ROCKY MOUNTAIN CRC
www.rmcrc.org

ROCKY MOUNTAIN COMMUNITY REINVESTMENT CORPORATION
-Your Premier Affordable Housing Lender Partnering with Utah Banks

Via Electronic Submission

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: Advance Notice of Proposed Rulemaking
Board of Governors of the Federal Reserve System
Docket No. R-1723
RIN 7100-AF94

Ms. Misback:

Thank you for the opportunity to comment on the proposal by the Board of Governors of the Federal Reserve System ("FRB") to modernize the FRB's Community Reinvestment Act ("CRA") regulatory and supervisory framework. We appreciate the effort of the FRB to address the need to modernize the regulations implementing the CRA in view of the significant changes impacting the delivery of financial services across the nation over the past four decades.

Rocky Mountain Community Reinvestment Corporation ("RMCRC") supports modernizing the CRA regulatory framework "to more effectively meet the needs of low- and moderate-income (LMI) communities and address inequities in credit access."

Before commenting on several of the questions let me briefly describe the context from which RMCRC expresses its responses.

RMCRC is a not-for-profit corporation formed in 1998 by Utah-based financial institutions ("Banks") to provide a platform addressing LMI affordable housing challenges. Initially, lending activity was exclusively focused on LMI neighborhoods in the state of Utah. Over the years, RMCRC became a major LIHTC lender in the Utah, providing financing for a majority of LIHTC projects requiring debt financing.

To mitigate the effects of a concentration of CRA-motivated resources in Utah (what some may refer to as a “CRA hot spot”, RMCRC expanded its geographic reach to include all states that are frequently referred to as the Rocky Mountain Region or Mountain Region – Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Utah and Wyoming. Excepting Montana, the states are contiguous to Utah. As a result, the CRA-motivated resources provided to RMCRC by Utah-based Banks benefit the entire region. Those resources could now support $71.1 million annual LIHTC credits rather than only supporting $9 million annual credits allocated to Utah alone[1]. The beneficial impact of the resources expanded from a single state population estimated in 2020 of only 3.3 million to the multi-state 2020 estimated population of 25.2 million.

It is critical to emphasize that **RMCRC is a CDFI**. Its mission is to facilitate the development and preservation of safe and clean affordable housing and community facilities that serve LMI households through sustainable direct multi-family lending, technical assistance, and community collaboration.

Annually, by distributing relevant current organizational and financial information, RMCRC invites banks operating in Utah to issue to RMCRC lines of credit that are collectively described as an Aggregate Line of Credit (“Line”). The recently concluded 2020-2021 invitation resulted in 34 Banks’[2] underwriting and participating in a Line totaling $406.8 million.

From inception through December 31, 2020, RMCRC has contributed $329 million to 198 projects. These projects account for over 10,000 units for LMI households. It has committed $176 million to 49 additional projects that will be funded over the next 24 months. Ninety-nine million of the Line is available to RMCRC to issue additional commitments to projects during the balance of the 2020-2021 fiscal year which concludes August 31, 2021.

As a CDFI that finances CD projects benefiting LMI communities RMCRC recommends the following:

- ***Question 1. Does the Board capture the most important CRA modernization objectives?***

  Although the objectives may be appropriate, RMCRC expresses concern that more important objectives are not receiving as much focus as less important ones. For

[1] Novogradic, Affordable Housing Resource Center, 2020 Federal LIHTC Information by State, https://www.novoco.com/resource-centers/affordable-housing-tax-credits/application-allocation/state-lihtc-allocating-agencies/2020-federal-lihtc-information-state

[2] Ally Bank, Altabank, American Express National Bank, Bank of Utah, BMW Bank of North America, Brighton Bank, Capital Community Bank, Central Bank, Continental Bank, Comenity Capital Bank, FinWise Bank, First Community Bank, First Electronic Bank, First Utah Bank, Green Dot Bank, Hillcrest Bank, Key Bank, LCA Bank Corporation, Marlin Business Bank, Medallion Bank, Merrick Bank Corporation, Optum Bank Inc., Prime Alliance Bank, Rock Canyon Bank, Sallie Mae Bank, Synchrony Bank, The Pitney Bowes Bank, Transportation Alliance Bank, U.S. Bank, UBS Bank USA, Washington Federal, WebBank, Wright Express Financial Services Corp., and Zions First National Bank.

instance, more effectively meeting the needs of LMI communities and addressing inequities in credit are more important than refining the configurations of assessment areas based on geographic proximity to physical facilities when technology is rendering geography less germane to providing financial services. "Community" is a fluid concept. Greater focus should be placed on identifying LMI communities where banks can engage in CRA qualifying activities with reasonable certainty of receiving credit. Additionally, modernization should foster flexibility thereby acknowledging that the concept of "community" will continue to evolve.

