Proposal: 1723 (AF94) Reg BB - Community Reinvestment Act

Description:

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From: Florida Community Loan Fund, Ignacio Esteban

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Subject: R-1723 Community Reinvestment Act

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Comments:

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Your comment:This is Florida Community Loan Fund's Letter of Public Comment to the Federal Reserve pursuant to proposed regulatory changes to the Community Reinvestment Act (CRA).
Florida Community Loan Fund (FCLF) appreciates this opportunity to comment on the Federal Reserve's Advance Notice of Proposed Rulemaking (ANPR) regarding the Community Reinvestment Act (CRA).
Since 1977, the CRA has incentivized bank loans and investments into low- and moderate-income communities. Today the role of CRA is no less important as it continues to ensure that critical financial services, loans and investments made by banks benefit people and places outside the economic mainstream.
FCLF is a statewide community development financial institution (CDFI), established in 1994 and certified by the U.S. Department of Treasury. As such, we have seen firsthand how CRA motivated bank loans, investments and financial services are vitally important in leading capital into low-income communities for the purposes of affordable housing, economic development, and high social impact community facilities.
In this letter we seek to offer comment and to complement the Federal Reserve for its data driven and thoughtful consideration of ways in which to both modernize and strengthen the original mission and rating metrics and compliance practices of CRA.
Overall we believe, it is, however, important to also encourage coordination among all CRA regulators and support the Federal Reserve's efforts to align regulatory practices with those of the OCC and the FDIC. In particular, we are hopeful that with the recent change in Administration there will be renewed efforts in this regard.
Given the significance of CRA in our state and region, regulators should not rush to propose or implement changes that could make banks less accountable and responsive to genuine community development needs counter to the original intent of the CRA legislation.
While we recognize that CRA effectiveness and efficiency reforms are desirable and appropriate in light of banking and technological change, and we support the stated goals of the reform effort, we share

the widespread hope that with "modernization of CRA" will also come greater clarity for including metrics that will better incentivize and reward increased bank performance in response to both racial equity and climate resilience; two concerns that significantly affect Florida's LMI communities and the nation. To that end, the Federal Reserve should pursue its proposals to collect improved community development and deposit data on a census tract level or at least on a county level so that CRA exams can better target community development financing to areas of need.

The following Public Comments specifically focus on:

Automatic consideration of investments in US Treasury certified CDFIs as qualifying CRA activity and proposed provisions for allowing investments by banks in certified CDFIs operating anywhere in the nation to be considered qualified activity even if the investment is made to a CDFI outside of a bank's defined community assessment area.

Need and opportunity to develop more rigorous and new metric for evaluating CRA performance through a racial equity lens.

The use and introduction of a "presumptive satisfactory rating" of banks and the creation of new public access dashboards for tracking bank performance metrics and progress over time.

Preserving geographic branch location as central to defining community assessment areas and efforts to standardize metrics for measuring bank performance in retail lending and community finance activities in order to offer banks and stakeholders greater clarity. This includes an array of revisions being considered under the categories of Community Development Financing Subtest, Qualitative CRA Measures, Community Development Services Subtest, and Community Development Test (particularly definitions for Affordable Housing and Community Services subcomponents), Qualifying Activities and Geographies.

Inclusion of climate resilience as qualifying CRA activity and clarification of what is defined as essential community facilities and essential community infrastructure.

Qualifying CDFI Activity

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

YES. We support CRA consideration of CDFIs as qualifying activity anywhere in the country, so long as existing bank investments in local or statewide CDFIs are not diminished and/or increase commensurately with investments made in national CDFIs. While larger national CDFIs may have unique resources and capacity, we believe that local and statewide CDFIs are the best fit for addressing LMI communities of which they have been a long standing part. Investments by banks in large or specialized national CDFIs should not be encouraged at the expense or neglect of either established or emerging CDFIs operative within a banks CRA footprint.

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?

YES. Our experience is that this will provide banks with greater flexibility and incentives to provide longer term and more patient capital. Providing banks with continuous credit for existing loans or investments should help to sustain bank investments in CDFIs reducing the necessity for renewing or restructuring short term investments year and year out.

We specifically support the use of the new Community Development Financing test which will evaluate new loans and investments made or originated during each year of an evaluation period, as well as loans and investments made or originated in a prior year and held on balance sheet.

These changes as the Federal Reserve points out would allow banks to receive CRA credit for extending and maintaining long-term financing activities, regardless of whether they are financed by debt or equity. This should also provide some greater rate stability and predictable cost of funds to CDFIs. A bank seeking to secure an "Outstanding" rating should also be evaluated by the degree to which it has grown its relationship with CDFIs using either new investments or loans.

Racial Equity Lens

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?

We are pleased that the Federal Reserve has recognized the importance of addressing racial inequities.

