February 11, 2021

Via Electronic Submission

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

Re: Community Reinvestment Act Regulations Request for Public Input
Docket No. R-1723, RIN 7100-AF94

Ladies and Gentlemen,

On behalf of ANB Bank (ANB), thank you for the opportunity to submit this comment to the Board of Governors of the Federal Reserve System (FRB) in response to the FRB's Advance Notice of Proposed Rulemaking (ANPR) seeking public input on proposals for modernizing the regulations that implement the Community Reinvestment Act (CRA).

INTRODUCTION

As a "large" (>$1.3 billion) community bank, ANB is committed to the goals of CRA and we take great pride in meeting the banking needs of the communities we serve. However, the regulatory framework implementing CRA is overly complex and has not kept pace with changing markets, technology, or consumer expectations. Importantly, the current framework's lack of clarity and transparency has led to examination practices that do not allow the appropriate and intended flexibility for banks to focus their resources where they have expertise and can be most impactful.

Key issues faced by "large" community banks under the current framework include:

- **Inadequate consideration of Performance Context.** The concept of Performance Context is designed to recognize differences in market area needs and opportunities as well as a bank's capacity and capability to meet those needs, but this is often given minimal consideration by examiners.

- **Inappropropriate "Peer" Comparisons.** Part of a bank's performance evaluation under the current CRA framework provides for comparisons with similarly situated lenders. Instead, these comparisons use aggregate data for all banks in a market. Comparing a $2 billion community bank to a $2 trillion mega bank is unfair and, frankly, absurd.

- **Failure to consider available resources in an Assessment Area (AA).** Community banks operating in multiple AA's often do not have the level of resources available to serve that AA that is expected under the "large" bank evaluation standard. Depending on their presence in an AA, they may operate much more like their small bank competitors. There is no consideration for the availability of resources in an AA under the current supervisory standards.

Given these issues, ANB is supportive of the FRB's effort to modernize the CRA's regulatory framework and would specifically emphasize two of the FRB's stated objectives:

- Increasing clarity, consistency, and transparency of supervisory expectations regarding where activities are assessed, which activities are eligible for CRA purposes, and how eligible activities are evaluated and assessed.

- Tailoring CRA supervision to reflect differences in bank size and business models, and differences in local markets, needs, and opportunities.

While acknowledging that there is much room for modernization and improvement, the current framework, *as written*, *should allow* banks to focus their resources where they can be most impactful by tailoring performance criteria to a bank's performance context, then measuring that performance against true peers rather than the market as a whole.

Too often, though, CRA exams have a one-size-fits-all approach, with little transparency or flexibility with regard to performance criteria used. Examiners select the criteria a bank will be evaluated against without consultation with the bank and, often, without consideration of performance context, then compare results to all competitors in the market rather than similar institutions. The result is that banks must achieve high performance in all categories and all assessment areas, regardless of community need, the bank's business model, or the bank's capabilities. This broad approach limits the impact banks are able to make in their communities by diluting scarce resources.

The framework proposed in the ANPR ***would simply codify much of what is already practiced by examiners***. Clarity and transparency will be improved at the expense of increased requirements and reduced flexibility for "large" community banks. It should be noted that the same standards and comparisons will apply to all banks exceeding the small bank threshold, from community banks with $1 billion in assets to regional, super-regional, or mega banks with more than $2 trillion in assets. For "large" community banks, the result will be a continuation and deepening of today's unfair and burdensome performance expectations as well as inefficient allocation of resources, ultimately limiting the potential impact of community banks on the the communities they serve.

To address these challenges, there must be recognition that the resources available to a community bank on the lower end of the "large" bank scale are much different than a regional, super-regional, or mega-bank. In addition, more must be done to tailor supervision to reflect not only the capacity of the bank as a whole, but also the capacity of the bank to serve a given assessment area (AA) based on its resources in that AA.

The comments that follow discuss the challenges to both banks and the communities we serve when: a) there is little consideration of a bank's business model, capacity, and capabilities; b) community banks are evaluated in the same manner as and compared to much larger regional or national institutions rather than peers, and; c) evaluations are based on asset size as a whole rather than a bank's presence in an assessment area. Our comments culminate in several recommendations to tailor supervision in a manner that will allow "large" community banks the necessary flexibility to maximize the impact on the communities we serve.

ANB BANK BACKGROUND

ANB is a $3.3 billion community bank headquartered in Denver, Colorado with 30 locations in Colorado, Wyoming, and Kansas. ANB is primarily focused on serving commercial customers, with the majority of the bank's loan portfolio comprised of loans to commercial, agricultural, and municipal borrowers. While our business model is more focused on commercial customers, we are a true community bank and also offer portfolio mortgage and consumer products.

The bank's 30 locations serve 12 distinct assessment areas, ranging from large metropolitan areas in Colorado and Kansas, to rural communities in Wyoming and western Colorado, to high cost resort communities in Colorado. The bank's largest assessment area by both population and physical area is the Denver Metropolitan Statistical Area (MSA) which is served by just three full service branches. This is indicative of ANB's strategy of utilizing a small branch network to serve customers over a large geographic footprint.

