February 16, 2021

Docket Number R-1723 and RIN Number 7100-AF94

To Whom It May Concern:

Coastal Enterprises, Inc. (CEI), appreciates the opportunity to comment on the "Advance Notice of Proposed Rulemaking (ANPR) on Reforming the Community Reinvestment Act Regulatory Framework." CEI strongly supports the Community Reinvestment Act (CRA), which has been the driver of much-needed investment to LMI communities over the past 40+ years. We believe that the time is right for modernization, and we appreciate the open approach of the Federal Reserve in soliciting comments on a wide array of proposed changes. We also encourage the Board, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency to work toward a joint CRA rule.

Introduction

CEI is a 44-year-old Community Development Financial Institution (CDFI) with a mission to grow good jobs, environmentally sustainable enterprises, and a more broadly shared prosperity in Maine and in rural regions throughout the country by integrating financing, business and industry expertise, and policy solutions. CEI envisions a world in which communities all are economically and environmentally healthy, enabling all people, especially those with low incomes, to reach their full potential. Since 1977, the CEI family of organizations has provided more than $1.4 billion in financing to over 3000 enterprises, creating or retaining over 45,000 jobs and leveraging another $3.1 billion; created/preserved over 3000 affordable homes; provided training and counseling to over 63,000 individuals and businesses; created/preserved more than 6800 child care slots; and provided leadership on state and federal policy initiatives, including consumer protection and community investment issues at the state and federal level. CEI was a founding member of the New Markets Tax Credit Coalition and helped to shape that program, and has been a leader in New Markets, community development venture capital, and other creative and high-mission capital deployment in Maine and beyond. CEI is also a NeighborWorks Organization and a member of the National Community Reinvestment Coalition (NCRC), the Opportunity Finance Network (OFN), the CDFI Coalition, the New Markets Tax Credit Coalition, and the National Association of Affordable Housing Lenders (NAAHL).

CRA has been a critical factor in CEI's success in raising and deploying capital, which has contributed in deep and measurable ways to Maine's economic and community development. Like other CDFIs nationwide, CEI receives a majority of the funds that it lends and invests from financial institutions, from small community banks to large national lenders. These funds range from small operating grants, to program related investments, lending facilities, and equity investments in CEI's venture capital subsidiary funds. Without the incentives of CRA, we would have been challenged to raise this capital and our impact would be significantly less.

We believe a strong CRA is vital to the economic health of LMI communities and people. America's economy, financial system, and society can be strong only if all people and communities can contribute to and benefit from them. CRA has significantly helped to include LMI people and places in the U.S. banking system. CRA modernization must strengthen, not weaken, financial inclusion.

30 Federal Street Suite 100 Brunswick, Maine 04011
207.504.5900 877.340.2649 fax 207.882.7308 www.ceimaine.org

Following are CEI's responses to the questions posed in the ANPR. We do not address all the questions, but have responded where CEI has a strong interest, knowledge, and expertise.

Question 1. Does the Board capture the most important CRA modernization objectives? Are there additional objectives that should be considered?

CEI appreciates the focus in the ANPR on impact measurement, transparency, and greater clarity. However, we note that not all impact can be easily translated into numbers, and both examiner discretion and performance context will continue to be important in evaluating impact. To ensure exams that are both consistent and allow for discretion, we urge that all the regulators jointly provide thorough, in-depth examiner training. Further, we recommend that such training include safety and soundness examiners, so they fully understand that perceived and actual risk may not be the same. Too often, when banks make innovative loans or investments, safety and soundness examiners require excessive reserves, which is a strong disincentive to innovation.

Question 2. In considering how the CRA's history and purpose relate to the nation's current challenges, what modifications and approaches would strengthen CRA regulatory implementation in addressing ongoing systemic inequity in credit access for minority individuals and communities?

