

February 16, 2021

Ann E. Misback
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

Re: Community Reinvestment Act Advance Notice of Proposed Rulemaking

Opportunity Finance Network (OFN) appreciates the opportunity to comment on Docket R-1723 and RIN numbers 7100-AF94, the “Advanced Notice of Proposed Rulemaking (ANPR) on Reforming the Community Reinvestment Act Regulatory Framework.” Our organization strongly supports the Community Reinvestment Act (CRA) while also acknowledging that there are aspects of the law and its administration that could be improved.

An effective, well-enforced Community Reinvestment Act that keeps pace with the changing financial services industry is critically important. Our comments reflect a commitment to a community development finance industry in which banks and CDFIs are important partners in expanding access to capital and credit in low- and moderate-income (LMI) communities.

CDFIs and the Community Reinvestment Act

Part of the 1977 Housing and Community Development Act, the CRA is a landmark civil rights accomplishment, rooted — along with the Voting Rights and Fair Housing Acts — in the Civil Rights Act of 1964. Together, these laws have taken us closer to being a nation that lives up to its stated founding principles of equality for all.

Inspired by the civil rights movement, the very first CDFIs set out to prove that access to affordable, responsible credit can transform a community. There are now more than 1,100 CDFIs certified by the Department of Treasury’s Community Development Financial Institutions (CDFI) Fund with more than \$222 billion in total assets.¹ With cumulative loan loss rates of less than 1 percent, CDFIs lend prudently and productively in exactly the low- and moderate-income (LMI) communities that are the focus of CRA.²

CDFIs have demonstrated that when you remove access to credit as a systemic barrier, communities in decline can begin to come back, and even thrive. Today, CDFIs provide financing where it is needed most— to marginalized people throughout the United States, as well as in

¹ Opportunity Finance Network, “CDFI Fund FY 2019 Annual Certification Report database”, Accessed February 3, 2021.

² Id at 1.



persistently poor inner cities, the Delta, Appalachia, Indian Country, and in other struggling communities.

Banks often partner with CDFIs to enter new markets that were previously ignored or “redlined.” These communities have reaped benefits, not only from the growth in CRA-motivated capital, but also from the partnerships between banks and CDFIs. Both banks and CDFIs have realized that working in partnership can enhance both institutions' effectiveness in reaching underserved markets. The Community Reinvestment Act has played a key role in this effective collaboration, fostering millions of new homeowners, thriving businesses, and accountholders. Any reform should build on this successful record - not reverse or pull back.

Proposed Reforms to the Community Reinvestment Act Regulations

Over the past 40 years, CRA has helped bring affordable housing, small businesses, jobs, and banking services to underserved communities. While greater clarity and consistency for banks and other stakeholders is valuable, reforms to the regulatory framework of the Community Reinvestment Act (CRA) must advance the primary purpose of the statute: assuring that banks provide appropriate access to capital and credit to low- and moderate-income people and places. The economic impact of the COVID-19 pandemic underscores the need for a CRA regulatory structure that encourages banks to do more to support low- and moderate-income communities.

CRA Must be Enforced through a Joint Regulatory Framework

The reforms outlined in the Federal Reserve’s ANPR will have limited impact if the Federal Reserve, FDIC, and OCC are not enforcing the same rule. OFN urges the bank regulators to work together on commonsense reforms to CRA regulations with the goal of driving greater investment into marginalized communities. Without a joint regulatory framework regulatory arbitrage is a risk, with banks “flipping” their charters from one agency to another to find the most advantageous regulations. OFN strongly encourages the Federal Reserve, FDIC, and OCC to continue to enforce CRA through a shared regulatory framework.

In general, OFN is supportive of the direction of many aspects of the Federal Reserve’s reform proposal but there is room for improvement. OFN would like to provide the following comments on the ANPR:

Section I. Introduction: Request for Feedback, Objectives, and Overview

Question 1. Does the Board capture the most important CRA modernization objectives? Are there additional objectives that should be considered?

OFN agrees with the Board that the core purpose of CRA is to “more effectively meet the needs of LMI communities and address inequities in credit access”. In addition, OFN recommends that increasing lending, investing and services in communities of color and LMI communities should be listed as an explicit objective of the reform effort.



OFN supports reforms to increase certainty and transparency for banks but not at the expense of community impact. The new evaluation framework must be meaningful enough to encourage additional investments in low-wealth communities. The Federal Reserve's proposal is a step in the right direction, but some aspects must be strengthened to encourage the investment needed to meet our nation's challenges.

