NHSSN
Building Better Neighborhoods
Block By Block

February 16, 2021

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

Re: Docket No. R-1723 and RIN 7100-AF94 (Advanced Notice of Proposed Rulemaking Community Reinvestment Act)

Dear Ms. Misback:

Thank you for the opportunity to comment on the Advance Notice of Proposed Rulemaking (ANPR) entitled "Community Reinvestment Act," which was published in the Federal Register on October 19, 2020, by the Board of Governors of the Federal Reserve System ("the Board"). Neighborhood Housing Services of Southern Nevada, Inc. (NHSSN) is a NeighborWorks affiliate organization and a HUD-certified housing counseling agency working in Southern Nevada. We provide affordable rental housing, pre-and-post-purchase homebuyer counseling and education, down payment assistance programs, and foreclosure prevention/loss mitigation counseling. We work directly with banks large and small and, since our inception, have been directly impacted by the Community Reinvestment Act (CRA) in our work.

We are encouraged by the Board's work to develop thoughtful, practical proposals that meaningfully address much of the stakeholder input provided in response to the Office of the Comptroller of the Currency's 2020 rulemaking on this subject. By moving beyond the single metric approach championed by the OCC, the Board has charted a more productive path to improving the mechanics of CRA evaluations while prioritizing the core purpose of meeting Low to moderate-income people's credit needs places. The single ratio framework operated on the flawed assumption that each dollar is as valuable as the next. Simply put, it would be impossible to design a system of multipliers and other adjustments that could adequately compensate for the nuance that this structure, which attempted to assign a numeric value to each activity, lacked. When evaluated through the lens of community needs, the value of a dollar deployed as an equity investment is not the same as the value of a dollar used to purchase mortgage-backed security. No multipliers or adjustments could consistently and accurately compensate for this contradiction.

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Assessment Areas (AAs)

Given the changes to the banking landscape since CRA regulations were last revised in the mid-1990s, it would be impossible to consider appropriate reforms without also revisiting challenges involving geography. NHSSN is encouraged by the Board's efforts to ensure that any reforms to AAs do not arbitrarily exclude LMI areas or embed illegal discrimination. When delineating AAs, large banks should not be permitted to exclude portions of counties (Q5). Small banks that cannot serve an entire county, particularly in Nevada, where counties are very large, should be allowed to serve only a portion of a county or counties. However, AAs that do not include a full county should be subject to examiner review to ensure that the geographic bounds appropriately reflect the community of borrowers and depositors served by the bank and that the boundaries do not unreasonably exclude minority communities.

Small Banks

Smaller financial institutions, which often have some of the deepest ties to local communities, should not be totally exempt from having to engage in CD activities. Rather, the expectations of their work should simply be scaled appropriately. Small banks may be uniquely situated to engage in locally responsive activities and are more likely to be in rural or other underserved areas.

Particularly concerning is the Board's proposal to increase the asset threshold for defining small banks to $750 million or $1 billion. NHSSN urges the Board to maintain the current $326 million thresholds, though we would support indexing inflation threshold. Given that small banks are exempt from a substantial portion of CRA regulatory requirements, increasing the threshold, particularly by doubling or even tripling it, would reduce the number of banks subject to the full requirements of the statute and could decrease the amount of investment, particularly in rural and minority communities for no apparent reason (Q13).

Retail Test

Retail Lending

NHSSN recommends that the Board include a metric measuring the racial distribution of loans. Careful consideration should be given to how to structure such a metric, and we encourage the Board to engage stakeholders in a conversation about how best to do so.

However, we believe that disparities in lending along racial lines are too significant not to be examined in an intentional, transparent way.

While recognizing the importance of giving banks certainty about how their performance will be viewed, NHSSN is concerned that the Board's proposal sets the threshold for a presumption of satisfactory too low. A modernized CRA should create incentives for banks to do more, not simply maintain the status quo. The presumption threshold essentially sets a floor for banks' targeted performance. While setting it too low may discourage banks from working harder to meet community credit needs, the potential risks of setting it too high are quite small, given that an examiner may still adjust a bank's score to account for factors not well represented by the quantitative measures.

Retail Services

NHSSN supports community and market benchmarks as a guide for examiners to assess branch distribution; however, we agree with the Board that it would not be appropriate to set specific thresholds. Examiners should have the discretion to use contextual information to evaluate the adequacy of bank branch distribution. Banks that operate in banking deserts, including Native lands and other areas of persistent poverty, should receive extra consideration for these efforts.

NHSSN supports the inclusion of a qualitative metric assessing bank product offerings. A bank could operate around the clock, but that wouldn't matter if it didn't offer products tailored to LMI consumers' needs. We strongly support the proposal to evaluate products based on their usage and impact. Usage is a good indicator of responsiveness and availability and can paint a clearer picture of the extent to which banks are serving their communities. When considering a bank's product range, examiners should also be watchful for predatory products and deceptive practices, particularly in the consumer lending space. These products are the antithesis of wealth building, and examiners should make downward adjustments in a bank's evaluation as appropriate.

