

# BOSTON PRIVATE

▫ COMMUNITY INVESTMENT ▫

**Submitted via [www.federalreserve.gov](http://www.federalreserve.gov)**

February 16, 2021

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

**RE:                   Docket ID R-1723; RIN 7100-AF94**

**Notice: Community Reinvestment Act -- ANPR**

Dear Ms. Misback:

I am writing on behalf of Boston Private, a bank and wealth management company. Below are our comments to the Board of Governors of the Federal Reserve System (the “Board”) on the Advance Notice of Proposed Rulemaking (ANPR) regarding the Community Reinvestment Act (CRA).

Thank you for the opportunity to comment. We appreciate the Board’s interest in seeking to modernize CRA regulations, especially related to addressing technological and other advances. We appreciate the objectives identified: more effectively meeting the needs of low- and moderate-income communities and addressing inequities in credit access; increasing clarity, consistency and transparency; tailoring supervision to reflect size, business models, local market needs and opportunities across business cycles; and recognizing that CRA and fair lending responsibilities are mutually reinforcing.

Boston Private values the Community Reinvestment Act (CRA), which has been responsible for trillions of dollars of investment in banks’ local communities in the more than forty-five years it has been in place, with a particular focus on low- and moderate-income neighborhoods and people. CRA has promoted access to capital and equitable treatment and encouraged banks to invest in the people and neighborhoods where they do business, helping to create more thriving and healthy communities that are essential to the success of the economy.

In the last five years (2016-2020), Boston Private has lent or invested approximately \$1.5 billion in community development qualifying activities promoting affordable housing, economic development, human and social service and neighborhood revitalization efforts, and loans for new homebuyers and small businesses.

We design our community investment initiatives to build wealth in our communities for low- and moderate-income people and communities that also responds to the racial wealth gap. The bank considers CRA to be good business resulting in well performing assets that contribute to our financial success while also contributing to the economic health of our communities and the people who live and work in them. Integral to the law is that community development lending, investments and retail loans by financial

institutions must be consistent with ‘Safe and Sound’ principles of operation, an essential aspect of the success of CRA.

We highly recommend that the Board, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency work toward a joint CRA rule. CRA and banks’ performance will be strengthened because of this consistency; implementation and oversight will be more effective and efficient for the Agencies.

Boston Private supports the recommendations of the *National Association of Affordable Housing Lenders (NAAHL)* and the *American Bankers Association (ABA)*. We have been active participants in their efforts to respond to the ANPR.

We share NAAHL’s and the ABA’s recommendations and wish to highlight some of the areas that are most important to us. We are appreciative of the efforts of the Board as it seeks to strengthen CRA.

**Boston Private has the following comments in response to the questions present in the ANPR:**

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

Boston Private is appreciative of the CRA modernization objectives as identified in the ANPR. They are highly relevant to the continued success of CRA and its promotion, through banks, of the economic health and vitality of low- and moderate-income (LMI) people and communities. This, in turn, benefits the nation’s economy, financial system, society, communities where banks do business and the banks themselves.

CRA is unique in incentivizing covered financial institutions to find innovative ways to do good business and also promote the inclusion of those who are traditionally underserved, focusing on LMI people and communities. It takes into account business models, local market needs and opportunities across business cycles.

Through steps to modernize it consistent with today’s advances in technology, greater expansion and use of the internet and dramatic changes in work/life situations (as the Covid Pandemic has shown us), CRA reform should seek to be more forward-looking to incorporate CRA more effectively into the banking of the future. As the Board considers Assessment Area and other modifications, it should continue to strive to create a more flexible framework that expands as the industry does.

Modernization should also include the implementation of CRA-like regulations to cover other financial institutions that increasingly compete directly with banks, often appear to be indistinguishable from banks and yet do not have similar CRA obligations to invest in LMI people and communities. The Massachusetts CRA-like regulations for mortgage companies are an example of the successful implementation of such a regulation.

