDFIs to multiply the impact of federal investment to meet the demand for affordable financial products in economically distressed communities. These competitive awards support and enhance the ability of our institutions to meet the needs of the communities they serve. These awards are currently taxed at the institution level. The Association believes they should be granted tax-free to our institutions as that maximizes our ability to put the resources to work in the communities we serve.

MDI Income Tax Credit

Our members help low- and moderate-income communities across the country, and they are committed to providing economic revitalization to families in those neighborhoods. Many in the communities we serve are more likely to be unbanked or underbanked, but our impact is limited due to our small size, both in total assets and in number of institutions. Racial minorities, especially Black and Hispanic, are more likely to be unbanked and underbanked according to a Federal Reserve Report on the Economic Well-Being of U.S. Households in 2021. MDIs can be a solution to this problem if our banks can maintain capital. Unfortunately, we lose a significant amount of capital every year that can be invested in our communities via taxes. The Association believes small institutions, under \$3 billion in total assets, should receive an income tax credit up to \$1 million to ensure they are sufficiently capitalized and can provide the services their communities need.

Amend the Bank Holding Company Act to Allow MDIs and CDFI Banks Under \$3B to Raise Additional Capital Without Triggering the BHCA's Change-of-Control Provisions

The Bank Holding Company Act's (BHCA) 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. The BHCA should be modified to allow for significant infusions of non-dilutive equity investments in MDIs. The Association supports legislative proposals that would exempt community banks under \$3 billion from the 25% change-of-control provisions of the BHCA to both attract significant equity investments and to help protect the minority ownership status of our member banks.

Fully Supporting the Community Development Financial Institutions Fund

Establish a permanent set aside of 40% of CDFI Fund appropriations reserved for award, guarantee, and grant programs for minority lending institutions, and requires reporting on such activities. Establish a new Office of Minority Community Development Financial Institutions to administer these funds led by a new Deputy Director of Minority Community Development Financial Institutions.

Federal Deposits in Minority Depository Institutions

Current rules require that federal agency deposits in MDIs must be fully collateralized, which has proven an insurmountable hurdle to implementation of the Minority Deposits Program, as doing so locks-up capital that could be mobilized for lending. It should be clarified that any such deposits may also be insured, including through reciprocal deposits. Doing so will ensure that any such deposits do not pose any financial risk to federal government, while also allowing the deposits to be mobilized for lending and thereby having a positive multiplier effect in the communities in which these banks operate.

Custodial Deposit Program for Covered Minority Depository Institutions

Establish a new program whereby the Treasury Department will deposit into MDIs funds up to the FDIC insured amount, from Funds under management by the Treasury Department. The program would be implemented by the Treasury Department, working via custodial banks, which can more easily and efficiently distribute the funds across covered MDIs. This initiative will help mobilize stable deposits into MDIs, which will have a multiplier effect on the communities they serve without creating any new exposures or loss risks for the Treasury Department.

PRESERVATION AND PROMOTION OF MDIS

Given the important role MDIs play in the communities they serve, federal regulators need to do more to preserve and promote them. The obligation in this regard is not just morally justified but required by federal statute. Passed into law in 1989, Section 308 of the Financial Institutions Reform, Recovery, and Enforcement Act, or FIRREA, requires the Treasury, Federal Reserve, OCC, and FDIC to preserve and promote MDIs in a variety of ways, including preserving the number of MDIs.

The Treasury and bank supervisory agencies have unfortunately failed to preserve and promote MDIs. The overall number of MDIs has declined by 33% since 2008, and among Black-owned MDIs, the problem is especially pronounced, as Black-owned banks have suffered from many of the same conditions and structural lack of access to capital as the Black community as a whole. Of the 4,746 total insured commercial banks in the U.S., only 145 are MDIs, and only 20 of those are controlled by Black people. Prior to the Great Recession of 2008-2009, there were 41 Black-owned commercial banks in the United States, a loss of more than 50 percent.

Federal Banking Agencies (FBAs) have not demonstrated any implementation or recognition of Section 308's directive for flexibility and support in the most critical area of all – the examination of these institutions. This includes, but is not limited to, the diversity of the examination teams and the appropriate cultural training of those teams. Moreover, the examination process significantly penalizes and restricts MDIs' operations and produces results that are antithetical to Section 308's goals of preserving and promoting minority owned and operated banks.