Section II - Background

Question 2. In considering how the CRA's history and purpose relate to the nation's current challenges, what modifications and approaches would strengthen CRA regulatory implementation in addressing ongoing systemic inequity in credit access for minority individuals and communities?

OFN appreciates the Board seeking feedback on this critical aspect of CRA. The law's history as civil rights legislation meant to address the impacts of racial discrimination in banking should not be downplayed. The CRA is rooted in addressing systemic inequity, and it is important that the Board's proposal focus on increasing lending and investment in communities of color.

A focus on race is well within the statutory focus of CRA. There are explicit references to race in the legislation including allowing investments with Minority Depository Institutions (MDIs), women-owned financial institutions, or low-income credit unions in minority communities to count for CRA credit. The law also requires reporting to Congress comparing depository institutions' lending in "minority neighborhoods" as well as other distressed areas.³

Further, as the National Association of Affordable Housing Lenders (NAAHL) notes, CRA's establishment of a "continuing and affirmative obligation" by banks to serve their entire communities implies more proactivity than just meeting a fair lending mandate not to discriminate. While CRA does examine service to low- and moderate-income (LMI) people and communities, "LMI" and "minority" are far from the same; most LMI people are White and many Black and Latinx people are not LMI. At the same time, rates of home and business ownership for people of color – which are critical to overcoming racial wealth gaps – are significantly below those for Whites, even after considering inter-group income disparities.

Efforts to truly address the racial wealth gap requires regulators to meaningfully assess how banks are meeting the financial needs of communities of color. The inclusion of race in the CRA evaluation should not be relegated to "extra credit" or optional as the current proposal has it structured. The proposed remedies of considering underserved areas on exams and encouraging more financing to Minority Depository Institutions are insufficient to address systemic inequities. OFN agrees with Hope Enterprise Corporation and the National Community Reinvestment Coalition (NCRC) that a

³ Code of Federal Regulations, "U.S. Code Title 12. BANKS AND BANKING Chapter 30. COMMUNITY REINVESTMENT", Accessed February 3, 2021. <https://www.govinfo.gov/content/pkg/USCODE-2011-title12/html/USCODE-2011-title12-chap30.htm>



bank should not be able to reach a presumption of satisfactory without demonstrated accountability of lending to people and communities of color in its assessment areas.

At a minimum, lending to people and communities of color should be included in the quantitative evaluation for both the retail and community development financing subtests. On the retail lending subtest, performance measures could include the percent of loans to people of color and the percent of loans in communities of color. On the community development subtest, a performance measure could be the number and percent of community development loans and investments in communities of color. OFN has additional recommendations throughout our comments for ways CRA can better address the capital needs in communities of color.

Section III - Assessment Areas and Defining Local Communities for CRA Evaluations.

Questions 3-10

Question 5. Should facility-based assessment area delineation requirements be tailored based on bank size, with large banks being required to delineate facility-based assessment areas as, at least, one or more contiguous counties and smaller banks being able to delineate smaller political subdivisions, such as portions of cities or townships, as long as they consist of whole census tracts?

The ANPR considers whether small banks should be required to serve whole counties in their assessment areas due to branch or ATM locations, or whether they can “carve out” by census tract. OFN does not support allowing small banks to exclude parts of counties where does not have a physical presence and where it has “de minimus” lending or there is substantial competition. This could have a negative impact on larger rural counties where a bank might not have a physical presence but still conducts substantial business in the community. Market share should be considered when determining a bank’s assessment areas – banks with significant market share that are taking deposits or making loans throughout a county should have CRA obligations throughout that county.

Question 8. Should delineation of new deposit- or lending-based assessment areas apply only to internet banks that do not have physical locations or should it also apply more broadly to other large banks with substantial activity beyond their branch-based assessment areas? Is there a certain threshold of such activity that should trigger additional assessment areas?

OFN recommends creating new assessment areas in addition to facility-based assessment areas for banks with significant activity outside of their assessment areas. These additional assessment areas should be based on a hybrid approach of where banks lend and take deposits from consumers. As OFN noted in our comments to the OCC, “deposit-based” assessment areas are unlikely to do enough to address the lack of investment in rural, Native, and other low-wealth



markets today.⁴ Communities with high concentrations of low-income residents are unlikely to generate the level of bank deposits to trigger the creation of a deposit-based assessment area. Similarly, low population communities are also likely to be missed.

