February 16, 2021

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

Submitted electronically via regs.comments@federalreserve.gov

RE: **Community Reinvestment Act; Docket No. R-1723 and RIN 7100-AF94**

To Board of Governors of the Federal Reserve System,

Thank you for the opportunity to publicly comment on the Board of Governors of the Federal Reserve System's (Board) Noticed of Proposed Rulemaking for Community Reinvestment Act reform. These are not normal times in which we find ourselves. We face multiple crises of racism and White supremacist insurgency, climate chaos, the COVID-19 pandemic, untenable economic inequality, and fraying social fabric. The good news is we have this tool – banks – that can serve as a key part of the solution to these structural challenges. Banks hold an outsized amount of power in our economy and society in part because they decide which individuals, communities, businesses, and nonprofits get access to loans and other bank products and services. With this power comes great responsibility, and the CRA is a crucial mechanism by which to ensure bank accountability and to assess how much financial Institutions (FI) are a part of the solution, as opposed to part of the problem. CRA enables banks in partnership with communities they serve to address some of the root causes of our collective crises by regulating how resources and investments from banks flow in our society. By being deliberate about these investment flows, we can make progress on a large scale to facilitate economic prosperity, wealth-building, positive health and wellbeing outcomes, not to mention full participation in the banking system.

About Beneficial State Bank and Beneficial State Foundation

Beneficial State Bank is a triple-bottom-line, values-based community development bank with branches in California, Oregon, and Washington. As a B Corporation, we operate with a triple-bottom-line, which means we equally prioritize people, planet, and profit. Our goal is to optimize positive outcomes for people (customers, employees, and communities in which we operate) and our shared planet, instead of maximizing profits at their expense.

We were established at the nadir of the financial crisis in 2008, recognizing the outsized role banks play in determining outcomes in our economy and society, and the need for financial institutions to be truly aligned with the interests and financial wellbeing of their customers. For over a decade, we have provided fair and transparent banking services to help people, businesses, and nonprofits align their money with their values. We believe that the banking industry should work for everyone, regardless of wealth, income, race, gender, nationality, age, religion, or marital status. Alongside partners, we advocate for a fair, inclusive, and just banking system. We believe community banks and community development financial institutions (CDFIs) are an essential part of this picture, and we work in concert with other CDFI banks and values-based banks to ever-strengthen our impact measurement and evaluation so that we can help hold the entire industry to higher standards.

Beneficial State Bank commits at least 75% of our loan portfolio to those that have a positive social or environmental impact, such as affordable housing, economic development, women-owned businesses, social justice nonprofits, environmental sustainability, and employee-owned businesses. The remaining 25% of our loans cannot work against our mission and includes projects like non-harmful commercial real estate loans. We aspire to 'do no harm,' and we ask for the same (in words and in action) from other banks. Beneficial State Bank is wholly owned by not-for-profit organizations. Its primary owner is Beneficial State Foundation whose mission is to change the banking system for good. Our ownership structure ensures we have no private shareholders seeking to maximize profits at the expense of our communities or our natural environment. We believe banks must be transparent about our social and environmental impact. We publish the impact of our lending so depositors can see what their deposits are funding, and we share detailed explanations of our financials so that a lay reader can understand them.

The Rulemaking Process

We agree with the Board that CRA rules can and should be improved, yet we have concerns about the divergent ways in which the federal agencies are going about the reform process. We urged the OCC and FDIC to refrain from implementation of the general performance standards, and were dismayed when the OCC chose to go alone in implementing its CRA proposal. We encourage and will continue to encourage the federal agencies to achieve interagency consensus before issuing a joint ruling. A joint ruling is the only workable path forward. We appreciate the Board's desire to bring all the regulatory agencies to the table for a consistent approach.

Objectives and Background (ANPR Sections I and II; questions 1 and 2)

The Board begins with two important groundwork-laying questions:

1. Are the most important CRA modernization objectives captured?
2. What modifications would strengthen CRA regulatory implementation to address ongoing systemic inequity in access to credit?

