Opportunity Bank
OF MONTANA

February 11, 2021

Ann E. Misback, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
Docket No. R-1723
RIN 7100-AF94

Dear Secretary Misback,

Opportunity Bank of Montana ("OBMT") submits the following comments in response to the Board of Governors of the Federal Reserve System ("Board") request for comments regarding modernizing the Board's Community Reinvestment Act ("CRA") regulatory and supervisory framework.

We encourage the Board to engage in further collaboration and discussion with the Office of the Comptroller of the Currency ("OCC") and the Federal Deposit Insurance Corporation ("FDIC") in order to achieve uniform CRA standards for all banking institutions. Absent such a uniform standard, there is increased likelihood that Federal Reserve member banks will be treated differently and evaluated under different standards than non-member banks. This would be a disservice to all supervised institutions and would create more confusion in the industry which could actually hinder CRA's goal of having a positive impact on low- and moderate-Income ("LMI") individuals and geographies.

As a community bank, we feel the efforts put forth to modernize CRA do not appear to be designed with community banks in mind, particularly those institutions under $10B in asset size. The very nature of a community bank is to support the community it serves with lending to a variety of income levels, investing in community endeavors, donating to community needs, and providing countless volunteer hours to many organizations that serve LMI individuals and geographies. While the idea of quantitative measurements is appealing in its apparent simplicity and objectivity, and might make a lot of sense for a national bank, it is difficult to imagine a metric that adequately captures all the impacts of a community bank in a small town or rural area.

OBMT is headquartered and operates solely in Montana, a state that is predominantly identified as a 'rural area' (as defined by the Economic Research Service of the U. S. Department of Agriculture). We believe that any new or amended CRA rules the Board adopts should include provisions tailored to banks that serve America's rural communities. Doing so would promote the goals of CRA and provide greater benefit to America's rural communities by ensuring that those communities retain the local banking branches that are crucial to their continued viability and vitality.

Formal comments regarding proposed changes intended for Modernizing the Community Reinvestment Act by question follow. Responses are in italics:

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?

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We disagree with the proposed asset threshold to distinguish between small and large retail banks as it would provide an insufficient accommodation for community banks because of the enormous regulatory burden. We would support the Board aligning with the OCC CRA Bank Type Determinations (OCC Bulletin 2021-5) based on asset size thresholds to determine a small bank ($0 to $600 million in assets as defined by the SBA); the intermediate bank category (assets between $600 million and $2.5 billion using the method suggested by the ABA and ICBA); and general purpose standards (GPS) large bank (above $2.5 billion in assets). We concur that the regulation should contain an automatic mechanism for allowing the thresholds to adjust with aggregate national inflation annually, as is done presently.

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?

We support retaining facility-based assessment area delineations as defined in the language of the current rule 12 C.F.R. 228.41.

Question 15. Are the retail lending distribution metrics appropriate for all retail banks, or are there adjustments that should be made for small banks?

The cost of complying with regulations such as the CRA monitoring and reporting requirements can become tipping points for small community banks when deciding to stay independent or, in some cases, whether to close branches in smaller rural communities. For this reason we support adjustments to the retail lending distribution metrics for small and intermediate banks.

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?

We believe that the Board has not sufficiently described the data, rationale, or methodology for the establishment of these thresholds with respect to community banks and rural communities. Therefore it is difficult to assess and comment on this question.

Question 25. How should banking deserts be defined, and should the definition be different in urban and rural areas?

It is our recommendation that the Board align with the OCC Final Rule of CRA deserts. The final rule defines CRA desert as an area that has been confirmed by the agency to be a CRA desert because it has significant unmet community development or retail lending needs and where: (1) few banks have branches or non-branch deposit-taking facilities; (2) there is less retail and CD lending than would be expected based on demographic or other factors; or, (3) the area lacks community development organizations or infrastructure. The agency will maintain an illustrative list of CRA deserts and includes a process for banks to obtain confirmation that an area meets the definition of a CRA desert.

Question 27. Should a bank receive consideration for delivering services to LMI consumers from branches located in middle- and upper-income census tracts? What types of data could banks provide to demonstrate that branches located in middle- and upper-income tracts primarily serve LMI individuals or areas?

As a community bank that has numerous distressed or underserved middle-income census tracts in our assessment areas, we support receiving consideration for delivering services to LMI consumers located in these census tracts. Census data is available to support the number of LMI consumers located in these census tracts.

Question 34. Would it be more appropriate to set a threshold for a major product line determination based on the lesser of: (1) the product line's share of the bank's retail lending activity; or (2) an absolute threshold?