OFN agrees with NCRC that the delineation of deposit or lending-based assessment areas should apply to both internet banks and other large hybrid banks that engage in significant lending or deposit-taking outside of their physical footprint. Banks must have an obligation to serve LMI and communities of color in all the areas in which they engage in significant amount of business, not only in areas with their branches. If they are not held accountable for making loans, investments, and services to underserved communities in areas beyond their branches, racial and income disparities in access to credit will widen.

Question 9. Should nationwide assessment areas apply only to internet banks? If so, should internet banks be defined as banks deriving no more than 20 percent of their deposits from branch-based assessment areas or by using some other threshold? Should wholesale and limited purpose banks, and industrial loan companies, also have the option to be evaluated under a nationwide assessment area approach?

OFN is concerned that a national assessment area for online banks might leave communities of color or severely economically distressed areas underserved. As NCRC notes, this would allow internet banks to cherry pick which areas to serve in their retail and community development activities. In other words, internet banks would gravitate towards serving those areas in which it is easiest to conduct CRA activities rather than areas most in need of credit and capital. The better approach for internet banks is to use a hybrid deposit or lending-based assessment area to create local assessment areas.

Section IV - Overview of Evaluation Framework. Questions 11-13

Question 13. Is \$750 million or \$1 billion an appropriate asset threshold to distinguish between small and large retail banks? Or should this threshold be lower so that it is closer to the current small bank threshold of \$326 million? Should the regulation contain an automatic mechanism for allowing that threshold to adjust with aggregate national inflation over time?

OFN strongly opposes the ANPR's proposal to increase the threshold for small banks from those under \$326 million in assets to either \$750 million or \$1 billion. The increase in small bank threshold could exempt many more banks from a community development test, which could impact community development investment in CDFIs and rural areas.

Rural areas are more likely to be served by small banks, and already receive less community development investment than urban areas. As OFN member HOPE Enterprise Corporation notes,

⁴ Opportunity Finance Network, "OFN Comments to the FDIC and OCC on Proposed Changes to the Community Reinvestment Act, April 8, 2020", <https://ofn.org/public-policy-communications>



the Fed's justification for making some of these changes is lack of capacity for community development in rural areas – yet the proposed solution is to reduce community development requirements in these communities. The Fed should be moving to strengthen, not exempt, banks' meaningful investments in rural communities, particularly communities of color and persistent poverty communities.

Section V - Retail Test. Questions 14-32

Question 16. Should the presumption of “satisfactory” approach combine low and moderate-income categories when calculating the retail lending distribution metrics in order to reduce overall complexity, or should they be reviewed separately to emphasize performance within each category?

Bank retail lending should be reported separately for low-income and moderate-income categories. This will allow full analysis of a bank's lending in low income communities and help determine if banks are focusing on serving moderate income households while leaving low-income households underserved and underbanked.

Question 19. Would the proposed presumption of “satisfactory” approach for the Retail Lending Subtest be an appropriate way to increase clarity, consistency, and transparency?

The presumption of “satisfactory” approach is reasonable if the performance measures and thresholds are high enough to be meaningful and encourage additional investment and lending.

Section VI – Retail Test Qualifying Activities. Questions 33-41

Question 36. Should consumer loans be evaluated as a single aggregate product line or do the different characteristics, purposes, average loan amounts, and uses of the consumer loan categories (e.g., motor vehicle loans, credit cards) merit a separate evaluation for each?

When evaluating a bank's consumer lending for CRA purposes, the quality of the consumer product is extremely relevant. High-cost credit card, car and student loans which may be detrimental to the financial health of the borrower should not receive CRA credit.

Question 37. Should the Board continue to define small business and small farm loans based on the Call Report definitions, or should Regulation BB define the small business and small farm loan thresholds independently? Should the Board likewise adjust the small business and small farm gross annual revenues thresholds? Should any or all of these thresholds be regularly revised to account for inflation? If so, at what intervals?

Yes, the Board should continue to define small business and small farm loans based on Call Report definitions of \$1 million or less. This is aligned with the well documented need for smaller dollar



lending for business owners. The Federal Reserve's 2021 Small Business Credit Survey found that 90 percent of business owners seeking capital sought financing of less than \$1 million, with 48 percent seeking less than \$100,000 in financing.⁵⁵ Increasing the dollar threshold would allow banks to obtain CRA credit for making larger loans likely to have been made in the normal course of business.

OFN also urges the Board to coordinate with other federal data collection requirements. CDFIs currently report to numerous federal agencies on their small business lending activity including the Small Business Administration (SBA) and CDFI Fund. The implementation of Dodd-Frank Section 1071 will also require reporting on small business lending to the Consumer Financial Protection Bureau. Section 1071 data will create a public database with data on race, gender, and other demographics of small business applicants for credit that may be comprehensive enough to replace the small business data collection required by bank regulators for CRA, as well as those at the SBA and CDFI Fund.