FBAs have a unique opportunity to fix these problems, which can preserve and promote existing MDIs and promote the growth of new MDIs.

Numerous bills have been proposed in the Congress over the past four years that directs prudential regulators to publish data on the diversity of their bank examiner corps, any initiatives undertaken to improve examiner diversity, and whether the regulators have developed any special training for examiners related specifically to working with banks that serve communities that are

predominantly minorities, low income, or rural.

Unfortunately, these bills have not been enacted into law. We encourage regulators to take the initiative and proactively adopt the steps outlined by Congress and do so as swiftly as possible. Prudential regulators should publish data on the diversity of their bank examiner corps, any initiatives undertaken to improve examiner diversity, and whether the regulators have developed any special training for examiners related specifically to working with banks that serve communities that are predominantly minorities, low income, or rural. The respective Office of Minority and Women Inclusion should also work to identify and make public best practices to increase the diversity and address retention issues of the bank examiner corps.

The information garnered from these studies and reports will prove invaluable in not only the supervision of MDIs, but greatly assist in their preservation.

GROWTH PRIORITIES

MDI Participation in Infrastructure and Transportation Programs

Updating our nation's transportation and infrastructure networks is a priority for both political parties. The inadequacies of our current networks have an outsized impact in the LMI communities the Association members serve. We believe our institutions are well positioned to participate in the development and implementation of plans to carry out the necessary upgrades and, as such, request to be included in all aspects of policy discussions surrounding this important issue.

Secure and Fair Enforcement Banking Act

The Association enthusiastically supports the Secure and Fair Enforcement (SAFE) Banking Act. As more of the states where our member institutions are located legalize cannabis, our member institutions would like to be their bank choice – especially for cannabis entrepreneurs of color that are seeking to establish banking relationships with MDIs.

Brokered Deposit Modernization

As banking business models evolve where fintech and other third-party partnerships begin to play a more prominent role in the lives of community banks, the law governing how banks accept otherwise core deposits should evolve with it. Unfortunately, virtually any third-party involvement in connecting banks to deposits result in the deposits being categorized as “brokered” – often including additional supervisory scrutiny and potentially higher deposit insurance premiums – even if they are otherwise core deposits. Many of our member institutions have limited branch networks, so having the flexibility to partner with fintechs or other technology partners could help to diversify our institutions’ deposit networks. The Association supports legislation modernizing Section 29 of the Federal Deposit Insurance Act.

Treasury Mentor Protégé Program

Codify the Financial Agent Mentor-Protégé Program within the Department of the Treasury. The program provides participating minority depository institutions and small financial institutions with mentorship opportunities with larger financial institutions.

Report on Covered Mentor-Protégé Programs

Require Treasury to submit an annual report to Congress on the Treasury Mentor Protégé Program, including an analysis of outcomes, the number of MDIs that are qualified to participate in the

program, but are not currently working with a large financial institution (defined as over \$50 billion in assets), and recommendations for how to match MDI proteges with large bank mentors.

Streamlined Community Development Financial Institution Applications

For any depository institutions with assets under \$3 billion, the FDIC should implement systems to record necessary information and conduct preliminary analysis for banks that seek to become CDFIs, and to partner with the CDFI Fund to develop streamlined processes for covered banks to apply for CDFI Fund certification. Note that a similar program has already been implemented by the NCUA for credit unions.

Interchange Law Changes

Regulation of interchange was a contested part of financial regulatory reform, as adopted by the Senate during debate of S. 3217, the Restoring American Financial Stability Act of 2010. While the bill and subsequent regulations have primarily been identified as targeting larger banks and the card networks, there has been significant harm done to MDIs, the very financial institutions that the Congress and banking regulators have a statutory duty to preserve and promote under Section 308 of the Financial Institutions Reform, Recovery, and Enforcement Act. It is for this reason that the Association respectfully opposes inclusion of any additional limiting interchange regulations. We believe that the impact to MDIs and CDFIs have not been fully considered by Congress, and that the survival of some of our most disadvantaged communities and institutions is at stake. Minority owned and operated banks are committed to the communities they serve. However, if interchange regulation that reduces fee revenue through additional price caps or routing requirements is adopted, many banks will have no choice but to raise costs for customers, cut back on services, and reduce vital capital allocations for community and business development.