CEI applauds the Board for raising this important issue. As the ANPR points out, CRA was created as a direct response to redlining and systemic racial inequity. CEI agrees with OFN that the law's history as civil rights legislation to address the impacts of racial discrimination in banking should not be downplayed. We appreciate the Board's focus on increasing lending and investment in communities of color.

CEI agrees with OFN and NCRC that a bank should not be able to reach a presumption of satisfactory without demonstrated accountability of lending to people and communities of color in its assessment areas. To ensure capital is flowing to communities of color, at a minimum, lending to people and communities of color should be included in the quantitative evaluation for both the retail and community development financing subtests. On the retail lending subtest, performance measures could include the percent of loans to people of color and the percent of loans in communities of color. On the community development subtest, a performance measure could be the number and percent of community development loans and investments in communities of color.

We note, however, that the effectiveness of these performance measures could be limited by the adequacy of data collection. One current limitation is that data on minority business lending will not be available until Section 1071 of the Dodd-Frank Act is implemented. An additional challenge is that many homebuyers do not respond to questions about race and ethnicity. CEI recommends that the regulators strongly encourage banks to be proactive in urging customers to answer these questions.

Question 8. Should delineation of new deposit- or lending-based assessment areas apply only to internet banks that do not have physical locations or should it also apply more broadly to other large banks with substantial activity beyond their branch-based assessment areas? Is there a certain threshold of such activity that should trigger additional assessment areas?

CEI believes that banks that conduct significant business outside of their assessment areas must be held accountable for that activity, and CRA evaluations should take such activity into account. We support a 100-loan minimum outside of AAs to trigger such accountability.

We believe, however, that both deposit-based and lending-based delineation of assessment areas are flawed approaches. We agree with the Board that both deposit-based and lending-based AAs would generally favor the most populous markets, most of which are already generally well served; worsen disparities between CRA hot spots and underserved areas; and most fundamentally, fail to capture most retail lending outside facility-based AAs. While CEI does not have sufficient expertise to advocate the best approach, we note that NAAHL has proposed a detailed alternative that we believe the Board should consider. NAAHL's framework "incorporates many elements of the Board's ANPR: (1) separate analysis of retail and CD performance; (2) retaining facility-based AAs; (3) determination of AA ratings; (4) building state and multi-state metro ratings from AA ratings; (5) aggregating state ratings at the institutional rating level; (6) determination of institutional level ratings for banks without significant retail lending beyond their AAs; (7) a nationwide AA for all branchless banks, including internet, wholesale, and limited purpose banks; (8) a CD test but no retail test for wholesale and limited purpose banks; and (9) retention of the strategic plan option." CEI recommends that the Board analyze this and other models in preparation for a new proposed rule.

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?

CEI opposes raising the small bank threshold above $326 million. As OFN points out, raising the threshold would likely result in less investment in CDFIs and in rural areas.

Question 16. Should the presumption of "satisfactory" approach combine low and moderate-income categories when calculating the retail lending distribution metrics in order to reduce overall complexity, or should they be reviewed separately to emphasize performance within each category?

No. CEI believes it is important to measure low and moderate-income categories separately to ensure a full picture of a bank's retail lending, and to ensure that low-income people are not left out.

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?

The Board should continue to define small business and small farm loans based on Call Report definitions of $1 million or less. As OFN points out in its comments, the Federal Reserve's 2021 Small

Business Credit Survey found that 90 percent of business owners seeking capital sought financing of less than $1 million, with 48 percent seeking less than $100,000 in financing. Increasing the dollar threshold allows banks to obtain CRA credit for making larger loans likely to have been made in the normal course of business.

CEI joins OFN, NCRC, and others to urge the Board to coordinate with other federal data collection requirements. From OFN's comment letter:

"CDFIs currently report to numerous federal agencies on their small business lending activity including the Small Business Administration (SBA) and CDFI Fund. The implementation of Dodd-Frank Section 1071 will also require reporting on small business lending to the Consumer Financial Protection Bureau. Section 1071 data will create a public database with data on race, gender and other demographics of small business applicants for credit that may be comprehensive enough to replace the small business data collection required by bank regulators for CRA, as well as at SBA and CDFI Fund.

