



Charting a Path to Prosperity and Inclusion for the Country's Minority Depository Institutions: 2024 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 2023 as well as our work ahead in 2024. 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.

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 have historically lacked access to capital markets that would allow them to scale. 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 in terms of the needs and demands of the communities they serve. With capital also comes the need for deposits to better leverage the capital for lending in communities. It is with this need in mind that we support the following federal initiatives in 2024.

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. Clarify 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 therefore having a positive multiplier effect in the communities in which these banks operate. The program is also extended to Impact Banks.

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 is to 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.

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 low-to-moderate income (LMI) communities we serve, we believe that our institutions' work confers enough of a benefit to 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 (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. As many MDIs are also certified CDFIs, the Association believes CDFI Program awards 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 2022.” 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 MDIs under \$3 billion in total assets or non-MDIs under \$3 billion that predominately serve minority communities, 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 in our member banks. The BHCA should be modified to allow for significant infusions of non-dilutive equity investments in our member banks. 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 percent 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.

GROWTH PRIORITIES

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.

Secure and Fair Enforcement Banking Act

The Association 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 establishing banking relationships with MDIs.

Treasury Mentor Protégé Program

Codify the Financial Agent Mentor-Protégé Program within the Department of the Treasury. The program provides participating MDIs 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 and for how to incentivize large banks to participate.

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 is an unintended negative impact on 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 or -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.

Revising Data Collection, Recordkeeping, and Reporting

MDIs have many federally mandated reporting requirements currently in place and the lack of technological resources to defray the costs associated with compliance, among other things, make it very difficult to deal with given the size of these institutions. We believe strongly that regulators should take into consideration the size and capabilities of institutions in our segment of the banking industry and allow for exemptions or offsetting resources for smaller institutions. Our member banks work with customers that are often financially fragile and in communities frequently targeted by predatory lenders. We have seen how predatory practices can devastate a community and their residents. We firmly believe, however, that a fair regulatory system should: (1) explicitly recognize the dissimilarities in capacity and systemic risk posed by different institutions based on size and scope of activities; (2) recognize that flexibility is important in serving distressed and underserved communities, as well as moving un- and under-banked populations into the economic mainstream; and (3) maintain effective consumer protection. We believe these goals are not antithetical to ensuring safety and soundness in the banking system and can be better achieved without duplicative and overly taxing data collection.

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, as defined by the Federal Reserve and FDIC, in a variety of ways, including preserving the number of MDIs.

Bank supervisory agencies have unfortunately failed to preserve and promote MDIs. The overall number of MDIs has declined by 31 percent since 2008. As of Q3 2023, of the 4,614 total insured commercial banks in the U.S. only 148 are MDIs, and among Black-owned MDIs the decline in the number of MDIs is especially pronounced. Prior to the Great Recession of 2008-2009, there were 41 Black-owned banks in the United States, a loss of nearly 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 or -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.