Consumer Loans

CRA credit should be allocated to activities that provide borrowers access to wealth-building products, not just any kind of credit. In particular, credit products with terms unfriendly to consumers should not be eligible. NHSSN encourages the Board to limit consumer lending eligibility in CRA to products that responsibly address credit needs. While some consumer loan products such as credit cards and auto loans may serve important functions, all too often, these credit products are associated with onerous (and sometimes even predatory) terms. Credit should be narrowly tailored to those products that advance the fundamental purposes of CRA (Q35).

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Community Development Test

CD Financing

A responsive CRA framework must be calibrated on the relative impact of different activities. NHSSN is very supportive of the Board's proposal to assign an individual impact score to each activity. However, we encourage the Board to consider a larger scale than the proposed 1-3 to create greater differentiation between those projects that are only minimally impactful and those that have a tremendous impact. NHSSN as an affordable housing developer believes, equity investments, including LIHTCs, NMTCs, CD REITs, and equity-equivalent investments, require a higher level of effort and commitment on the part of banks, have outsized impacts on communities (Q47). This approach is much more promising than the multiplier-based approach proposed by the OCC.

CD Services

The Board's focus on impact and responsiveness as the ultimate CRA performance measures is to be commended. In addition to assessing how a bank serves its community through investments of 9 volunteer times, this subtest would be enhanced by the inclusion of a quantitative metric for grants, as measured against a bank's deposits. Compared to other CD financings, the relatively smaller scale of grants would result in these investments being drowned out in the CD financing subtest. However, grant funding is essential to nonprofit organizations' success and should be assessed through a standalone metric (Q48).

We support using an impact score model to recognize the relative differences among the various services banks offer to their communities. CD services provided by banks offer a unique and specialized contribution to local communities, and NHSSN is wary of proposals to broaden the definition of services that would be eligible for consideration.

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Eligible Activities

Given the tremendous unmet need for affordable housing in the United States, NHSSN recommends that all subsidized housing, unsubsidized affordable housing, and housing with an explicit pledge or other mechanisms to retain affordability should be automatically eligible CRA credit.

However, because it is impossible to develop a definition that will be adequate in all situations, we envision a scenario in which tailored definitions will create certainty around the core of these activities, and more nuanced projects will be approved on a case-by-case basis. Since unsubsidized affordable housing represents approximately 80% of the nation's low-cost housing stock, it is critical to include it in the CRA framework. However, other tools will also be needed to preserve these assets over the long term.

Though it is impractical to document and track renters' income of unsubsidized housing, affordability can be approximated by considering the current and expected future rents and comparing them to prevailing rents in the community. To receive consideration, two conditions should be met: 1) rents should be affordable, and 2) most renters in the neighborhood are LMI, and most rents in the neighborhood are affordable. If most of the rents in a neighborhood are affordable, the market will likely dictate that the subject property's rent would remain affordable. Furthermore, the incomes of other renters in the neighborhood are the most reasonable predictor of future tenants' incomes. Taken together, these two conditions offer sufficient assurances that the property will benefit LMI renters. This definition should be intentionally narrow so as to ensure that properties receiving automatic consideration are in keeping with CRA's purposes. It is possible that other 10 unsubsidized affordable housing projects that do not meet this definition should also receive consideration, but such projects should be reviewed on a case-by-case basis (Q52).

Access to capital is a perennial challenge for nonprofit housing developers, and some bank activities are more responsive to meeting these needs than others. Enterprise-level investments are powerful tools to help spur larger development activities, while equity investments and below-market loans play very important roles in the capital stack for affordable housing development (Q54).

When used to its full potential, CRA is a powerful tool for incentivizing partnerships between banks and local communities and leveraging investments across those communities, including the nonprofits that serve them, to achieve their shared goals. In proposing to give CRA consideration for any activity undertaken in partnership with a Community Development Financial Institution (CDFI), automatically eligible, the Board has recognized this potential. NeighborWorks recommends extending this status to partnerships between banks and nonprofit organizations that hold a charter from NeighborWorks America. These mission-driven organizations undergo rigorous financial and management assessments prior to receiving their charters and on an ongoing basis thereafter. Furthermore, membership in the NeighborWorks network is only available to organizations that demonstrate a commitment to resident leadership, ensuring that the organization continues to represent the interests of 11 of the communities in which it works. Activities relating to partnerships with NWOs, including loans and grants, should be explicitly included in the regulations describing qualified activities (Q67).

Conclusion

CRA regulations are one of the most powerful tools that the federal government has to incentivize and reward certain bank behaviors. CRA has long been the "thumb on the scale" that pushes more challenging deals or projects (within the confines of safe and sound lending) across the finish line, and it must remain that way. A modernized framework will provide certainty and clarity for banks while better focusing their activities on those that most impactfully address community needs.

We genuinely appreciate the spirit of openness and collaboration that the Board has brought to this process. We look forward to serving as a partner to modernize the Community Reinvestment Act regulations.

Sincerely,

M. Merced

Michelle Merced
CEO