These questions are foundational to this entire project in order to keep our eyes on reinvestment goals. Below we state added objectives and modifications, as both a bank and a foundation advocating for racially equitable community economic development lending, for CRA reform. In addition to the Board's objectives expressed in the proposal, we add that the following should be key considerations:

1. Name racial equity as a modernization objective. CRA guidelines should explicitly include racial anti-discrimination as a key criterion to determine what counts and how. Financial institutions (FIs) should get extra credit for policies, products, or programs that explicitly serve people of color (POC) and others who suffer longstanding systemic inequity – with the purpose of promoting economic equality.
2. Prioritize LMI individuals and people of color instead of place. The greatest emphasis should be on the person, not the place. Ownership as an overarching principle or criteria could go a long way to reforming CRA as a tool to address redlining and disinvestment in communities of color. CRA should incentivize banks to loan to borrowers who are LMI, of color themselves, or who have a commitment to support LMI and POC people by providing:
    a. Dedicated affordable housing
    b. Homeownership opportunities
    c. Quality jobs that are targeted to or can reasonably be expected to be available to local residents who are LMI and POC
    d. Employee ownership via business ownership shares or cooperative business structure
    e. Products and services that support their needs
3. Products must meet non-predatory standards to qualify.
4. Maintain emphasis on performance context and community input.
5. Real penalties (including double downgrades) for harming communities.
6. Align CRA and CDFI reporting. CRA and CDFIs share the same goal of community development in underserved markets, but reporting requirements differ greatly. CRA and CDFI could work in tandem to create a CRA examination tailored to CDFIs, reducing the reporting burden for CDFIs and freeing resources to continue to invest directly into communities.
7. Mandate demographic data collection of all loans using the Dodd-Frank Section 1071 framework.

What follows are responses to and commentary on selected questions in the Board's ANPR where we feel we can add value, through additional considerations, a balanced approach, and a unique perspective as a both a bank and an advocacy nonprofit organization. We have indicated the ANPR topic and related questions for reference.

Assessment Areas (ANPR Section III)

Facility-based assessment areas

Loan production office-based and deposit-taking ATM-based assessment areas (ANPR questions 4-7)

Basing assessment areas on a whole county will provide clarity to small banks about where they are evaluated. Examiners should use the county designation for data analysis (to look at the distribution of loans) as well as the qualitative performance context to determine if the bank is meeting the needs of its communities and to determine whether discrimination is occurring within the areas the bank truly serves within that county. We don't believe the facility-based assessment area delineation requirements need be tailored to bank size. Examiners don't need to assess an area smaller than at the county level.

As for loan production offices (LPOs), they should be included in the examination process if they meet a substantial portion of a bank's lending activity. We agree with the Board's suggestion to determine this materiality based on whether or not LPO products constitute a major product line.

The issue of limited service trust offices deserves clarity. It is unacceptable for a bank to skirt CRA rules by explicitly dedicating resources only to wealthy customers (as has been detailed in The Center for Investigative Reporting's seminal research on modern-day redlining). If a bank is taking deposits and engaging in bespoke customer service for high income customers, it should be required to also serve LMI communities and communities of color with their banking needs.

The ANPR states that "if deposits from deposit-taking ATMs generate considerable bank deposits or comprise a comparatively large market share within a community, it may still be appropriate to delineate assessment areas around them." We advocate to change "it may still be appropriate," to "it is necessary," as in, if the bank takes a considerable amount of deposits from an LMI community or a predominantly community of color, it should also have to make loans and investments there. If this is the case, the ATM is treated like a branch and an assessment area must be designated around it.

Deposit-based or lending-based assessment areas for certain large banks (ANPR question 8)

New deposit- or lending-based assessments areas should apply to any bank that has a substantial majority of loans outside of its assessment area. The Board's 75% baseline seems appropriate.

If a financial institution is lending across the country and doesn't have a geographic footprint, it has the opportunity to fill in where there are credit need gaps or CRA deserts. FIs should be required to drive investments to target markets (tribal areas, underserved areas, CRA deserts, as mentioned, etc.) Generally, we support FIs receiving credit for legitimate and high-impact activities outside of their assessment areas but only up to a certain amount with a cap (for example, 5% of community development activities).