It has specifically invited comment through its various on-line listening sessions with stakeholders. In

Question #47 it asks what supplementary metrics in the use of impact scores for qualitative considerations in the Community Development Finance Subtest would help examiners evaluate both the impact and responsiveness of such activities. It has also invited comment in general on whether underserved areas should be designated based on high levels of poverty or low levels of retail lending. We believe race, high levels of poverty, and low levels of retail lending are all appropriate and useful metrics. By focusing on low levels of lending in underserved census tracts regulators would be effectively targeting neighborhoods chronically "redlined" due to the Home Owners Loan Corporation (HOLC) original classifications of the 1930's

Including a requirement to include assessment area racial demographics in CRA exams would also strengthen oversight. For example, CRA exams could include racial equity performance measures in all aspects of bank lending, investing, branching and services to people of color and communities of color. Moreover, CRA exams should require racial and ethnic demographic data in performance context analysis and require banks to affirmatively include communities of color in their assessment areas (geographical areas on CRA exams). The Fed could also provide CRA consideration for lending and investing in majority minority census tracts outside of assessment areas just as it is considering for Indian reservations and other underserved areas.

Finally, we would support the proposal to eliminate distinctions between full-scope and limited-scope assessment areas. Full-scope assessment areas, which are usually the largest cities, count more on current CRA exams than limited-scope areas that generally are smaller cities and rural counties. Often, communities of color, Native American reservations, and other underserved communities continue to receive less CRA-related loans and investments because they are in limited-scope areas.

"Presumptive Satisfactory" Rating of Banks

Questions: #19, 20,21

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

Question #20: Is the approach to setting the threshold levels and a potential threshold level set at 65 percent of the community benchmark and at 70 percent of the market benchmark appropriate?

Question #21: Will the approach for setting the presumption for "satisfactory" work for all categories of banks including small banks and those in rural communities?

The Fed is proposing to reduce the number of ratings on a state level, and on subtests, from five to four. This proposal would result in fewer distinctions in performance whereas a new CRA exam system must reveal more distinctions in performance in order to motivate banks to be more responsive to issues of racial equity, COVID-19 recovery needs and the treatment of qualified CDFIs and MDIs which serve as important conduits of capital to and for LMI people and places outside the economic mainstream.

The use of the new proposed methodology for providing a "Presumptive Satisfactory" rating in our opinion should be approached with caution and stringent oversight. Clearly, the Federal Reserve has done extensive historical research (reviewing 6,300 performance evaluations from 2004-2017) and carefully considered and crafted a revised (more "modern") methodology that uses community and demographic comparators, thresholds, and layered approaches to multiple sets of metrics. This effort we would hope is designed to avoid the gradual grade inflation that over time has resulted in nearly every bank receiving a Satisfactory Rating.

The new methodology presented in the ANPR has successfully demonstrated theoretically a close congruence with actual ratings when applied to Federal Reserve's historical data base of thousands of CRA exams over time. To that extent, we believe the process of awarding a "presumptive satisfactory rating" may provide greater clarity and transparency for both banks and stakeholders. We would, however, support setting the threshold levels for the community benchmark at 75% and the market benchmark at 75% in conjunction with the use of all four proposed Performance Rating ranges (Outstanding, Satisfactory, Needs to Improve and Substantial Non-Compliance.

Note, however, that the number of ratings categories on performance subtests we believe should preferably continue to include at least five gradations: Outstanding, High Satisfactory, Low Satisfactory, Needs to improve and Substantial Non-Compliance. Reducing the number of categories does not necessarily lead to incentivizing bank CRA performance. Transparency and greater clarity are worthy objectives. But the presumption of satisfactory performance may systemically contribute to an acquiescence/complacency on the part of banks to status quo performance over time whether they are large, small or rural.

Performance Data Dashboard

Question #18:  How can the Board mitigate concerns that the threshold for a presumption of "satisfactory" could be set too low in communities underserved by all lenders?

We both welcome and support the Federal Reserve's intention to introduce new and more quantitative metrics for evaluating CRA performance and its plan to provide greater public access to transparent and easily accessible data bases of performance metrics. If the Federal Reserve elects to also introduce a new "presumption of satisfactory" rating, we believe the proposed dashboards to performance data will be essential so that both banks and the public can track progress toward greater CRA compliance with updates on a quarterly and/or annual basis.

It would be best if these dashboards displayed a bank's metric calculations to date in addition to the applicable thresholds. New dashboard tools must give banks and most importantly stakeholders the capacity to better observe and evaluate bank performance compared to need under varying market conditions over time. There should also be provisions for periodically reviewing whether thresholds have been set to low for LMI communities so that persistent socio-economic conditions contributing to wealth building inequalities do not become an acceptable determinant of future bank performance.

Finally, we would like to acknowledge the Federal Reserve's work to examine historical CRA ratings performance as the basis for its regulatory proposals and for making its research available for public review and comment. We also appreciate its leadership among regulators in pursuing a data-driven effort and designing a layered approach to structuring proposed regulations in ways that ensure multiple "fail-safe" cross checks to ensure rating accuracy.