Since Section 1071 requires more detailed reporting than the CRA regulation, like the Home Mortgage Disclosure Act (HMDA) data, Section 1071 data could become the data source that CRA exams use in the future. Banks and CDFIs would find it more efficient to submit data in one format as Section 1071 data than to have one or possibly two more annual data submission requirements.

Question 39. Are there other alternatives that would promote liquidity by freeing up capital so that banks and other lenders, such as CDFIs, can make additional home mortgage loans to LMI individuals?

As NCRC notes, current CRA exams rarely discuss whether banks are purchasing loans from CDFIs that are particularly responsive to local needs. Examiners should review purchased loans separately from loan originations on CRA exams to determine the concentration of bank activity in loan purchases. This method of examination would allow banks to offer greater detail on their loan purchases. Activities that provide liquidity to CDFIs or other mission lenders could be considered particularly responsive or impactful and receive additional consideration.

Question 40. Should CRA consideration be given for retail lending activities conducted within Indian Country regardless of whether those activities are located in the bank's assessment area(s)?

Yes. The CDFI Fund's 2016 report "Access to Capital and Credit in Native Communities" stated "the Community Reinvestment Act of 1977 (CRA) is intended to encourage depository institutions to help meet the credit needs of the communities in which they operate, including low- and moderate-income neighborhoods, consistent with safe and sound operations...Nonetheless, it is possible for banks to satisfy their requirements under the CRA without working with a Native Community

⁵⁵ "Small Business Credit Survey: 2021 Report on Employer Firms", Federal Reserve Banks, Accessed February 7, 2021. <https://www.fedsmbusiness.org/survey/2021/report-on-employer-firms>



located on Native lands (communities which otherwise meet CRA criteria). The CRA was not intended to exclude Native Communities living on tribal lands, but in practice it often does.”⁶

Addressing the centuries of disinvestment and discrimination in Native communities requires focused efforts to drive capital into Indian Country. CRA has been an underutilized tool and OFN encourages the Board to redouble efforts to support lending and investment in Native communities, regardless of whether these activities occur in a bank’s assessment area. Activities undertaken with Native CDFIs should be recognized as especially impactful and responsive.

Section VII - Community Development Test. Questions 42-51

Question 42. Should the Board combine community development loans and investments under one subtest? Would the proposed approach provide incentives for stronger and more effective community development financing?

OFN supports evaluating all community development financing under one test. However, it is critical that within the community development test, banks report and be evaluated on community development lending and investment activities separately to avoid banks shifting more activity into lending at the expense of critical community development investments that support activities like Low Income Housing Tax Credit and New Markets Tax Credits projects.

Question 43. For large retail banks, should the Board use the ratio of dollars of community development financing activities to deposits to measure its level of community development financing activity relative to its capacity to lend and invest within an assessment area? Are there readily available alternative data sources that could measure a bank’s capacity to finance community development?

Yes, this is the appropriate ratio to assess a bank’s capacity to finance community development. Using this ratio would provide consistency and objectivity when measuring a bank’s community development activities.

Question 44. For wholesale and limited purpose banks, is there an appropriate measure of financial capacity for these banks, as an alternative to using deposits?

OFN recommends the Board continue to use assets to measure the capacity of wholesale and limited purpose banks to finance community development, as currently used on CRA exams.

⁶ Native Nations Institute, “Access to Capital and Credit in Native Communities”, Published 2015. Accessed February 6, 2021.
http://nni.arizona.edu/application/files/6315/2822/4505/Accessing_Capital_and_Credit_in_Native_Communities.pdf



Question 45. Should the Board use local and national benchmarks in evaluating large bank community development financing performance to account for differences in community development needs and opportunities across assessment areas and over time?

Yes. Using local and national benchmarks will provide important context for examiners to determine if a bank is engaging in adequate amount of financing while also taking into account local conditions that may impact community development like capacity constraints. The performance context will be key in determining the weight given to local benchmarks. OFN also supports using different national benchmarks for metropolitan areas and one for rural areas since rural areas have average community development ratios that are lower than for urban ones.

However, allowing lower benchmarks in rural communities must not create a “race to the bottom”, whereby banks aim only to achieve the same low levels of investment that has been the historical standard, especially in CRA deserts. Similarly, benchmarks may be very high in CRA hotspots but not reflective of the actual community development needs.