PERFORMANCE CONTEXT

Performance context is a critically important element of the current framework that ***should*** allow an examiner to evaluate a bank based on its business strategy and capabilities, the unique needs of the community, and the opportunities available to serve the community. However, performance context is inherently subjective and consideration of performance context is at the discretion of the examiner. This subjectivity and examiner discretion makes it difficult to to develop, communicate, and obtain agreement with examiners as to the appropriate performance context. Consequently, performance context is often afforded insufficient consideration or simply ignored.

To illustrate the importance of performance context, consider ANB's unique challenges in serving its 12 distinct assessment areas. Our assessment areas include high cost areas such as Aspen where low-to-moderate income (LMI) borrowers are priced out of the housing market; rural areas such as Northern Wyoming where LMI residents are highly dispersed across large geographic areas and often difficult to reach; and large metropolitan areas like Kansas City where our two branches are located a great distance from LMI areas. In addition, as noted earlier, ANB's strategy is more focused on serving commercial customers and, while the bank offers mortgage and home equity products, we do not have a separate mortgage division or the capability to offer high loan-to-value secondary market products.

Each of these factors should be an important consideration in establishing our performance context in each individual assessment area. In the majority of our assessment areas, ANB is best equipped, and can be most impactful, by meeting the needs of business owners, non-profits, and municipal borrowers. These entities are investing in our communities, directly and indirectly benefiting LMI residents. However, regardless of our strategy, organizational capabilities, or our efforts to meet the unique needs of individual assessment areas, we are evaluated similarly in all assessment areas with equal weight given to mortgage, small business, and community development lending. Our performance context within each assessment area receives minimal or no consideration.

The ANPR proposes to compound this problem by further limiting consideration of performance context. The evaluation of community banks such as ANB would include four distinct Retail and Community Development sub-tests. The lending tests include income based and geographic components, with performance evaluated against *all market participants* rather than peers or even other banks. There will be no consideration of performance context related to the conditions, needs, and opportunities in the local community since the market and community comparators built into the tests are designed to objectively capture those elements. While examiners *may* adjust for bank-specific factors including business model, capabilities, and capacity, this adjustment is likely to be considered only after a bank receives a low rating initially and will be inherently subjective.

Without adequate consideration of performance context, our bank will be required to continue investing significant resources to serve market segments that do not fit within our core capabilities. These market segments are often well served by other institutions, yet we are expected to serve them at a level commensurate with institutions whose business strategy and capabilites are focused on those markets. ***The broad expectations of the proposed CRA framework to serve market segments equally with minimal consideration of performance context will divert resources, limit focus, and reduce ANB's inherent strengths and ability to impact communities we are most capable of serving.***

PEER COMPARISONS

In addition to the challenges associated with performance context, the peer comparisons associated with both the current and proposed performance evaluation methods are problematic. When established appropriately based on performance context, peer comparisons can be valuable *as a supporting data point,* as allowed in the existing framework. However, rather than identifying true peers in each assessment area for comparison, examiners often default to comparing a bank to industry data comprised of the aggregate of all banks that report HMDA and CRA data. The ANPR would codify and expand this approach to include all industry participants, not just banks, and eliminate true peer comparisons entirely.

As an illustration of the impact on a bank like ANB, consider this example. Since ANB offers portfolio mortgages, primarily as an accommodation product, mortgage lending to LMI borrowers is part of our performance evaluation. Given the fact that we do not have a separate mortgage division with a full menu of products, nor a ubiquitous branch network in any of our AA's, it would be reasonable and appropriate under the current regulatory framework to compare us to peers who are similar in size, business model, and product offerings. However, instead of true peers, ANB's results are compared to all banks that report HMDA data. The ANPR would expand this approach to utilize industry aggregate HMDA data that includes the largest mortgage lenders in the country. This includes trillion dollar banks as well as the largest non-bank lenders, all of which have large branch networks, multiple delivery channels, and access to a large variety of programs that are well beyond ANB's capabilities.

Banks should be compared to true peers, with clear guidance regarding peer selection based on the bank's asset size, business model, products offered, etc. It is not possible, nor is it desirable, for ANB to serve LMI borrowers at the same level as institutions that are focused on the mortgage market, have large branch networks or sales forces, and that have much better capability to serve that market segment. This pass/fail approach that compares us to the industry rather than true peers dilutes our impact by ***requiring us to focus on markets that are better served by others rather than focusing our scarce resources where we have the expertise and capability to make a meaningful impact on the communities we serve.***

SIZE OF BANK VERSUS PRESENCE IN ASSESSMENT AREA

ANB operates in 12 distinct and unique AA's. Our largest AA encompasses the Metropolitan Denver Statistical Area. We have $700 million in assets in this AA and serve a 10 county area with a population of 2.9 million people with just three branches. By contrast, our Northern Wyoming AA consists of three branches with $120 million in assets serving three counties with a population of just 62,000 people and a geographic area of 11,200 square miles.

