



February 16, 2021

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

Re: Docket No. R-1723/RIN 7100-AF94 (Advance Notice of Proposed Rulemaking on the Community Reinvestment Act)

To Whom It May Concern:

I write on behalf of the broad array of stakeholders in the Opportunity Zones Coalition to provide comments in response to the Advance Notice of Proposed Rulemaking, Community Reinvestment Act, issued October 19, 2020 (“ANPR”).¹ We appreciate the work of the Board of Governors of the Federal Reserve System (“Federal Reserve”), and write to suggest that future proposed regulations make clear that investments in Opportunity Zones (“OZs”) that align with the intent of the Community Reinvestment Act (“CRA”) in benefitting low- and moderate-income (“LMI”) individuals and communities are eligible for CRA credit.

Specifically, we offer the following recommendations:

- Provide examples of Opportunity Zone investments in an illustrative, non-exhaustive list of CRA-eligible activities.
- Expand areas for community development activities to cover activities in designated areas of need, such as rural areas and Indian country.
- Retain a separate investment test or, at a minimum, provide an increased impact score in an institution’s evaluation for long-term community development investments.

I. Opportunity Zones Investments Should Receive CRA Credit Because They Share Similar Purposes and Goals

Opportunity Zones were included as a provision in the *Tax Cuts and Jobs Act* to provide tax benefits for certain private investments in America’s low-income communities. This incentive was designed to encourage investors to redeploy their earnings from capital gains to finance new and expanded business activity in low-income areas nationwide. Opportunity Zones are low-

¹ 85 Fed. Reg. 66,410, RIN 7100-AF94 (Oct. 19, 2020).

income and contiguous² census tracts that were nominated by state governors and certified by the U.S. Department of the Treasury. The more than 8,700 OZ census tracts are among the highest-need communities in the United States by most measures of socioeconomic well-being. The map of OZs are well-targeted to needy places, demonstrating an average life expectancy three years shorter than the national figure, an average poverty rate of 26 percent according to the latest 2019 data, and a median family income less than two-thirds the national level, on average. The goal of the Opportunity Zones provision is to help address the persistent poverty and uneven recovery from the Great Recession that left too many American communities behind.

The CRA shares many of the same goals as Opportunity Zones, namely to benefit low-income communities and their residents. The impact of the CRA and Opportunity Zones programs can be maximized by providing eligibility for investments in both programs. The CRA and Opportunity Zones have an overlap in their lower-income community focus. The Opportunity Zone definition of low-income communities³ is similar to, and in many cases, overlaps with the CRA's LMI definition.⁴ Accordingly, Opportunity Zone investments are a natural fit for CRA credit, similar to other federal tax incentives that qualify, such as the New Markets Tax Credit and Low-Income Housing Tax Credit programs. As described further below, we believe that only Opportunity Zone investments in LMI tracts that benefit the LMI community should qualify for CRA credit to better align the goals of the two programs.

The ANPR states that: "Given the complexity of the existing definition and guidance on the revitalization and stabilization category, in addition to the particularly fact-specific nature of eligibility and responsiveness determinations, the Board is considering how to both provide more detail in the regulation on which activities qualify in which targeted geographies and simplify the definition overall."⁵ The ANPR could accomplish this goal by explicitly including examples of

² A state could designate a small portion of its census tracts as Opportunity Zones even if the tract is not a low-income community, as long as the tract is contiguous with the low-income community that is designated as a Qualified Opportunity Zone, and the median family income of the tract does not exceed 125 percent of the median family income of the low-income community with which the tract is contiguous. 26 U.S.C. Section 1400Z-1(e).

³ 26 U.S.C. Section 1400Z-1(c)(1), *citing* Section 45D(e):

(A) The poverty rate for such tract is at least 20 percent, or

(B)

(i) In the case of a tract not located within a metropolitan area, the median family income for such tract does not exceed 80 percent of statewide median family income, or

(ii) In the case of a tract located within a metropolitan area, the median family income for such tract does not exceed 80 percent of the greater of statewide median family income of the metropolitan area median family income.

⁴ "Low-income, which means an individual income that is less than 50 percent of the area median income, or a median family income that is less than 50 percent in the case of a census tract.

Moderate-income, which means an individual income that is at least 50 percent and less than 80 percent of the area median income, or a median family income that is at least 50 percent and less than 80 percent in the case of a census tract." Prop. 12 CFR § 25.03.

⁵ 85 Fed. Reg. at 66,447.



activities in LMI Opportunity Zones that would qualify under the revitalization and stabilization subcomponent of community development.

Question 60 of the ANPR asks whether “the Board [should] codify the types of activities that will be considered to help attract and retain existing and new residents and businesses? How should the Board ensure that these activities benefit LMI individuals and communities, as well as other underserved communities?”⁶ The Opportunity Zones incentive was specifically designed to create new businesses and jobs in distressed communities. In his press release announcing the introduction of the *Investing in Opportunity Act*, the original legislative vehicle introducing Opportunity Zones, Senator Tim Scott (R-SC) wrote, “The *Investing in Opportunity Act* can provide the chance that entrepreneurs and small businesses are looking for to grow, innovate and create jobs,” underscoring that this incentive was intended to draw capital to Opportunity Zones both to help existing businesses grow, as well as to spur the creation of new businesses.