As a community bank serving a large number of assessment areas located in rural areas, we would support the calculation of the product's line share of the bank's lending activity as the determination of a major product line. Establishing an absolute threshold in individual assessment areas may have the reverse effect of discouraging banks from making desirable small business/small farm or LMI mortgage loans if these loans would be in an assessment area that falls under the absolute threshold. This could have a particularly significant impact in rural areas and CRA deserts.

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?

In accordance with the current rule, the evaluation of a bank's consumer lending should only occur at a bank's discretion.

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?

We encourage the Board to engage in further collaboration and discussion with the OCC and the FDIC in order to achieve uniform small business and small farm loan thresholds and gross annual revenue thresholds for all banking institutions. The OCC Final Rule defines a small business or small farm loan threshold as no greater than $1.6 million and the gross annual revenues threshold as no greater than $1.6 million, adjusted for inflation every five years. We are not adverse to Regulation BB defining these thresholds.

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)?

Question 41. Should all retail lending activities in Indian Country be eligible for consideration in the Retail Lending Subtest or should there be limitations or exclusions for certain retail activities?

Yes, CRA consideration should be given for all retail lending activities conducted within Indian Country regardless of location. Delineation of assessment areas by county may not include the entire Indian Country designated area. Allowing CRA consideration for activities conducted outside an assessment area and within Indian Country ensures that LMI banking needs are being met inside and outside of assessment areas in or near a delineated assessment area.

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?

As a community bank located in rural area geographies we cannot support the proposal of using local and national benchmarks to measure community development needs and opportunities. The numerator for the benchmark would be the annual average of the total dollar amount of all large banks' qualifying community development financing activities in the assessment area. The denominator for the benchmark would be the annual average of the total dollar amount of all deposits held by large banks in the assessment area. Currently no such benchmarks exist. We urge the Board to retain a community development test that is based on an institution's performance context, where it considers a bank's community development activity in light of its capacity for such community development activities, its assessment area's need for such community development activities, and the availability of such opportunities for community development in the bank's assessment area(s).

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?

Yes, as a community bank located in rural area geographies we support the Board expanding activities in rural communities to include activities that address local community needs generally, without having to demonstrate a primary purpose of community development. In these communities, bank employees often provide needed leadership for nonprofit and civic organizations that are addressing community needs and serve as a catalyst for overall community development, even though some of these organizations do not necessarily have a primary purpose of community development as defined in the regulation or the volunteer activities do not use the employee's technical or financial expertise.

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

Yes. Granting CRA credit for providing financial literacy education to all individuals, regardless of their income level, benefits the financial well-being of the entire community. This is particularly true when it comes to financial literacy education in schools. Youth, regardless of economic status, will learn how to develop good financial habits at a young age and this can set youth up for financial well-being later in life. Granting CRA credit for providing financial literacy education will enable more banks to provide this valuable education in their communities.

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?

Yes, OBMT supports the creation of an illustrative, but non-exhaustive list of CRA eligible activities. Currently the types of loans, investments, and community service activities that qualify for CRA credit vary from region to region and even exam cycle to exam cycle. An illustrative, non-exhaustive list of activities that are pre-approved for CRA credit promotes both nationwide consistency and transparency. We believe that the qualifying activities list should be consistent among all agencies and updated through an interagency process. If the agencies keep separate lists, it is likely to lead to unequal *enforcement and create uncertainty about which activities count for CRA credit. We also support periodic updates to the list on an ongoing basis.*

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?

Yes. As a community bank, it is frustrating to ask for input from the Board CRA examiner to determine if a particular activity will be eligible to receive CRA credit only to be told that the activity "might work". An interagency template listing all information needed for the agencies to make an informed decision would be very helpful. We would also suggest that a second interagency list be kept of all proposed CRA activities that are deemed ineligible. This would reduce the number of repeat requests for activities that do not meet the definition of community development.

Even though our next comment does not relate to modernizing the Board's Community Reinvestment Act regulatory and supervisory framework, we would like you to know this community bank's strong objection to credit unions' statutory exemption from CRA. Credit unions, fintech companies, and any financial firm that serves consumers and small businesses and small farms should be subject to CRA in a manner comparable to, and with the same asset-size distinctions, as banks and thrifts. Credit unions that perform "bank-like" functions and offer comparable products and services are not subject to CRA. This uneven playing field places community banks at a competitive disadvantage and inhibits our ability to serve our customers and our communities. We request that the Board take serious consideration and reach out to Congress requesting the Community Reinvestment Act be amended to include credit unions, fintech, and other financial firms that serve consumers and small businesses and small farms.

We thank you for the opportunity to comment on the Board's Advanced Notice of Proposed Rulemaking for the modernization of the Community Reinvestment Act. We are available to answer any questions you may have regarding our comments listed above.

Respectfully,

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