Assessment Area Branch Locations & Expansion to Other Target Areas

Question #68: Will the approach of considering activities in "eligible states and territories" and "eligible regions" provide greater certainty and clarity regarding the consideration of activities outside of assessment areas, while maintaining an emphasis on activities within assessment areas via the community development financing metric?

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?

Question #70:  In addition to the potential designated areas of need identified, are there other areas that should be designated to encourage access to credit for underserved or economically distressed minority communities? (Page 66451)

As a statewide CDFI, we would overall support the Federal Reserve's on LMI communities in its ANPR proposals. This includes retaining bank branch locations as the centerpiece of CRA evaluations but also addressing LMI community needs in targeted qualified areas adjacent to existing assessment areas, in CRA "deserts" and nationwide in qualified areas and minority majority census tracts.

With regard to "qualifying activities":

We strongly recommend that qualifying activity include all projects developed with New Markets Tax Credits in highly distressed rural and urban areas. We do not support expanding financial education services to other than LMI consumers and people of color who, according to FDIC surveys, are most likely to be unbanked or underbanked. The Federal Reserve could designate additional subgroups in the population such as people of color, people with disabilities, or older adults for whom CRA credit for financial education or other community development activity could be earned rather than opening eligibility up to all persons regardless of need.

We support the further development of additional criteria and procedures for awarding CRA credit for financing "naturally occurring "affordable housing and methods for ensuring that this form of non-subsidized housing when financed actually serves LMI tenants.

Climate Resilience

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

With 8,436 miles of coastline, Florida regularly experiences natural hurricane disasters and is also subject to the threat of rising sea levels. We support the Federal Reserve's intention to include disaster preparedness and climate resilience as qualifying CRA activities particularly in LMI communities.

It is imperative that the Board adopt qualification criteria for disaster preparedness and climate resiliency that directly benefit LMI people residing in LMI communities so as to avoid providing CRA credit to endeavors that have the potential to lead to gentrification.

Essential Community Needs and Essential Community Infrastructure:

Question #61: What standards should the Board consider to define "essential community infrastructure," and should these standard be the same across all targeted geographies?

When considering standards for defining essential community we encourage the Federal Reserve to ensure that this infrastructure development not lead to displacement or otherwise extreme gentrification of existing LMI communities. Careful examination of these potential consequences should be undertaken for any and all projects across all targeted geographies. This will help to ensure that infrastructure developments incentivized by CRA do not detrimentally contribute to creating consequences antithetical to the original intent of the regulation. Local stakeholder input and oversight of such developments should be a paramount standard for consideration.

Significance of CRA Qualified Lending in Florida

In conclusion, since its inception, FCLF has directly benefited from CRA motivated bank investments that have grown our capacity to provide financing as a mission-driven intermediary lender into low-income communities. As of year-end 2019, more than 35 banks have invested in FCLF since its inception and have provided over $80 million in CRA loans as well as equity investments in FCLF. CRA motivated bank investment currently represent 47% of our total assets. In addition, banks have invested a total of $295 million in the 27 New Markets Tax Credit projects financed by FCLF in highly distressed census tracts.

In turn, FCLF has loaned $470 million in financing into $1.21 billion worth of community development projects statewide. (See attached FCLF Impact Report.) Moreover, when investments are made in CDFIs like FCLF, the initial dollar impact of these investments recycles in loans made time and again into numerous LMI community projects

The positive historical impact of CRA motivated direct bank investment in communities and in CDFIs like FCLF cannot be underestimated.

In Florida, based on data from 2015, the Federal Reserve Bank of Atlanta estimated that a weakening of CRA could lead to an annual loss of between $2.473 and $4.947 billion dollars in small business and mortgage lending, resulting in a total estimate of $7.7 billion in community development loans and investments annually across Florida, Georgia, Alabama, Mississippi, Louisiana, and Tennessee.

Notably a more recent analysis done by the National Community Reinvestment Coalition reports $108.6 Billion in CRA/LMI qualified lending done by banks over the period of 2009-2018 in just 6 of the state's largest metropolitan areas.

The power of CRA is immense and immensely important to communities of people and places outside the economic mainstream.

Over the past 40 years, CRA has helped bring about affordable housing, small businesses, jobs and banking services to poor and underserved areas. Modernizing the regulatory framework of the Community Reinvestment Act (CRA) presents an opportunity to both sustain and advance the primary purpose of the statute assuring that banks continue to provide appropriate access to capital and credit to LMI people and places. In closing we would like to thank the Federal Reserve for its leadership and commitment to building on this track record. Thank you also for this opportunity to provide further public comments on how best to modernize CRA in a new era.

As the third largest state in the nation, Florida warrants a robust CRA regulatory environment in order to ensure high levels of bank participation in our shared obligation and responsibility to build a better future.