Reducing complexities associated with CRA should be a major focus of modernization as well. To do so will naturally increase clarity, consistency and transparency in the regulatory process. It should result in more timely performance evaluations. RMCRC favors more guidance on eligible activities by utilizing clearly stated general standards combined with an illustrative list, although not an all-inclusive list, coupled with a readily available process of exploring and determining opportunities in a timely manner.

Modernization should be governed by the goal that no change will unintentionally reduce the CRA resources available to assist LMI communities.

- **Discard the concept of "deposit-based assessment areas" and develop an alternative that recognizes internet-based banks' efforts to address the affordable housing challenges facing LMI communities anywhere in the country.** Establishing deposit-based assessment areas may reduce one or two CRA-hot spots by shifting utilization of CRA qualified resources to other larger CRA-hot spots. Deposit concentrations exist in large population centers such as those found in New York, California, Texas and Florida where considerable CRA resources are already deployed. The proposal would undermine RMCRC's efforts to spread resources, otherwise available to Utah because of its concentration of banks, to neighboring states in the Rocky Mountain Region. CRA deserts would not benefit from the "deposit-based assessment area" concept and may very well be adversely affected.

- ***Question 35. What standard should be used to determine the evaluation of consumer loans (1) A substantial majority standard based on the number of loans, dollar amount of loans, or a combination of the two; or (2) a major product line designation based on the dollar volume of consumer lending?***

  Question 36. Should consumer loans be evaluated as a single aggregate product line or do the different characteristic, purpose, average loan amounts and uses of the consumer loan categories (e.g., motor vehicle loans, credit cards) merit a separate evaluation for each?

  Questions 35 and 36 suggest that the inclusion of consumer loans in CRA evaluations will become mandatory, whereas currently such inclusion is voluntary. **CRA regulations should <u>not require</u> banks to include consumer loans in their CRA evaluation.** Mandatory inclusion of consumer loans will seriously disrupt current CD activity and unintentionally discourage future CD activities. Mandating the inclusion of consumer loans will render much of the current and future CD activity either inconsequential or unnecessary, resulting in fewer resources directed to LMI communities. Therefore, RMCRC strongly encourages the Agencies to continue to allow banks to elect to include consumer loans in their CRA evaluation.

- ***Question 42. Should the Board combine community development loan and investments under one subtest?***

  Under the current approach CD lending and investing are evaluated differently even though both require long term financial resources. Combining lending and investing under one subtest fails to address the flaws of the current approach. It would not matter whether an evaluation incorporated separate subtests or a combined one so long as CD lending and CD investing were treated the same.

  As noted above, the revolving Line extended to RMCRC support three phases of financing affordable housing – (1) issuing immediate funding commitments and forward commitments during the current year; (2) previously issued forward commitments to be funded up to 30 months in the future as projects are completed and stabilized; and (3) previously issued and funded commitments that support operating projects up to 15 years once funded. The Line is legally binding and consumes critical capital of the Banks for the duration of the Line.

  Currently, to ensure CRA credit for the life of a CD loan that may fund a project for more than a decade, a bank must make or reconsider and renew the credit decision annually. In contrast, a CD investment of a similar duration only requires a bank to make the investment decision once and receives CRA credit provided the investment remains on the bank's balance sheet. RMCRC long-term reliance upon the renewal of the funded portions of its Line to support previously funded LMI housing projects, which are inherently long-term, is equally critical. Without the Banks' support, RMCRC would no longer be able to support CD projects throughout the Rocky Mountain Region.

- ***Question 48. Should the Board develop quantitative metrics for evaluating community development services?***

  Quantitative metrics for community development services, such as board or committee participation, should not be developed. The qualitative nature of such service renders quantitative measurement meaningless and would tend to diminish, devalue, or denigrate the service. Such service, however, uniquely contributes to the local LMI communities.

- ***Question 52. Should the Board include for CRA consideration subsidized affordable housing, unsubsidized affordable housing, and housing with explicit pledges or other mechanisms to retain affordability in the definition of affordable housing?***

All three forms of housing should be included in the definition of affordable housing. Unsubsidized housing should be included provided there are clear guidelines designed to ensure that affordability is retained. The affordable housing crisis gripping the country will not be addressed successfully relying solely on federal- or state-subsidized multi-family affordable housing. Banks should be able to support private unsubsidized efforts addressing LMI affordable housing needs. Full credit should be given subsidized or unsubsidized projects provided LMI residents occupy no less than 20 percent of the units. Partial credit, to the extent LMI residents occupy less than 20 percent of the units, should be given.