*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?*

The Board's objectives of more effectively meeting the needs of LMI communities and addressing inequities in credit access should be expanded to promote racial equity and wealth building to reduce significant racial disparities in access to credit that have long existed and contribute to the nation's racial wealth gap. Although LMI and minority status are far from the same, there is substantial overlap. Yet CRA addresses race only peripherally as it relates to evidence of racial discrimination by lowering a bank's CRA rating. Fair lending rules will need to be modified to facilitate inclusion of race as "a continuing and affirmative obligation" by banks through CRA to serve their entire communities, and should not be limited to the fair lending mandate to do no harm. CRA can contribute meaningfully to improving racial equity through encouraging lending, investments and services that promote wealth building and promote equity for Black and other racial minority group populations. The Board should work with banks and others to identify qualifying activities that promote racial equity and maintain its focus on LMI people and communities where there is overlap.

***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 requirement of large banks to delineate facility-based assessment areas (AA) as one or more contiguous counties should not be a requirement but instead should be subject to flexibility and the performance context of the bank. The use of whole counties may be appropriate in some states and in some cases, but may not be appropriate in others. Requiring the use of whole counties may not be consistent with the capacity of the bank to address the credit needs of entire counties that may more appropriately include smaller political subdivisions consisting of whole census tracts. Small banks will be especially challenged by this requirement if they convert to large banks and are required to expand their AAs beyond their capacity to respond to the credit needs of the newly required county-based expansion.

***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?*

Boston Private supports a new evaluation framework, as generally presented by NAAHL in its response to the ANPR, which can include activity beyond facility-based AAs for the full continuum of large retail bank business models as the industry and banks evolve. We do not support the establishment of new deposit or lending AA that require banks to establish multiple AAs based on changing patterns of deposits and loans. Establishing multiple non-facility-based AAs results in substantial new obligations for banks that likely will not be within a bank's capacity to respond adequately on a local level and may result in shifting AAs regularly or dis-incenting such activity to preclude the need to establish more AAs. We agree with the Board that deposit-based and lending-based AAs will generally favor areas with higher populations, but it likely will not result in more activity in underserved areas. An important aspect of CRA modernization should be to reach broader markets rather than promote CRA hot spots. We agree that CRA should harness banks' capacity to move capital to where it is needed and where it will be productively deployed.

Recognizing CD lending, investment and service activities outside AAs without restriction, while also requiring responsiveness to AAs, will be beneficial to all communities. CD activities by definition are

targeted to LMI people and communities. Retail lending in LMI areas and to LMI borrowers are better served locally in facility-based AAs; however, if a bank does a substantial number (not dollar value) of retail loans outside its facility-based AAs, it should be evaluated for responsiveness to LMI people and areas.

***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?*

We agree with NAAHL that all branchless banks, including branchless internet banks and branchless wholesale and limited purpose banks should have a nationwide institution-level evaluation that reflects their activities nationwide instead of AAs, which are inherently local. These banks collect deposits and provide financing and services nationwide. Wholesale and limited purpose banks, and industrial loan companies, should also have the option to be evaluated under a nationwide AA area approach.

***Question 10.** How should retail lending and community development activities in potential nationwide assessment areas be considered when evaluating an internet bank's overall CRA performance?*

Please see response to Question 8.

***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?*

Combining LMI categories is appropriate for purposes of the presumption of "satisfactory." Local communities face different market conditions that affect banks reaching each category consistently in different timeframes, at different market cycles, in high cost markets, during economic downturns and in communities where there is a significant lack of housing affordable to purchase.

***Question 17.** Is it preferable to retain the current approach of evaluating consumer lending levels without the use of standardized community and market benchmarks, or to use credit bureau data or other sources to create benchmarks for consumer lending?*

The current approach should continue to apply.

***Question 33.** Should the Board establish a major product line approach with a 15 percent threshold in individual assessment areas for home mortgage, small business, and small farm loans?*

A 15% threshold for a major product line of home mortgage, small business and small farm loans may be an acceptable requirement, although this may require further research by the Board to ensure appropriateness, for example as it relates to performance context.

Because loan sizes of these retail loans are necessarily smaller, the Board should base the evaluation on the number of loans and not the loan amounts.

***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?*

The Board should combine community development loans and investments under one subtest. Both are critical to feasibility but they may also be different sources in the same project. CRA investment opportunities are more limited as well and many communities may generate few projects requiring investments.