"Since Section 1071 requires more detailed reporting than the CRA regulation in addition to the data elements that CRA now requires, Section 1071 data could become the data source that CRA exams use in the future. Banks and CDFIs would find it more efficient to submit data in one format as Section 1071 data than to have one or possibly two more annual data submission requirements."

Question 39. Are there other alternatives that would promote liquidity by freeing up capital so that banks and other lenders, such as CDFIs, can make additional home mortgage loans to LMI individuals?

CRA exams should include consideration of loans purchased from CDFIs. Such purchases can increase liquidity for CDFIs and create significant LMI impact.

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)?

and

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. Incentives to increase lending in Indian Country are greatly needed.

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?

CEI supports combining CD loans and investments under one subtest. As NAAHL states, "Separating investments from CD loans places the form of an activity ahead of its function, thereby reducing responsiveness to CD needs and obscuring evaluation of a bank's overall CD activities. In addition, the volume of high-value CD investment opportunities, such as LIHTC and New Markets Tax Credits (NMTC), are not sufficiently available in all communities to fulfill the obligations for all large banks."
We also agree with NAAHL that "it is vitally important to CD that special consideration be provided within the CD test for *equity* investments, including those for LIHTCs, NMTCs, CD REITs, unsubsidized

affordable housing, MDIs, and equity-equivalent investments in CDFIs. These activities expose banks to higher risk than loans, require higher capital reserves, tend to be illiquid, are often technically and financially complex, and – most important – are generally catalytically responsive to community needs. This could be accomplished through the impact scoring approach the Board proposes."

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?

Yes, CEI supports using local and national benchmarks. However, as others have noted, the regulators will need to work with banks and others to develop or identify datasets to inform these benchmarks. Performance context will also be crucial to differentiate different types of communities and geographies (e.g. rural vs. urban).

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?

CEI agrees with the response of NAAHL, that "impact scores are a plausible way to convert qualitative factors into a quantitative measure, but the Board should explain in more detail how they would affect ratings." We also agree that a scoring range of 1 to 3 is too limited, and recommend a wider scale to reflect the range and combination of factors that should be considered. We also concur with NAAHL's recommendations regarding recognition for activities involving:

- Equity investments, including but not limited to those involving LIHTCs, NMTCs, CD REITs, unsubsidized affordable housing (with some guidelines ensuring affordability over several years), MDIs, equity-equivalent investments in CDFIs, and Qualified Opportunity Zone funds that directly and primarily benefit LMI people.

- Chronically underserved communities, including economically distressed counties in both metropolitan and non-metropolitan areas and regions like the Mississippi Delta, the Colonias, Appalachia, and Indian Country.

- Partnerships with CDFIs, MDIs, women-owned financial institutions, and low-income credit unions.

- Activities that are especially responsive to community needs, such as small-balance multifamily affordable housing loans, construction loans for small scale developers of affordable housing, commercial revitalization loans in LMI neighborhoods, or receivables financing or real estate loans for nonprofit community service providers whose revenue depends on government grants and contracts.

- Financing with unconventional terms or that require underwriting flexibilities.

- Minority communities and businesses, including minority developers of CD projects.

- Grants. Grant amounts are typically small relative to loans and investments, but they are disproportionately valuable to CD. Unless grants receive additional consideration, their modest size would result in their undervaluation within CRA.

Question 48. Should the Board develop quantitative metrics for evaluating community development services? If so, what metrics should it consider?

No. Community development services are important and should be considered as part of the CD test, but they are difficult to quantify – and may not be valued sufficiently if they are assigned a set value.

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?

No. Volunteer activities should be directly related to financial services or have a community development purpose.

Question 56. How should the Board determine whether a community services activity is targeted to low- or moderate- income individuals? Should a geographic proxy be considered for all community services or should there be additional criteria? Could other proxies be used?