Nationwide assessment for internet banks (ANPR question 9 and 10)

Nationwide assessment areas should not only apply to internet banks. Nationwide assessment areas should also apply to wholesale and limited purpose banks and to industrial loan companies. They should apply to any FI with a small (or no) branch footprint and a large lending geography.

A state level assessment could be appropriate when evaluating overall CRA performance. Examiners could look at percentage of deposits by state or percentage of loans by state to determine where community development activities must take place. A state-based approach is flexible, but banks should still be incentivized to focus on the CRA desert and credit need gaps (as outlined above in question 8).

Tailoring Evaluations Based on Bank Size and Business Model (ANPR Section IV; questions 11-13)

The small bank threshold should remain closer to the current amount of $326 million in assets. Small banks still engage in community development lending and activities that should be counted early on. The challenge with these considerations is there are many factors that determine what "amount" is meaningful, including local context, number of loans, number of loan dollars, proportionality, peer comparisons, market benchmarks. Acknowledging these complexities, we advocate most importantly for banks, regulators, and community stakeholders to be in constant and continued conversation. Banks should be engaging directly and often with their communities to do the work that is required to meet CRA obligations and community development objectives.

Retail Test: Evaluation of Retail Lending and Retail Services Performance (ANPR Section V)

The Board is moving in the right direction to improve CRA by maintaining separate scoring for retail and community development activities, the criteria for both being so varied depending on the type of lending, product, or service. Generally, we are in favor of the Board's transparency around benchmarks and metrics. We are also very much in favor of the use of dashboards to track progress.

Retail services subtest evaluation approach

Retail lending distribution metrics for presumption of "Satisfactory" (ANPR question 16)

Low and moderate income categories should not be combined when calculating the retail lending distribution metrics for a presumption of "Satisfactory." Performance should be emphasized within each category, given there needs to be a specific focus on lower income individuals, so they are not excluded or deprioritized. CRA obligations should address both low *and* moderate income communities. In fact, the more we can design community development activities to be targeted toward those most impacted by disinvestment, the greater the benefits will be to collective society.

Incorporating target performance context and qualitative aspects of performance into the retail lending performance ranges approach (ANPR question 23)

The Board notes that stakeholders have expressed support for considering performance context and other qualitative aspects in CRA examinations. There are specific kinds of activities, related to certain types of retail lending, that should be taken into consideration when considering the performance ranges, and specifically the difference between "Satisfactory" and "Outstanding." These are both qualitative and quantitative. As we stated in the objectives, CRA cannot only be about access to banking products and services, but about access to *high-quality* products and services. Access to high-quality credit is a key component of a successful financial life for many people to weather a financial shock, smooth income fluctuations, build positive credit history, or facilitate a purchase.

Auto loan borrowers, for instance, are often targeted by predatory practices. Banks can receive higher performance ratings for engaging in a material amount of high impact lending that restructures the product in a positive way to be consumer-friendly. In the context of CRA, qualitative aspects around the quality of lending products (including consumer lending) should be considered when determining performance ratings, just as multifamily loans are that are deed-restricted are double counted.
Specific activities and metrics that banks should capture for auto loans, for example, that could determine “Outstanding” performance, include:

- Access: Is the FI providing loans to people who might otherwise not be able to get them?
  - Consider eligibility such as including “sub-prime” borrowers (borrowers who have a low or no credit score) and the use of ITIN in place of SSN
  - Quantitative metric: How many loans is the FI making directly and/or getting pre-approved?
- Borrower profile: What metrics is the FI capturing around who is using the product?
  - Quantitative metric: What percent of borrowers are LMI?
  - Quantitative metric: What percent of borrowers are women or people of color?
- Price and terms
  - How do the FI’s terms compare to the market (favorable/unfavorable)?
  - How much money is the FI saving its borrowers vs. market (interest rate, fees, etc.)?
    - Is the FI’s pricing reflective of a “fair” ROE relative to risk, overhead, etc.?
    - Is the FI’s pricing within a consumer’s ability to repay?
  - How do the FI’s default rates/collection efforts/repossessions/etc. compare relative to (1) FICO (expected risk/default rates) and (2) market?
    - Are collections efforts better for the consumer?
  - Is pricing related to performance, whereby a borrower’s interest rate may decline after a demonstrated period of on-time payments?
  - Is the FI helping borrowers to save money on unwanted add-ons (capping amount financed and/or welcome call checks)?
  - No fair lending disparities (in pricing, terms) between men/women, white/POC borrowers, etc.
- Financial education and disclosures: Is the FI giving people the tools they need to make informed financial decisions?
  - What kinds of financial education and resources are provided? Are disclosures easy to understand? What has the FI done to confirm that disclosures are easy to understand?
- Environmental impact: Is the FI encouraging people and/or making it easier (providing information) for borrowers to purchase vehicles that are better for the environment?
  - Quantitative metric: What types of cars are being financed?
- Dealers: What is the FI doing to ensure good behavior and to mitigate perverse incentives by the dealers it works with?