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

  Yes. Certified Depository Financial Institutions engaged in aiding LMI communities and supported by banks become the "eyes and ears" or "boots on the ground" for those banks. The CDFI's can identify and prudently underwrite qualifying CRA projects the banks may otherwise not become aware. Not only should banks receive consideration when supporting such CDFI's, they should also receive such consideration even when the CDFI may not be located in the banks' assessment areas.

- ***Question 68. Will the approach of considering activities in "eligible states and territories" and "eligible regions" provide greater certainty and clarity regarding consideration of activities outside of assessment areas, while maintaining an emphasis on activities within assessment areas via the community development financing metric?***

  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?

  Banks should receive CRA credit for qualifying activities in as broad a geographic area as possible without incurring increased administrative burdens associated with increasing the number of AA's or the expansion of the size of AA's. Under current regulations banks receive CRA credit for CD activities in a relatively broad geographic area provided they satisfy the CRA needs of their physical assessment areas. Banks with a Utah-based assessment area regularly receive credit for efforts outside of Utah and in the surrounding regional area. As noted above, some of that effort is achieved through their lines of credit issued to RMCRC that enables it to pursue multi-family affordable housing throughout the Rocky Mountain Region. The Rocky Mountain Region is a very large geographic region with widely disbursed populations, quite unlike some recognized regions along the east coast. However remote, activity in one section impacts sections elsewhere within the region. Modernization should enhance the efforts of CDFI's, including RMCRC, to serve expanding needs of LMI communities anywhere throughout the United States. Expanding the areas within which a bank can receive CRA credit for qualifying activities even for areas where the bank does not have an assessment area would enhance CDFI efforts to aid LMI communities.

Some of RMCRC's member banks are called "limited purpose" or wholesale banks. RMCRC understands that they receive CRA credit for CD activities anywhere in the country after they have adequately addressed the needs of their assessment area. It would make sense that this standard should apply to all banks, i.e., all banks should be able to get credit for CD activities *anywhere* outside their assessment areas if they have adequately addressed the needs in their assessment areas.

As noted earlier, less focus should be given the concept of assessment areas and more to identifying areas of need without regard to proximity to a bank's assessment area.

- ***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?***

  Question 72. Should a pre-approval process for community development activities focus on specific proposed transactions, or on more general categories of eligible activities?

  RMCRC believes that an illustrative, but non-exhaustive, list of CRA eligible activities would promote clarity on the CRA eligibility of activities. Such a list could be developed by assembling a list of current eligible activities. That list could be expanded by soliciting recommendations from stakeholders throughout the country. It should be published via the websites of the various regulatory agencies and the Federal Register. The challenge of assembling the initial list is significant. However, amendments to that list should not be as burdensome and should be updated at least every two years.

  A pre-approval process for community development activities should be developed jointly by the agencies that can address both specific transactions, as well as general categories. The processes should accommodate timely responses to requests for pre-approval by developing a standard, yet non-overly burdensome, submission format. Perhaps consideration should be given to permit submissions by any legitimate stakeholder and not limit submissions to banks. The process should not require that determinations be made at the national level which would create a potential bottleneck. Rather determinations should be made at the regional level.

- **Modernized CRA Regulations should be issued jointly by the Federal Reserve Board, the OCC, and the FDIC.** RMCRC efforts to finance affordable housing addressing the challenges facing LMI communities in its geographic region are designed to aid all banks' efforts to deploy resources in a CRA-qualified manner. The failure to issue jointly modernized CRA regulations will require RMCRC to develop duplicative loan products merely to satisfy differing CRA regulations. The operational resources available to RMCRC will be squandered in efforts to satisfy the differing regulations, thereby underutilizing and possibly restricting the breadth and depth RMCRC can address the affordable housing issues facing the eight states within its geographic region.

- **Performance evaluations should be issued to the banks and the communities served by those banks in a more timely manner.** Under the current regulations no timeframe is required for the regulators to present their evaluations of the banks' CRA efforts. With the passage of time the value of performance evaluations is seriously diminished. Banks are held in limbo, delaying further efforts to assist LMI communities and frustrating CDFI's and other nonprofit entities that rely on banks' CRA resources to fulfil missions centered on helping LMI communities. Housing options for individuals, families and communities suffering from inadequate affordable housing are unnecessarily delayed to the detriment of society as a whole. Just as safety and soundness examination results are required to be given to banks in a reasonable timeframe, performance evaluations should be required to be published within six to nine months from the CRA examination conclusion.

In conclusion, RMCRC supports the modernization of CRA regulations that encourage increased CRA-qualified efforts, particularly involving CD lending, investing, and services.

In advance, thank you for considering RMCRC's recommendations.

Respectfully,

Steven J. Nielsen

Steven J. Nielsen
President & CEO
Rocky Mountain Community Reinvestment Corporation