Geographic proxies are appropriate, as are other proxies such as reduced or free school lunch eligibility, Pell grants, and federal disability benefits.

Question 57. What other options should the Board consider for revising the economic development definition to provide incentives for engaging in activity with smaller businesses and farms and/or minority-owned businesses?

CEI agrees that community development activities that support minority-owned, women-owned and other small businesses with revenues of less than $1 million should receive CRA credit. We also agree with OFN that "to encourage additional activity with the smallest businesses, the Board should remove requirements that the businesses create jobs for LMI people. Sole proprietorships make up more than three quarters of all small businesses – and businesses owned by people of color are more likely to be sole proprietors."

Question 58. How could the Board establish clearer standards for economic development activities to "demonstrate LMI job creation, retention, or improvement"?

As others have noted in their comments, the CDFI Fund requires recipients of its Financial Assistance awards to document and report on job creation and retention associated with their small business loans. We join OFN and NCRC in recommending that the Board consult with the CDFI Fund and other federal agencies on documentation of job creation, retention or improvement. In addition, CEI has developed a detailed matrix-based definition of "Good Jobs," which encompasses seven criteria within three major areas: Living wage; Basic Benefits; and a Fair and Engaging Workplace. CEI would be pleased to share its methodology with the Board or others if it would be helpful in thinking about job improvement metrics.

Question 59. Should the Board consider workforce development that meets the definition of "promoting economic development" without a direct connection to the "size" test?

Yes, provided that the activity is located in LMI communities or the workers are residents of LMI communities or are themselves LMI.

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

Yes, definitely. Natural disasters and the impacts of climate change disproportionately affect LMI communities and communities of color. Climate change is one of the defining challenges of our time, and banks should be provided with incentives and models for investment that helps mitigate its effects.

Question 64. Would providing CRA credit at the institution level for investments in MDIs, women-owned financial institutions, and low-income credit unions that are outside of assessment areas or eligible states or regions provide increased incentives to invest in these mission-oriented institutions? Would designating these investments as a factor for an ''outstanding'' rating provide appropriate incentives?

Yes, CEI believes institution-level credit is appropriate and would provide incentives, as would designating these investments as a factor for an "outstanding" rating. We urge the Board to include CDFIs in this list as well.

Question 65. Should MDIs and women-owned financial institutions receive CRA credit for investing in other MDIs, women-owned financial institutions, and low-income credit unions? Should they receive CRA credit for investing in their own institutions, and if so, for which activities?

Yes. MDIs, women-owned financial institutions, low-income credit unions and CDFI banks should receive CRA credit for investments in other MDIs, women-owned financial institutions, and low-income credit unions and CDFIs, especially those located in and/or serving communities of color.

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

CEI strongly agrees that banks should receive such consideration.

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?

Yes – CEI supports the Board's proposal that banks get CRA credit for community development activities in a newly created designation of Designated Areas of Need, without regard for a bank's assessment areas. We also agree with OFN that the Board must ensure these investments reach the intended communities. The CRA credit provided for investments in "designated areas of need" must be given sufficient weight to incent investments and the designated areas of need must be correctly defined.

- Evaluation Framework – The evaluation framework must create enough incentive for banks to conduct activities in areas of designated need. In addition, the evaluation must take into account both people and place – ensuring the investments actually reach low-income people and people of color living in these designated areas. Activities that are deeply targeted or highly impactful should receive additional consideration or higher impact scores.
- Defining Areas of Designated Need - While the list of criteria proposed is a good start, there are still concerns that the broad definitions will result in CRA activity that is concentrated in more populous or urban areas, leaving rural and Native communities without investment. Reaching communities of color as an area of designated need must be a priority. The Board should also annually publish and update a list of designated areas of need and make public the criteria for adding and removing areas from the list.

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, such a list would be helpful to provide greater certainty for banks and clarity for advocates and communities. This list should be updated every two or three years.

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?

A pre-approval process should include both specific proposed transactions and general categories.