Question 46. How should thresholds for the community development financing metric be calibrated to local conditions? What additional analysis should the Board conduct to set thresholds for the community development financing metric using the local and national benchmarks? How should those thresholds be used in determining conclusions for the Community Development Financing Subtest?

As noted in the ANPR, there is currently little information on prior period community development loans, on financing activities in broader statewide and regional areas, or on activities in many smaller cities and rural areas. It is difficult to determine how to develop those thresholds without additional data and analysis. OFN agrees with the Board that it is necessary, at least initially, to treat the thresholds as a general guideline to help evaluate a bank's community development financing metric until more data is available.

Question 47. Should the Board use impact scores for qualitative considerations in the Community Development Financing Subtest? What supplementary metrics would help examiners evaluate the impact and responsiveness of community development financing activities?

OFN supports the use of impact scores as a part of the qualitative evaluation of a bank's community development activities. In particular, we support providing an impact score for each community development loan and investment individually, as some activities are far more impactful than others. Impact scores can be used to account for responsiveness, innovation, and complexity. The proposal recommends a scale of one to three to measure impact but does not provide sufficient detail about which activities would qualify for a one, two, or three as an impact score. The Board should provide examples and more detail about the types of projects that would be considered at each level of impact.



Question 48. Should the Board develop quantitative metrics for evaluating community development services? If so, what metrics should it consider?

No. Community development services are difficult to quantify but are important and should receive qualitative consideration on the community development test.

Question 50. Should volunteer activities unrelated to the provision of financial services, or those without a primary purpose of community development, receive CRA consideration for banks in rural assessment areas? If so, should consideration be expanded to include all banks?

No. Banks should only receive credit for volunteer activities directly related to the provision of financial services or that have a community development purpose. Community development services should be related to financial services or the regulatory definition of community development (including affordable housing and economic development).

While OFN understands that opportunities for offering community development are limited in rural areas, OFN agrees with NCRC's recommendation that the Board should use the current definition of community development services in rural areas to encourage banks to offer services such as financial education directly through its branch network if the area lacks a nonprofit organization or other established means of offering community development services. Examiners can use performance context to adjust for any specific local challenges to delivering community development services.

Question 52: Should the Board include for CRA consideration subsidized affordable housing, unsubsidized affordable housing, and housing with explicit pledges or other mechanisms to retain affordability in the definition of affordable housing? How should unsubsidized affordable housing be defined?

CRA should continue to support investment in the production and preservation of affordable housing regardless of subsidy. CRA is a critical tool to incentivize bank participation in subsidized affordable housing and that should absolutely consider. CRA consideration should also extend to unsubsidized or naturally occurring affordable housing (NOAH). Affordable rental housing without government assistance and income restrictions should be given favorable CRA treatment based on rent levels after renovation, rather than verification of tenant incomes.

Preserving NOAH can be a way to protect residents of rapidly changing neighborhoods from displacement and therefore should not be limited based on the income of the neighborhood. OFN agrees with Housing Partnership Network that it is appropriate to give CRA credit for naturally affordable housing in LMI areas if the majority of the units have affordable rents. Credit should also be provided for naturally occurring affordable housing in middle or upper income geographies if at least 80% of the units have affordable rents.



Question 54: Should the Board specify certain activities that could be viewed as particularly responsive to affordable housing needs? If so which activities?

OFN recommends that the Board consider specifying the preservation of existing affordable housing as an activity that is particularly responsive to affordable housing needs. In addition, to promote investment in affordable housing and set benchmarks, OFN recommends the Board collect data on whether banks have increased, maintained, or decreased originations of affordable housing loans and other preferred affordable housing activities significantly at the bank level relative to the prior assessment period.

Section VIII - Community Development Test Qualifying Activities. Questions 52-72

Question 56. How should the Board determine whether a community services activity is targeted to low- or moderate- income individuals? Should a geographic proxy be considered for all community services or should there be additional criteria? Could other proxies be used?

A geographical proxy (such as whether the facility or activity is in a LMI census tract) is appropriate for determining whether a community facility such as a homeless shelter or a health care facility supports LMI communities. In addition, the current guidelines stipulating that 50% or more of the recipients of a federal or non-federal government program are LMI individuals is appropriate to determine if the community service benefits LMI people. OFN also supports the Board's proposal to use Pell Grants and federal disability programs to measure whether community services benefit LMI and underserved populations.

Question 57. What other options should the Board consider for revising the economic development definition to provide incentives for engaging in activity with smaller businesses and farms and/or minority-owned businesses?

