February 16, 2020

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

Re: Community Reinvestment Act Advance Notice of Proposed Rulemaking
Docket No. R-1723; RIN 7100-AF94

Federal Reserve Board:

The CRE Finance Council (CREFC) appreciates this opportunity to comment on the Federal Reserve Board's (Board) Advance Notice of Proposed Rulemaking to modernize its Community Reinvestment Act (CRA) regulatory and supervisory framework (the "proposal").[1] CREFC members welcome the financial industry's growing focus on sustainability, equity, and inclusion, and believe that an effective CRA framework is essential to addressing persistent racial equity gaps and supporting low- and moderate-income (LMI) communities across the country. We therefore applaud the Board's efforts to modernize and strengthen its CRA regulatory structure.

By way of background, CREFC is comprised of over 300 institutional members representing U.S. commercial and multifamily real estate investors, lenders, and service providers – a market with an estimated $4.6 trillion of commercial real estate (CRE) debt outstanding.[2] CREFC facilitates the development of best practices, industry standards, and federal policy across the commercial real estate markets, all with the goal of promoting strong and liquid debt markets.

While the CRA impacts a broad range of credit needs in low- and moderate-income (LMI) neighborhoods, CREFC's comments focus on community development (CD) financing activities, including:

- Meeting the needs of communities outside of current CRA "hot spots;"
- Rewarding both quantity and quality of CRA CD activities;

[1] Board of Governors, Federal Reserve System, *Advance Notice of Proposed Rulemaking, Community Reinvestment Act*, 85 Fed. Reg. 66410 (Oct. 19, 2020).

[2] Federal Reserve, as of December 31, 2019.

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- Preserving optionality in qualifying CD activities to give banks flexibility in the manner in which they satisfy their CRA obligations;
- Improving predictability in the CRA rating process by providing greater clarity around qualifying activities and scoring metrics; and
- Relying to the greatest extent possible on existing data sources and reporting processes, rather than imposing onerous new requirements.

Our comments on each of these points follow.

I. CRA credit should be expanded for qualifying CD financing activities in high-need areas outside of current CRA "hot spots."

- It is widely recognized that the CRA regime's focus on physical location-based assessment areas has created so-called CRA "hot spots" for CD activities.[3] These hot spots tend to be in populated areas and banking centers (e.g., Salt Lake City, New York City). In these areas, *many* banks compete for CRA credit in a limited universe of qualifying CD lending and investment opportunities.

- While CREFC members recognize and fully support the CRA's policy goal of encouraging banks to meet the credit needs of their local communities – and do not suggest that this requirement be removed – expansion of credit for activities beyond those local communities would serve more low- and moderate-income communities (so-called CRA "deserts"), and expand the pool of quality CD financing opportunities for banks' CRA dollars.

- CREFC members generally support elements of the proposal that would award CRA credit for qualifying activities in areas of need, even if they are outside of the traditional assessment areas, including, for instance:

  - Establishing "designated areas of need" (i.e., underserved and economically distressed communities across the country, which could overlap with existing CRA concepts like Indian country and rural and underserved areas identified by certain authorities) and awarding CRA credit – perhaps even higher-weighted credit – for CD activities in these areas; and

  - Clarifying and expanding "regions" around banks' assessment areas where CD activities count for CRA credit (again, potentially overlapping with current CRA concepts for underserved areas).

II. The CRA structure should incentivize high-impact CD activities that are particularly responsive to community needs.

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[3] CREFC members expressed similar concerns about the Office of the Comptroller of the Currency's (OCC) CRA assessment areas based on deposits, noting that that approach likely would still result in CRA activity concentrated in population centers.

- CREFC members generally support recognition and promotion within the CRA regime of the quantity *and quality* of CD activities. The proposed “impact score” approach to complement banks’ quantitative performance scores, for example, will incentivize innovative, impactful, and perhaps non-traditional CD activities that best meet communities’ needs.

- The “impact score” proposal – akin, we think, to a multiplier approach that incentivizes high-quality CRA activities – is consistent with the current responsiveness model under the CRA with which banks are familiar and which works well to award particularly impactful CRA CD activities.