Delivery systems and branch distribution (ANPR question 24; question 27)

We support the Board's proposed approach to evaluating the distribution of a bank's branches and branch-based services, and especially its emphasis on the usage and impact of products and services delivered via branches or by non-branch channels. We appreciate the clear community and market benchmarks for branch distribution.

We also agree with the Board's proposal to perform a qualitative distribution analysis without the use of community and market benchmarks when a bank has a limited number of branches in an assessment area. Here again we emphasize the performance context, which must be prepared meaningfully and in true partnership with community stakeholders. Earlier in this comment, we discussed LPOs and limited service trust offices, which should be accounted for when considering branch distribution.

Banks should receive consideration for delivering services to LMI consumers from branches located in middle- and upper-income census tracts, if they are able to make the evidence-based case for it. The types of data that banks could provide to demonstrate that those branches primarily serve LMI individuals include:

- Incomes of borrowers;
- End users of commercial loans (nonprofits, for instance, based on mission statements and organization descriptions);
- End users of commercial property and deed restrictions/written rent caps; affordable space for nonprofits serving LMI individuals;
- Loan purpose descriptions.

Deposit products (ANPR questions 29-31)

It is critical that deposit products are examined for how fairly and effectively they benefit low-income customers and other groups disproportionately negatively impacted by bank policies and practices. Banks should be incentivized under CRA to offer retail banking services and products tailored to LMI customers, Black customers, and people of color. Retail banking services are a primary area where LMI customers interact with banks, and CRA has the potential to make an enormous positive impact if it considers the impact of these products when evaluating banks. When banks fail to meet the needs of these customers, they turn to non-bank financial services that overcharge and over-leverage families. A quarter of US households are underbanked or unbanked. A disproportionate percentage of underbanked households in the US are Black (nearly one third, as compared to white households at 14%). Banks should receive CRA credit for delivering products with features designed for these populations who have been left out of the banking system, like those listed in the ANPR such as individual development accounts and accounts with no overdraft fees. In addition, banks' retail services should be examined based on an outcomes approach. Some data points that would be beneficial to determine how responsive deposit products are to the needs of LMI and other consumers (question 29) include:

- How many accounts with safe account features are opened for LMI customers?

- How does this number of openings compare to the rest of the bank's product offering?
- How much are customers saving in fees as compared to check cashers or other non-bank financial services?
- How are these types of accounts marketed relative to other bank products?

Banks should be required to collect demographic information for all accounts in order to assess how these products meet the needs of Black customers and customers of color.
Large banks should be able to provide deposit product and usage data at the assessment area level. Even if geocoding at the assessment area (or county) level is new, it should be doable with a large bank's resources.

Large banks should be required to provide a strategic statement articulating their approach to offering retail banking products. This should be a requirement for not only deposit products, but also for consumer lending.

Retail Lending Subtest Definitions and Qualifying Activities (Section VI)

Determining which loans are evaluated using retail lending metrics

Treatment of home mortgage, small business, and small farm loans (ANPR questions 33 and 34)

A major product line approach with a 10% threshold at the institution level, based on the number of loans, not dollar amount, is a start. But the Board should provide further clarity. The ANPR states that some stakeholders have suggested including contextual information about the bank or it's assessments areas, such as its "market share within the community." We agree that this kind of context is important here. If a bank is large and engaging in many different types of lending, and therefore has a lower percentage of home mortgage, small business, or small farm loans, it should not be allowed to pass on delivering those services to LMI borrowers and to borrowers of color. For instance, if 1% of a bank's lending is in small business, but that equates to a significant number relative to the population and/or to the overall small business lending in that community by all banks, then that bank should be evaluated for service with an LMI and racial equity lens.