OFN agrees with the Board that community development activities that support minority-owned, women-owned, and other small businesses with revenues of less than \$1 million should receive CRA credit. To encourage additional activity with the smallest businesses, the Board should remove requirements that the businesses create jobs for LMI people. Sole proprietorships make up more than three quarters of all small businesses – and businesses owned by people of color are more likely to be sole proprietorships.

Question 58. How could the Board establish clearer standards for economic development activities to “demonstrate LMI job creation, retention, or improvement”?

OFN recommends the Board consult with other federal agencies, in particular the CDFI Fund, on documentation of job creation, retention or improvement. CDFI recipients of financial assistance from the CDFI Fund are required to document and report on job creation associated with their



small business loans. The CDFI Fund's Transaction Level reporting provides guidance on how to calculate job-related data points – including permanent jobs, temporary jobs, construction jobs.⁷

QUESTION 61: What standards should the Board consider to define “essential community needs” and “essential community infrastructure,” and should these standards be the same across all targeted geographies?

OFN agrees with LIIF that the definition of “essential community needs” and “essential community infrastructure” should include a primary purpose of community development, as well as a primary benefit to LMI people. Large infrastructure projects with minimal benefits for local communities may crowd out more impactful activities given the size and availability of such infrastructure projects. Developing standard criteria and definitions across geographies is helpful but the extent to which activities revitalize and stabilize LMI communities will depend on performance context.

Question 62. Should the Board include disaster preparedness and climate resilience as qualifying activities in certain targeted geographies?

Yes. The Board should also consider the impact of environmental racism and provide additional consideration for activities that support communities of color and low- and moderate-income communities at risk of severe impacts of climate change.

Question 64. Would providing CRA credit at the institution level for investments in MDIs, women-owned financial institutions, and low-income credit unions that are outside of assessment areas or eligible states or regions provide increased incentives to invest in these mission-oriented institutions? Would designating these investments as a factor for an “outstanding” rating provide appropriate incentives?

The proposed evaluation framework – providing qualitative consideration for moving from satisfactory presumption to outstanding rating - is insufficient to motivate investments into these institutions. Incorporating support for MDIs, women-owned financial institutions and CDFIs into CRA exams would be a more rigorous and objective way to support these institutions and elevate their importance.

OFN recommends consideration of support for CDFIs and MDIs in the quantitative evaluation of banks in their assessment areas if activity occurs within the assessment area. Activities occurring outside of a bank's assessment area should be incorporated into institutional or state-level community development evaluations.

⁷CDFI Fund, “CDFI Transactional Level Report Data Point Guidance September 2020”, Accessed February 1, 2021. <https://www.cdfifund.gov/sites/cdfi/files/documents/8.-cdfi-tlr-guidance-sept-2020.pdf>



Question 65. Should MDIs and women-owned financial institutions receive CRA credit for investing in other MDIs, women-owned financial institutions, and low-income credit unions? Should they receive CRA credit for investing in their own institutions, and if so, for which activities?

Yes. MDIs, women-owned financial institutions and CDFI banks should receive CRA credit for investments in other MDIs, women-owned financial institutions, and low-income credit unions and CDFIs, especially those located in and/or serving communities of color.

Question 66. What additional policies should the Board consider to provide incentives for additional investment in and partnership with MDIs?

OFN recommends the Board highlight and disseminate best practices and innovative examples of support for MDIs, women-owned financial institutions, low-income credit unions and CDFIs. The Board should make publications and other tools available on its website and those of the Federal Reserve Banks.

Question 67. Should banks receive CRA consideration for loans, investments, or services in conjunction with a CDFI operating anywhere in the country?

Yes. OFN strongly supports the Federal Reserve's proposal to allow automatic CRA credit for qualified activities in conjunction with certified CDFIs located anywhere in the country, even outside of the bank's assessment area. However, the current placement in the evaluation framework is not necessarily sufficient to motivate investment. Activities undertaken in conjunction with a CDFI should count as part of the community development test – not just receive qualitative consideration for moving from satisfactory presumption to outstanding rating.

Similar to the recommendations for MDIs, investments into CDFIs must be meaningful to ensure they reach historically overlooked communities. Banks should get additional credit for working with CDFIs based in or serving designated areas of need and CDFIs serving communities of color, and for providing equity or equity equivalent products. Banks should also receive consideration for activities in conjunction with NeighborWorks organizations.

Question 69. Should the Board expand the geographic areas for community development activities to include designated areas of need? Should activities within designated areas of need that are also in a bank's assessment area(s) or eligible states and territories be considered particularly responsive?