- Any “impact score” framework should contain clear measurement/calculation parameters to avoid adding unnecessary complexity or uncertainty to the CRA scoring processes.

III. The Board should preserve flexibility and optionality in how banks may satisfy their CRA CD obligations to encourage responsiveness to community needs and satisfaction of the CRA’s quantitative CD financing metrics.

- Combining CD investments and lending into a single subtest/score provides flexibility for banks to choose how best to reach their CRA CD financing requirements based on a community’s needs at any given time, and effectively expands options for qualifying CD financing opportunities in over-banked CRA hot spots (rather than, for instance, all banks in New York City going after the same deals to try to satisfy their CRA obligations). To the extent combining these categories into a single test results over time in unintended imbalances in certain communities or generally between investing and lending, a dynamic impact scoring approach could be used to incentivize a particular type of CD financing activity.

- CREFC members support the Board’s proposal to award credit for CD loans and investments held on balance sheets from review period to review period, which could help incentivize longer-term CD loans (for construction lenders, for instance, who take on more risk and could also be rewarded with a multiplier or impact score of some type).

- The Board should continue to award CRA credit for mortgage-backed securities (MBS) purchases when the securities are backed by loans that finance subsidized and affordable housing. MBS purchases provide valuable liquidity to the affordable housing market and will ultimately produce more CD lending for these important and impactful projects.

- CREFC members urge the Board to *at least* maintain pro rata credit eligibility for mixed-income projects where the LMI benefit is 50% or less, or preferably, to consider making the credit more generous for these projects due to the important local policy goals these projects support. For instance, when a city or locality establishes a threshold goal for new developments with some affordable housing (e.g., 25% or 30%) because it has determined that that threshold best meets its economic, planning, and/or development goals, and a bank finances the project to satisfy and promote the jurisdiction's specified objectives, the Board could consider awarding up to full CRA credit for that activity.

- The Strategic Plan evaluation option is an important tool to preserve flexibility for banks and maximize customization of CRA activities based on banks' business models and the different communities they serve.

IV. CREFC supports multiple elements of the proposal that aim to bolster clarity and certainty within the CRA regime.

- Overall, greater clarity in the CRA regime around eligible activities and more specificity regarding rating processes and calculations will generate a level playing field for bank assessments.

- Currently, a big challenge for banks is after-the-fact CRA assessments that conclude a long-term, complex project does not in fact qualify for CRA credit. We therefore support measures to increase predictability, such as:

  - Our members generally support the proposed creation and maintenance of a non-exhaustive list of eligible CRA activities that would provide additional *advance* (i.e., pre-assessment) guidance and clarity for banks about a project's eligibility for CRA credit.

  - Perhaps even more helpful than a list – which will never encompass *all* qualifying activities, from which many new projects will vary in at least some details, and which could stifle innovation and responsiveness in CRA activities if it comes to be viewed as a compliance "checklist" of requirements – is a case-by-case "pre-approval" process to evaluate a project's eligibility early. For such a process to be helpful, though, it must be efficient and fast because many CD financing deals close in a short timeframe.

- Our members support clarification around "naturally occurring" or unsubsidized affordable housing and its eligibility for CRA credit, including a clear definition and/or examples of what constitutes "naturally occurring" affordable housing.

- The Board should consider expanding and clarifying the parameters around qualifying CD services. Conducting financial literacy classes in LMI areas has become a popular CD activity, for example, but communities could potentially benefit more from other services (e.g., internship programs, job training courses, etc.).

V. CREFC members strongly support the Board's proposal to rely to the greatest extent possible on existing data sources, reporting processes, and systems, rather than creating onerous new bank reporting requirements.

- CREFC members report that one very challenging aspect of the OCC's CRA rule is its reporting requirements, which require banks to create new data systems and are very time consuming and costly.

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While we recognize that the Board is still in the initial phase of evaluating potential changes to its CRA regulatory framework, we applaud your efforts to modernize and clarify the CRA regime and we look forward to providing additional feedback and recommendations as this rulemaking process progresses.

Sincerely,

Lisa A. Pendergast

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