Treatment of consumer loans (ANPR questions 35 and 36)

The Board should use a major product line designation based on the dollar volume of consumer lending. This threshold should be 10% at the institution level, just as with mortgage, small business, and small farm loans. We do not advocate for evaluating consumer loans based on dollar amount because we want to make sure that banks are incentivized to do LMI lending based on widespread impact to individual consumers, rather than on a certain dollar amount, which can lead to banks seeking out fewer, larger dollar activities rather than meeting the needs of the communities they serve. Each consumer product type (auto, credit card, etc.) should be treated separately; they should not be evaluated in aggregate.

Small business and small farm thresholds

Small business definition (ANPR question 37)

We believe the Board should use an existing framework rather than establishing a new definition. This consistency of definitions across regulations will help banks to know what qualifies for CRA and target those qualifying activities. That said, the Call Report framework for small business lending is flawed due to the emphasis on loan size as the primary defining factor, rather than the profile of the business receiving the loan. The primary focus should be to drive loan capital to underserved small businesses. In order to effectively accomplish this, we need to better study and understand what types of businesses aren't getting enough bank capital on an ongoing basis. This small business profile should not only be based on revenue, but should also be more inclusive to focus on ownership (people of color, women-owned businesses, cooperatives, etc.), years in business, size (number of employees, revenues, start-up businesses, etc.), and context (type of business, urban vs. rural geography, high-cost areas, etc.). By prioritizing who should receive loans, the CRA will more effectively drive capital towards underserved small businesses and business owners, per its stated objectives.

We do not oppose the loan dollar amount increasing for inflation, however, again, we urge regulators to primarily consider the profile of the business. Banks should be extra incentivized to serve those small business owners from groups that have been (and continue to be) excluded from accessing bank credit.

The Board, CFPB and other agencies must coordinate data collection via Section 1071 of the Dodd-Frank Act which amends the Equal Credit Opportunity Act (ECOA) to achieve ECOA's statutory objectives of preventing discrimination in credit transactions by providing publicly available data on race, gender, and other demographics of small business applicants for credit. In truth, these requirements should exist for *all* types of loans, not only small business loans. Section 1071 could provide the framework for CRA data collection.

Treatment of purchased loans (ANPR question 38)

The Board should not value loan purchases on par with loan originations. Banks should receive less credit for purchasing loans than for originating loans. A bank that receives CRA credit for originating a loan, and then sells it to another bank that also gets credit for that purchase does not align with CRA objectives, and is far too abstracted from the purpose of the law.

Even if loan purchases are evaluated differently, we agree with the Board's proposal for an additional review to help exclude loan churning and loans purchased for the purpose of inflating CRA lending performance. Once again, the purpose of CRA is to increase LMI investments – and should also explicitly be to increase racial equity, as mentioned in the reform objectives – and there is not a direct impact relationship between these repeated repurchases of loans and the communities in which these loans are located. As a part of this review, a bank purchasing loans can make the case if those purchases are for a community development purpose, such as purchasing from a CDFI to free up its balance sheet to make more community-benefitting loans.

Broadening consideration for retail activities in Indian Country (ANPR questions 40-41)

If a bank has satisfied CRA obligations in its assessment area, we agree that a bank's activities in target areas, such as Indian Country (and also banking deserts), may receive CRA consideration. As we've stated before, there should generally be an overall cap as to how much credit banks can receive for community development outside of their assessment areas, which this type of activity would count toward. Here again we advocate that this work be done in deep partnership with the tribes residing in these areas, given Indigenous communities' history of having been targeted by racist policy and excluded from the benefits of CRA. Examiners could evaluate to what extent banks have partnered with Native CDFIs, which are the most prevalent financial institutions serving tribal areas.
We expect the same scrutiny to retail lending to be applied to activities in Indian Country. That means all CRA-eligible retail loans should meet the same non-predatory standards of fairness and affordability.