OFN supports the Board's proposal that banks get CRA credit for community development activities in a newly created "Designated Areas of Need", without regard for a bank's assessment areas. However, the Fed must do more to ensure these investments reach the intended communities. The CRA credit provided for investments in "designated areas of need" must be given enough weight to incent investments and the designated areas of need must be correctly defined.



- Evaluation Framework – The evaluation framework must create enough incentive for banks to conduct activities in areas of designated need. In addition, the evaluation must take into account both people and place – ensuring the investments actually reach low-income people and people of color living in these designated areas. Activities that are deeply targeted or highly impactful should receive additional consideration or higher impact scores.
- Defining Areas of Designated Need - While the list of criteria proposed is a good start, there are still concerns that the broad definitions will result in CRA activity remaining concentrated in more populous or urban areas, leaving rural and Native communities without investment. Reaching communities of color as an area of designated need must be a priority. The Board should also annually publish and update a list of designated areas of need and make public the criteria for adding and removing areas from the list.

Question 71. Would an illustrative, but non-exhaustive, list of CRA eligible activities provide greater clarity on activities that count for CRA purposes? How should such a list be developed and published, and how frequently should it be amended?

Inconsistent decisions on the part of examiners and a lack of transparency can leave bankers and stakeholders guessing about what qualifies for CRA credit and how much credit an activity will receive. We appreciate the attempt to add more consistency to CRA rules by being clearer about what counts for CRA.

The transparency embraced by providing and updating an illustrative list of CRA qualifying activities is welcome. A public list of CRA eligible activities provides clarity and certainty, helping banks make better investment decisions without waiting years after engaging in a transaction to find out if an activity qualifies for CRA credit. The list of CRA eligible activities can also provide additional guidance for impact scores, how certain activities might be scored by examiners and encourage banks to engage in responsive and innovative activities.

Question 72. Should a pre-approval process for community development activities focus on specific proposed transactions, or on more general categories of eligible activities? If more specific, what information should be provided about the transactions?

Both. The Board should provide guidance on broad categories of eligible activities but also, where possible, include examples of specific transactions within those categories. For example, the Board could pre-approve pandemic related small business lending activities as eligible for CRA credit, and then provide the specific example of banks providing lines of credit to CDFIs to make Paycheck Protection Program loans as an eligible community development activity.

Section X - Ratings. Questions 79-99

Question 79. For a bank with multiple assessment areas in a state or multistate MSA, should the Board limit how high a rating can be for the state or multistate MSA if there is a pattern of persistently weaker performance in multiple assessment areas?



Yes. A bank that underperforms across multiple assessment areas in the state should not be able to receive a high rating at the state or MSA level. The appropriate threshold (e.g., weak performance in 20 percent of assessment areas) should be determined based on local conditions and performance context.

Question 80. Barring legitimate performance context reasons, should a “needs to improve” conclusion for an assessment area be downgraded to “substantial non-compliance” if there is no appreciable improvement at the next examination?

Yes. Banks that consistently fail to improve performance on CRA exams should be downgraded.

Question 81. Should large bank ratings be simplified by eliminating the distinction between “high” and “low” satisfactory ratings in favor of a single “satisfactory” rating for all banks?

No. The “high” and “low” satisfactory threshold should remain in place. This is particularly important as 98 percent of banks currently score at least “Satisfactory” on their exams, yet clearly there is wide variance in their levels of activity and its effectiveness. These additional categories help differentiate bank performance.

Question 82. Does the use of a standardized approach, such as the weighted average approach and matrices presented above, increase transparency in developing the Retail and Community Development Test assessment area conclusions? Should examiners have discretion to adjust the weighting of the Retail and Community Development subtests in deriving assessment area conclusions?

The proposal to assign a bank’s overall rating on the Retail Test and Community Development Test by using a weighted average of each of the bank’s assessment area-level conclusions is a good reform. OFN strongly supports eliminating the designation of full- and limited-scope assessment areas in the evaluation process and agrees that a bank’s overall rating should reflect its performance in all of its local communities. This change may also increase investments in rural communities that previously may have only received a limited scope exam.

Examiners should still retain some flexibility to adjust weighting based on local market conditions and performance context, including evaluating the role a bank plays in a market. A bank may make only a small volume of loans in a particular assessment area as a portion of its total activity, but that lending could be the overwhelming source of financial services in that area.

Question 83. For large banks, is the proposed approach sufficiently transparent for combining and weighting the Retail Test and Community Development Test scores to derive the overall rating at the state and institution levels?