In Denver, our three locations comprise less than 1% market share and compete with other community banks, larger regional banks, the largest mega banks, and a host of mortgage lenders and fintechs. This is a highly banked and highly served market, with our competition offering low down-payment/high LTV mortgages sold on the secondary market. We do not have a mortgage division and all of our mortgages are held in our portfolio. We can and do help LMI borrowers but finding these opportunities consumes significant resources. Since we are compared to all banks in this market, though, we have to spend these resources serving a small number of borrowers who have many other options available. This is not the best use of resources and has very little community impact in this well-served market, but is required to get a satisfactory exam result.

In Northern Wyoming, we compete primarily with other community banks that are generally below the small bank threshold. We are evaluated as a large bank and our competitors are evaluated as small banks. While both ANB and our competitors are part of the fabric of these small communities, we must expend our limited resources meeting a number of specific tests instead of truly meeting the needs of the community. Our competitors have much more flexibility to direct their resources where they can make the greatest impact.

In the majority of our 12 AA's, we would be considered a small bank and the resources we have available in those AA's reflect that. While we have some centralized resources that a small bank may not have, we do not have special products or services that small banks would not also have. In addition, the number of people we have available to serve those communities and the dollars available to invest are commensurate with other small banks. Yet, we are evaluated the same as a $50 billion, $100 billion, or $2 trillion bank. To meet supervisory expectations, ***we must achieve high performance in all categories and all assessment areas, regardless of community need or the resources we have available in the community.***

RECOMMENDATIONS

There are many positive changes proposed in the ANPR, but the problems outlined for “large” community banks will remain and, in some scenarios, will be magnified. A stated objective in the ANPR is to “more effectively meet the needs of LMI communities.” As community banks demonstrated through our highly effective participation in the Paycheck Protection Program, we are connected to our communities and well-positioned to impact our communities when resources can be appropriately focused. We offer the following recommendations that will allow community banks to focus their scarce resources where they can be most impactful.

1) **Retain a Tiered Approach to Supervision.**

   The ANPR proposes to eliminate the Intermediate Small Bank standard and set the threshold between a small bank and large bank at either $750 million or $1 billion. We support raising the threshold, but would advocate retaining a three-tiered system with a higher threshold for the “Middle Tier”, such as $10 billion. While the resources available to a $500 million bank may be much smaller than a $3 billion bank, thereby justifying a different level of evaluation, the resources of $3 billion bank are significantly less than a $20 billion, $50 billion, or $2 trillion bank, yet they are all evaluated similarly. A $10 billion threshold would adequately account for these differences in resources and would match other regulatory thresholds.

2) **Tailoring Supervisory Expectations to a Bank’s Presence in an Assessment Area.**

   Under the proposed framework, a small bank would be evaluated only under the Retail Lending subtest, while a large bank would be evaluated under four separate subtests – Retail Lending, Retail Services, Community Development Lending, and Community Development Services. We support limiting the performance evaluation to the Retail Lending Subtest for small banks but would extend this to Middle Tier banks if the bank’s presence in an assessment area (measured by asset size) falls below the small bank threshold. This approach would allow for more appropriate consideration of a bank’s presence in the market, its available resources in that market, and its business strategy.

3) **Application of Community Development Tests for Middle Tier Banks at the Bank Level.**

   Middle Tier banks with multiple AA’s are challenged to meet Community Development tests in multiple ways. In larger markets, CRA opportunities are sought after and highly competitive. In smaller markets, there may be limited opportunities or, in some cases, the available opportunities may be too large to fund with the resources available to invest in a given AA. Evaluating CD performance for Middle Tier banks at the bank level rather than the AA level would allow community banks to be more impactful by directing their limited resources to the communities they serve with the highest unmet needs.

4) Retain Peer Comparisons for Small and Middle Tier Banks

Small and Middle Tier community banks do not have the same risk tolerance, access to secondary market products, or operational resources to support specialized lending in the same manner as larger banks and should not be compared to larger banks or non-bank lenders. While the proposed market and community comparators are designed to eliminate much of the need for performance context in the Retail Lending tests, the one element of performance context retained is an adjustment for bank-specific factors. This is entirely subjective and would offer no real way to compare results. It is unclear how an examiner would actually use this flexibility in practice. A better alternative would be to compare Small and Middle Tier banks to peers of similar size and business model rather than to all market participants.

These recommendations, combined with many of the other positive changes in the proposed framework, will reduce the challenges faced today by "large" community banks due to:

- Inadequate consideration of Performance Context.
- Inappropropriate "Peer" Comparisons.
- Failure to consider available resources in an Assessment Area (AA).

We encourage you to consider these common sense recommendations in your final rulemaking process and allow "large" community banks to deploy their resources where they can be most impactful, rather than simply "checking the right boxes."

On behalf of ANB, thank you again for the opportunity to participate in the process of updating and modernizing the regulations implementing the Community Reinvestment Act. We appreciate the FRB's leadership in soliciting input and encourage you to coordinate with the FDIC and OCC to develop an Inter-Agency proposal based on comments received in response to the ANPR.

If you have any questions or would like clarification regarding anything contained in our comments, please don't hesitate to contact me at 303-394-5380 or via email at todd.crowley@anbbank.com.

Sincerely,

R. Todd Crowley
Executive Vice President
Chief Credit Officer and CRA Officer