Question 78. Would eliminating limited-scope assessment area examinations and using the assessment area weighted average approach provide greater transparency and give a more complete evaluation of a bank's CRA performance?

Yes. CEI supports eliminating limited-scope area examinations, which excluded performance context and important qualitative factors. These factors are integral to understanding a bank's responsiveness. Qualitative factors are especially important to CD. Smaller AAs, especially in rural areas, were systematically disadvantaged because they were more likely to have limited-scope examinations.

Question 79. For a bank with multiple assessment areas in a state or multistate MSA, should the Board limit how high a rating can be for the state or multistate MSA if there is a pattern of persistently weaker performance in multiple assessment areas?

Yes. A bank that underperforms across multiple assessment areas should not be eligible to receive a high rating at the state or MSA level. The appropriate threshold (e.g. weak performance in 20 percent of assessment areas) should be determined based on local conditions and performance context.

Question 80. Barring legitimate performance context reasons, should a ''needs to improve'' conclusion for an assessment area be downgraded to ''substantial non-compliance'' if there is no appreciable improvement at the next examination?

Yes.

Question 81. Should large bank ratings be simplified by eliminating the distinction between ''high'' and ''low'' satisfactory ratings in favor of a single ''satisfactory'' rating for all banks?

No. CEI believes that this distinction is useful data for both the banks and community advocates, and can provide an incentive for banks to do better.

Question 82. Does the use of a standardized approach, such as the weighted average approach and matrices presented above, increase transparency in developing the Retail and Community Development Test assessment area conclusions? Should examiners have discretion to adjust the weighting of the Retail and Community Development subtests in deriving assessment area conclusions?

Yes, CEI supports the weighted average approach presented. As noted, CEI supports eliminating the designation of full- and limited-scope assessment areas in the evaluation process and agrees that a bank's overall rating should reflect its performance in all of its local communities. This change may also increase investments in rural communities that previously may have only received a limited scope exam.

As OFN notes, examiners should retain some discretion to adjust weighting based on local market conditions and performance context, including evaluating the role a bank plays in a market. A bank may make only a small volume of loans in a particular assessment area as a portion of its total activity, but that lending could be the overwhelming source of financial services in that area.

Question 83. For large banks, is the proposed approach sufficiently transparent for combining and weighting the Retail Test and Community Development Test scores to derive the overall rating at the state and institution levels?

CEI recommends that the Retail and Community Development tests receive equal rating.

Question 91. Is the certainty of accurate community development financing measures using bank collected retail deposits data a worthwhile tradeoff for the burden associated with collecting and reporting this data for all large banks with two or more assessment areas?

Yes. CEI believes that access to accurate and complete community development data is a critical component of CRA. Deposit location data will be an important factor in accurately and fairly evaluating CD performance.

Question 95. Are the community development financing data points proposed for collection and reporting appropriate? Should others be considered?

Yes - this level of additional detail is critically important to analyzing CD performance. The Board should also include data regarding partnerships with MDIs, CDFIs, and other partners that primarily serve minority populations and communities.

Question 97. Is the burden associated with data collection and reporting justified to gain consistency in evaluations and provide greater certainty for banks in how their community development financing activity will be evaluated?

Yes. The absence of such data has severely limited examination of CD performance as well as public information and research.

Question 99. Possible data points for community development services may include the number and hours of community development services, the community development purpose, and the counties impacted by the activity. Are there other data points that should be included? Would a Board-provided template improve the consistency of the data collection or are there other options for data collection that should be considered?

CEI agrees with NAAHL that a Board-provided reporting template would be helpful, and that reporting on the number of hours volunteered is "burdensome and not very productive." CEI also supports the flexibility of current Q&A guidance that allows banks to report the hours, number of events, or number of people served. Banks should also be permitted to identify other information, such as participation as board members of or advisors to nonprofit CD organizations, for additional consideration.

Thank you again for this opportunity to comment.

Sincerely,

Betsy Biemann
CEO