Community Development (CD) Test Qualifying Activities and Geographies (ANPR Section VII)

Community development financing subtest evaluation approach

Combined consideration of community development loans and investments (ANPR question 42)

We support combining CD loans and investments into one subtest but there must be mechanisms in the regulation to ensure that banks don't only put money into low-impact, easy-to-fill CRA investments.

Impact score for community development financing subtest (ANPR question 47)

With the information given, it is hard to know how meaningful or helpful the impact scores will be. We do think these are heading in the right direction and are preferable over the multiplier concept. First, we advocate for the Board to create some kind of working group in partnership with community stakeholders to create the impact score incentive structure. What do communities consider higher versus lower impact? Then, we suggest the Board pilot the concept to test it and determine whether banks will make the effort to engage in this concept.

Community development services subtest evaluation approach

Quantitative metrics for evaluating community development services (ANPR question 48)

The Board should use quantitative metrics for the CD services subtest. Although these can be crude, a purely qualitative analysis can leave too much leeway to determine how the bank is meeting appropriate standards. Banks should calculate hours of volunteer service relative to number of employees. There should also be minimum service hour requirements per full time employee to achieve Satisfactory and Outstanding ratings.

Impact score for community development services subtest (ANPR question 49)

Impact scores could be based on the type of volunteer service, for instance, a higher score for financial education and technical assistance related to access to capital, business planning, etc., than for general service hours, such as volunteering at a food bank (see below). Impact scores could also be based on local context and the needs of that community. If a bank can demonstrate that it provided CD services to a community that it serves that had a specific need, that bank could receive a higher impact score.

Community development services and volunteer activities (ANPR questions 50 and 51)

All volunteer activities (whether related to the provision of financial services or not) must serve LMI people to qualify; banks must not receive CRA credit for providing these services without regard to income level. The fundamental purpose of CRA is to increase bank investment of time, money, capacity for people and communities with low and moderate incomes. Banks do not need to be incentivized to provide financial education for higher income people, and CRA is not an appropriate tool for that purpose. Banks may receive partial credit for volunteer hours that have no financial education component, but still serve LMI communities.

Volunteer hours and donations should both be quantitatively benchmarked to ensure banks are doing sufficient activities relative to peers.

Community Development Test Qualifying Activities and Geographies (Section VIII)

Definitions for community development subcomponents

Affordable housing definition (ANPR question 52)

Subsidized affordable housing, unsubsidized affordable housing, and housing with explicit pledges or other mechanisms to retain affordability should be included in the definition of "affordable housing." Banks should receive a zero or negative impact score for affordable housing that does not have a permanent affordability mechanism in place, so that banks are incentivized toward financing deed-restricted affordable housing, and are not rewarded for loans to affordable units that then become unaffordable (creating displacement). This is currently one of the most damaging elements of CRA today.

Job creation, retention, and improvement (ANPR question 58)

Banks should be required to record alongside the loan documentation that the activity will create or retain jobs that:

- Don't require a college education;
- Guarantee living wages according to MIT's living wage calculator;
- Provide health insurance benefits;
- Proactively recruit women and people of color.

Workforce development (ANPR question 59)

The Board should consider workforce development that meets the definition of "promoting economic development" without direct connection to the "size" test.

Essential community needs and essential community infrastructure (ANPR question 61)

It is reasonable that activities associated with federal, state, local, or tribal government revitalization plans and the standards for those plans are eligible for credit. Still, it also should be codified that banks must be able to demonstrate how community infrastructure projects will directly benefit LMI communities and communities of color in order to receive credit. This is related to the overall purpose of CRA, which is to provide benefit to LMI people, and to CRA reform objectives that make racial equity explicit. Benefit to people, rather than place, should be the primary driver of eligibility.