Community development and retail activities should be evenly weighted. While mortgages, consumer loans, small business and small farm loans are of critical importance, community



development activities are also pivotal in addressing the credit needs of low and moderate income communities. Further, as nonbank mortgage and small business lending companies without CRA obligations continue to capture more market share from banks, it can limit market opportunity for banks in those sectors. Allowing equal weighting for retail and community development activities may spur additional investments in activities addressing workforce development, economic development, and affordable housing needs.

Question 86. For small banks, should community development and retail services activities augment only “satisfactory” performance, or should they augment performance at any level, and if at any level, should enhancement be limited to small institutions that serve primarily rural areas, or small banks with a few assessment areas or below a certain asset threshold?

Retail and community development services are important, but banks must also be focused on lending activities. Services activities should be able to augment satisfactory lending performance, but a bank that is not performing well in its lending should not be able to receive a satisfactory or outstanding rating based off services.

Question 88. Should consideration for an outstanding rating prompted by an investment or other activity in MDIs, women-owned financial institutions, and low-income credit unions be contingent upon the bank at least falling within the “satisfactory” range of performance?

Yes, as well as activities undertaken with CDFIs. A bank should not be considered for an outstanding rating without at least reaching satisfactory performance, regardless of the activities undertaken with MDIs, women-owned financial institutions, and low-income credit unions and CDFIs.

Question 89. Would it be helpful to provide greater detail on the types and level of activities with MDIs, women-owned financial institutions, and low-income credit unions necessary to elevate a “satisfactory” rating to “outstanding”?

Yes, similar to the list of CRA qualifying activities, it would be helpful to have illustrative examples. However, it is important to clarify that the activities are examples and not the only activities that might qualify, and to leave some flexibility for banks to develop partnerships that meet the needs of communities.

Section XI - Data Collection and Reporting. Questions 91-99.

Question 91. Is the certainty of accurate community development financing measures using bank collected retail deposits data a worthwhile tradeoff for the burden associated with collecting and reporting this data for all large banks with two or more assessment areas?



Yes. The community development data available now is extremely limited, making it difficult to determine the appropriate metrics for the community development test benchmarks. The short term burden banks might experience in adjusting to new data collection is far outweighed by the public benefit of having more accurate community development data.

Question 95. Are the community development financing data points proposed for collection and reporting appropriate? Should others be considered?

OFN supports NCRC's recommendation that similar to HMDA and small business data, the community development lending and investment data must be submitted annually and publicly by banks on a census tract, county level, and assessment area level.

Banks should also have to provide more granular data on their community development activities. For example, banks are currently not required to report on the community development lending or investments undertaken in concert with a CDFI. This makes it difficult to track, measure and assess this activity. The community development data should also be reported separately for the major categories of community development including affordable housing, small business, community facilities, etc.

Question 96. Is collecting community development data at the loan or investment level and reporting that data at the county level or MSA level an appropriate way to gather and make information available to the public?

OFN recommends collecting community development data at the loan or investment level and reporting it at the county level or metropolitan statistical area (MSA) level. When possible, data should be reported at the census tract level, which is valuable in identifying racial disparities in communities of color.

Question 97. Is the burden associated with data collection and reporting justified to gain consistency in evaluations and provide greater certainty for banks in how their community development financing activity will be evaluated?

The existing CRA reporting system makes it difficult for the public to analyze CRA performance data and assess how well banks are meeting the needs of communities. CRA reports on an individual bank's performance are very complex and rarely timely, limiting their usefulness. OFN supports providing greater public access to CRA data, exams, and timely publication of bank evaluations in a user-friendly format, as well as the enhanced reporting on community development activities.

The data collection and reporting would not be too burdensome for banks as many banks are already reporting some data for public welfare investments on a loan or investment level. Other large banks are also reporting aggregate community development lending, so loan or investment level data should be relatively accessible.



Question 99. Possible data points for community development services may include the number and hours of community development services, the community development purpose, and the counties impacted by the activity. Are there other data points that should be included? Would a Board-provided template improve the consistency of the data collection or are there other options for data collection that should be considered?

Yes, these are the appropriate data points for evaluation of community development services. OFN agrees with NCRC that a template would be valuable for collecting this information because CRA exams are currently inconsistent regarding which of these data points are included on exam tables. The community development purpose is critical because it would help an examiner use impact scores to evaluate the quality and responsiveness of the services.

Conclusion

OFN appreciates the opportunity to comment on potential changes to the CRA regulatory framework. Please do not hesitate to contact me at dwilliams@ofn.org or 202.868.6922 with any questions or for more information.

Thank you,

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