It is critically important that equity investments, such as Low Income Housing Tax Credits, receive special consideration for CRA. These investments expose banks to higher risk than loans, require higher capital reserves, tend to be illiquid and are often technically and financially complex.

***Question 51.** Should financial literacy and housing counseling activities without regard to income levels be eligible for CRA credit?*

Yes. Financial literacy and housing counseling do predominately serve LMI people, but documenting clients' income is often personally intrusive, perceived as offensive or dissuasive by clients, and administratively burdensome.

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

Job creation could be defined to include new businesses and existing businesses that add significantly to their workforce within an LMI community. Where existing businesses are financed, job retention should qualify, although it is not feasible generally for a bank to prove the business would otherwise contract, close, or leave a community without the new financing. Working capital and financing for new capital investment, e.g., in real estate, equipment or intangible property should qualify under job retention even if no new jobs are created, since such financing is often vital to keeping businesses strong.

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

Climate resilience and disaster preparedness should qualify to the extent of their LMI benefit.

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

CDFIs provide important resources for LMI people and communities and banks should receive CRA consideration for lending and investing in CDFIs.

**Question 73.** *In fulfilling the requirement to share CRA strategic plans with the public to ensure transparency, should banks be required to publish them on the regulatory agency’s website, their own website, or both? Would it be helpful to clarify the type of consultation banks could engage in with the Board for a strategic plan?*

We recommend that posting strategic plans on the regulatory agency’s website would facilitate public awareness. It would be helpful to clarify the type of consultation banks could engage with the Board on strategic plans. Since the Board will have to approve or reject a proposed strategic plan, it would be helpful and more efficient for banks to understand in advance how the Board would likely regard a proposed plan.

The Board should also clarify that, while community engagement is important, entering into a community benefits agreement would not be required as a condition of approving a plan.

**Question 74.** *How should banks demonstrate that they have had meaningful engagement with their community in developing their plan, and once the plan is completed?*

The current guidance has worked well.

**Question 75.** *In providing greater flexibility for banks to delineate additional assessment areas through CRA strategic plans, are there new criteria that should be required to prevent redlining?*

A bank with a Strategic Plan should have the flexibility of delineating additional AAs; the bank should provide sufficient data to the Board that the AA would be appropriate. AAs should not arbitrarily exclude areas with high concentrations of racial and ethnic minority populations.

**Question 76.** *Would guidelines regarding what constitutes a material change provide more clarity as to when a bank should amend their strategic plan?*

Guidance would be helpful, including timeframes for bank submissions and agency reviews, recognizing that more material changes might involve longer timeframes.

**Question 77.** *Would a template with illustrative instructions be helpful in streamlining the strategic plan approval process?*

A template would be helpful for some banks, but it should not be mandatory. The Board should retain the current provision (in 12 CFR 228.21(b)) that the Board continue to “consider whether to approve a proposed strategic plan in the context of” the factors listed in Section 228.21(b) (1)-(7), commonly referred to as the “performance context” factors.

**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?*

If the distinction between “high” and “low” “satisfactory” ratings is eliminated, banks will have little clear incentive to strive harder when a lesser effort will achieve the same “satisfactory” rating. The result would be less community reinvestment.

***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?*

Collection and reporting of CD data at the county level will be necessary to provide data to the public, especially since levels of CD activity will, appropriately, vary among counties within an MSA. However, it is important to note that many large banks should be allowed to delineate MSA-wide AAs and performance for these AAs should be evaluated for the entire AA and not individual counties within the AA.

Activities undertaken through third-party financing funds, such as CDFIs and LIHTC funds, that intend to serve a broader area that includes a bank’s AAs but have not yet fully deployed their capital could be provisionally allocated among a bank’s AAs on any reasonable basis. A key point here is that the full amount would be recognized; the only, temporary, uncertainty would be how the credit would be distributed at the AA and institution levels.

Thank you for the opportunity to comment on CRA. We are grateful for your initiative on this valuable and effective regulation. Please let us know if we can be helpful in your ongoing efforts to modernize CRA regulations.

Sincerely,



Esther Schlorholtz  
Director of Community Investment  
[eschlorholtz@bostonprivate.com](mailto:eschlorholtz@bostonprivate.com)