Community facilities as noted in current guidance are vague, for instance, public safety and public services. Banks must be able to demonstrate a clear community development purpose for financing these activities. In cases where community facilities such as parks or education benefit *everyone* (not only LMI communities), banks could receive pro rata credit for these activities. Community facilities and essential community infrastructure projects that cannot demonstrate direct benefit to LMI communities and/or communities of color should not be eligible for credit. Projects should only be eligible to receive CRA credit in documented cases where conventional public or non-CRA-related private funding sources are unavailable.

Disaster preparedness and climate resilience (ANPR question 62)

The Board should include disaster preparedness and climate resilience as qualifying activities in targeted geographies to help LMI communities and communities of color prepare for future disasters. The San Francisco Federal Reserve has studied this, which would include credit for retrofitting homes to withstand extreme temperatures or flooding; funding developments for LMI residents in areas where people are being forced to abandon coastlines; and funding emergency loans to small business owners in the aftermath of disaster. As of this month wherein this comment is due, state-regulated banks in the state of New York are now able to earn state CRA credit for investments into LMI communities to reduce the impacts of climate change. The federal CRA should follow New York state's lead.

CDFIs (ANPR question 67)

Banks should receive CRA consideration for investments with a CDFI. Banks should prioritize CDFIs operating in their assessment areas, but if there are none, or if there are more investment dollars to be made than can be absorbed, banks may still receive CRA consideration for investments with locally-based CDFIs operating anywhere in the country. There are concerns about financial technology firms acquiring CDFI status – and CDFI is undergoing a review process of its certification criteria – and so we wouldn't want to see banks investing in fintechs that aren't entirely mission-driven for "easy credit." The Board might consider CDFI impact ratings such as Aeris or the National Community Investment Fund to factor into the CDFI's credibility.

Geographic areas for community development activities

Expanding geographic areas for community development activities (ANPR questions 68-69)

We think it will be helpful to have designated areas of need for banks to know whether they will be eligible for CRA credit outside of their assessment area, should they fulfil requirements in their own assessment area. These designated areas should be defined based on low levels of retail lending and CD finance, as the Board proposes.

Options to provide additional certainty about eligible activities

Create an example list of eligible activities (ANPR question 71)

An illustrative list of CRA eligible activities and the reason for eligibility would provide greater clarity. This list should also include examples of activities that are ineligible, and why they are ineligible. Regulators could source this list from past examples of ineligible activities and also by surveying banks to provide examples of activities they have questions about. The list need not be updated frequently, however, major external impacts such as pandemic, climate change disasters, new federal programs like PPP will generate questions and should prompt an update of this list.

Pre-approval process for community development activities (ANPR question 72)

There should be a pre-approved process for community development activities and it should focus on specific proposed transactions. There should also be a public database with general examples of approved and denied requests and why they were approved or denied so that banks can further learn what does and does not count toward CRA. This can be connected to the list/database discussed above.

Strategic Plan Evaluation (ANPR Section IX; questions 73-77)

We believe the most important aspect to the strategic plan process is ensuring that banks/FIs have properly and adequately involved community stakeholders in the pre-planning process. Banks should have a designated point-of-contact who liaises with the community and banks should be able to demonstrate sessions held for community stakeholder feedback and input. The public should have at least sixty days to comment or provide feedback on plans.

Ratings (ANPR Section X)

We support the continued nexus between fair lending and CRA. Fair lending violations should negatively impact CRA. Banks that engage in discriminatory and/or illegal practices that cause harm to consumers should receive real penalties that affect their CRA rating. This includes the use of double-downgrades as a penalty. Banks may meet CRA obligations by investing in positive community economic development, while also discriminating against customers (as seen in recent encounters between banks and Black customers), offering unfair or misleading products to customers, exacerbating or causing housing displacement, or financing polluting industries that directly negatively impact LMI communities and people of color, to name some examples. Bank evaluations must take into account the good and the bad, because it is not enough to do good. Banks have to stop harming communities too. It is counter-productive to silo regulations and not acknowledge that bank actions that harm consumers will disproportionately impact the same people CRA was created to benefit: LMI individuals and families and people of color. Banks offering products, terms, and services that extract wealth from LMI communities must be penalized via CRA.

We look forward to continued conversation and input into the Board's plan for CRA, and more broadly, with all regulators for interagency consensus.

Sincerely,

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