February 15, 2021

Board of Governors of the Federal Reserve System
Via email to regs.comments@federalreserve.gov

RE: Docket No. R-1723 RIN 7100-AF94

Dear Governors:

Clearinghouse CDFI (CCDFI) appreciates the opportunity to comment on Docket R-1723 and RIN numbers 7100-AF94, the "Advanced Notice of Proposed Rulemaking (ANPR) on Reforming the Community Reinvestment Act Regulatory Framework."

CCDFI strongly supports the Community Reinvestment Act (CRA) while also acknowledging that there are aspects of the law and its administration that could be improved. CCDFI believes that an effective, well-designed, and enforced CRA framework, that keeps pace with the changing financial services industry, can promote and accelerate financial inclusion. Additionally, the CRA can be a catalyst for economic recovery from the COVID-19 pandemic.

For twenty-four years, CCDFI, a for-profit Community Development Financial Institution (CDFI) has provided commercial real estate lending opportunities to borrowers who may not qualify for traditional bank loans. Our equity and debt providers are generally CRA-motivated banks.

Banking has changed dramatically since the CRA was enacted in 1977. This important law requires regulated banks to provide loans and services, across all income levels, in the geographies where they operate. It prevents banks from redlining in low-income or distressed neighborhoods. For over forty years CRA has helped our country adhere to the goal of giving everyone a fair chance accessing credit in a capitalist economy.

For years, banks have commented on inconsistent, uncertain, and unfair application of CRA, depending on which examiner or which agency was performing CRA reviews. The ANPR provides several proposals that address the need to improve transparency, consistency, and simplicity in determining CRA compliance by banks.

CCDFI is encouraged and impressed by breadth of the ANPR. For this comment letter, rather than address each section of the ANPR, we have chosen to provide targeted feedback in several areas.

Assessment Areas for CRA Evaluation

The definition of assessment areas must be expanded beyond the current "bricks and mortar" approach. Banks must be required to serve communities in which they engage in deposit gathering and lending activities. Technology has enabled a wide range of deposit gathering and lending activities to take place outside of a bank's physical footprint. For this reason, market share should be considered when determining CRA assessment areas. Banks with significant market share that are taking deposits and/or making loans throughout a region or county should have CRA obligations throughout that region or county.

The ANPR provides multiple, complex, scenarios for the determination of assessment areas. Rather than comment on each scenario, CCDFI supports the broader goal of revising the existing "bricks and mortar" approach. We support the "facility-based" assessment approach that would incorporate bank branches, loan production offices, and deposit-taking ATMs. We also support the "deposit-based" assessment areas for banks that gather deposits through the internet in lieu of, or in addition to, bank branches and ATMs.

In addition to the "facility-based" and "deposit-based" approach, we strongly recommend providing CRA credit for bank investment and lending in underserved areas like Indian Country and LMI communities ("CRA deserts") that typically will not fall into the "facility-based" and "deposit-based" approaches.

Community Development Test

We support the proposed Community Development Test (Test) that would include a Community Development Financing Subtest and a Community Development Services Subtest. The Test would apply to large retail banks and wholesale and limited purpose banks. We support the concept of a community development financing metric that measures the ratio of a bank's qualifying community development financing activities to total deposits in each assessment area.

The ANPR proposes combining new community development financing and investments under the proposed Community Development Financing Subtest. New activity would be evaluated each year along with the prior year's activity (that remains on balance sheet). We support this approach as a means to encourage a more patient investment approach. Currently, many bank's rewrite community development financing agreements on an annual basis to take CRA credit. This creates burdensome underwriting, paperwork, and the threat of non-renewal for the recipients.

The ANPR proposes applying "impact scores" to each bank community development financing activity based on the CRA examiner's assessment of its impact locally. The scores would range from 1 to 3 (highest). Although this approach would require impact data from banks and would involve a degree of subjectivity by the examiner's, CCDFI supports this approach. CDFIs and community organizations are "front line" providers of credit, investment, and services to underserved populations, communities, and businesses. The "impact scores" can be used to recognize this impact and incentivize banks to direct their investments and equity towards greater impact.

Although we strongly support applying a multiple for community development financing activity, the proposed "impact score" approach is at the discretion of the examiners. We recommend setting a minimum multiple of two times for investments in, or loans to, CDFIs. The two times multiple approach is consistent with the Office of the Comptroller of the Currency's June 2020 CRA guideline. CRA examiners can have the discretion to increase the two times multiple up to four times for activities in "CRA deserts" and for activities deemed to be innovative and responsive.

Clarifying Eligible CRA Activities

CCDFI supports the ANPR proposal to increase certainty about qualifying CRA activities including the development and publication of a list of qualifying activities and a pre-approval process.

Financial institutions often delay or postpone CRA activities due to uncertainty about "what qualifies" and whether they must seek pre-approval from their regulators. This uncertainty has the unintended consequence of reducing the volume and scope of CRA activity. Additionally, banks will often seek "safe" and "known" CRA activities to ensure compliance.

Establishing a clear list of eligible activities under CRA takes the guess work out of compliance. Additionally, this should streamline and provide greater consistency for the CRA examination process.

Question 71 of the ANPR asks for feedback on the development, maintenance, and distribution of a CRA eligible activities list. CCDFI supports the development of a list as a means to support CRA activities. The list must be an actively managed document that would require oversight by a committee comprised of representatives from regulators, financial institutions and CRA "beneficiaries" including CDFIs. Confidence in the list will be critical. Banks must be confident that the list will be honored by CRA examiners.

Question 72 of the ANPR asks for feedback on development of a pre-approval process for community development activities, and the information that should be provided about the preapproved activities. CCDFI supports the development of a pre-approval process to encourage CRA activities. The development and maintenance of a pre-approval process document should be part of the duties performed by the oversight committee outlined in the prior paragraph. Confidence in the pre-approval process will be critical to its success and utility. Banks must be confident that the pre-approval process will be honored by CRA examiners.

Conclusion

In conclusion, CCDFI is very encouraged by the "Advanced Notice of Proposed Rulemaking (ANPR) on Reforming the Community Reinvestment Act Regulatory Framework." The majority of changes put forth in the document will enhance the Community Reinvestment Act, adapt the Act to today's technology-based banking environment, and direct needed investments towards underserved populations, communities, and businesses.

Thank you for considering these comments.

Sincerely,

Terrin Enssle
Chief Financial Officer
Clearinghouse CDFI