The Opportunity Zones statute is structured to incentivize long-term investments by providing the maximum tax benefit for investments lasting ten years or more.⁷ As such, Opportunity Zone investments would meet and reinforce the goal of providing greater stability and patient capital in LMI areas.⁸ Accordingly, we believe it is appropriate to provide CRA credit for Opportunity Zone investments that, as discussed in the next section, align with LMI community benefits.

II. Provide Illustrative Examples of Opportunity Zone Activities that Provide LMI Individuals and Communities Benefit

Providing an illustrative, non-exhaustive list of qualifying Opportunity Zone activities would provide greater certainty to financial institutions and investors, as well as meet the stated goals of the Federal Reserve. The ANPR notes that, under the current rules, “[t]he lack of upfront certainty is a disincentive to undertake such activities, even if they potentially have great value to the local community.”⁹

Question 71 of the ANPR asks whether “an illustrative, but non-exhaustive, list of CRA eligible activities [would] 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?”¹⁰

We agree with the Federal Reserve’s proposal to create an illustrative, non-exhaustive list of community development activities that meet the requirements for CRA consideration. Under the

⁶ 85 Fed. Reg. at 66,448.

⁷ The Opportunity Zones statute excludes from taxable income the appreciation of investments in Opportunity Zones that have been held by the taxpayer for at least ten years. 26 U.S.C. Section 1400Z-2(c).

⁸ See 85 Fed. Reg. at 66,437 (noting “community development loans and investments could be improved by encouraging patient capital”).

⁹ 85 Fed. Reg. at 66,451.

¹⁰ 85 Fed. Reg. at 66,452.



current rules, the lack of certainty regarding whether activities will qualify for CRA credit discourages financial institutions from engaging in activities other than those that are certain to qualify.

The ANPR also notes that, “The Board is interested in ensuring that, in addition to serving a revitalization and stabilization purpose, these activities include benefits to LMI communities and individuals, or other underserved communities.”¹¹ Considering that not all Opportunity Zone investments would meet the requirements of the CRA to provide benefit to LMI communities or individuals, proposed regulations should provide illustrative examples of Opportunity Zone activities that would qualify for CRA credit.

Some financial institutions have already engaged in investments in Opportunity Zones that support the CRA’s purpose:

- PNC Bank provided \$11 million in equity through its opportunity fund and \$4.2 million in loans to transform a vacant, nearly century-old office building into much-needed workforce housing in Birmingham, Alabama.¹²
- PNC Bank also redeveloped an obsolete cold storage warehouse into needed residential apartments on the South side of Bethlehem, Pennsylvania using traditional financing and Opportunity Zone investments.¹³

In fact, Fifth Third Bank closed \$100 million in OZ investment in 2020 to support the development of affordable housing and retail space for minority-led businesses, and revitalize dilapidated properties. This investment was additive to Fifth Third’s overall community investment activity, and Catherine Cawthon, then-president of Fifth Third Community Development Corporation, noted in a September 2020 press release, “Because of the Opportunity Zones initiative, we were able to expand our total community investment activity and help respond to this critical need.”¹⁴

These sorts of projects are clearly of the type that should receive CRA credit – but the lack of certainty makes it riskier for banks to engage in these activities. We recommend that if the Federal Reserve approves an activity for CRA purposes for one institution, that the Federal Reserve make its determination public and that the same activity should be considered to qualify for CRA credit for other institutions.

Illustrative examples would help to provide certainty that if an Opportunity Zone investment engages in one of these activities, then it will qualify for CRA credit. We welcome the

¹¹ 85 Fed. Reg. at 66,448.

¹² <http://pnc.mediaroom.com/2019-07-30-PNC-Provides-15-Million-To-Finance-American-Life-Redevelopment-In-Birmingham-Opportunity-Zone>.

¹³ <https://www.pnc.com/en/about-pnc/topics/pnc-pov/community/opportunity-zone.html>.

¹⁴ <https://www.prnewswire.com/news-releases/nef-fifth-third-close-out-25m-opportunity-zones-fund-to-expand-workforce-and-low-income-rental-housing-301137806.html>

additional certainty provided by the final regulations issued by the Office of the Comptroller of the Currency (“OCC”)¹⁵ through the listing of illustrative examples of investments in opportunity funds in § 25.04(c)(11). For instance, the following examples of Opportunity Zone investments would reflect our recommendations of activities that should be presumed to benefit LMI individuals or communities in accordance with CRA requirements. This list is meant to be demonstrative, not comprehensive.

- Qualified opportunity fund investment that finances construction of a grocery store in an Opportunity Zone that is also an LMI census tract.
- Qualified opportunity fund investment that finances the construction of a commercial building intended for retail and restaurant use in an Opportunity Zone that is also an LMI census tract.
- Qualified opportunity fund investment that finances construction of a new manufacturing facility that creates jobs for local residents in an Opportunity Zone that is also an LMI census tract.
- Qualified opportunity fund investment that finances renovation of a vacant building into a cultural arts facility in an Opportunity Zone that is also an LMI census tract.
- Qualified opportunity fund investment that finances the rehabilitation of an acute care hospital facility, including the purchase of new medical equipment, in an Opportunity Zone that is also an LMI census tract.¹⁶
- Qualified opportunity fund investment that finances the construction or renovation of facilities oriented toward serving low-income children, such as charter schools, day care centers, and early childhood centers in LMI Opportunity Zones.
- Qualified opportunity fund investment that finances the construction or renovation of office space occupied by non-profit organizations, community recreation, and similar gathering spaces in LMI Opportunity Zones.
- Qualified opportunity fund investment that finances the construction of affordable residential apartments in an LMI Opportunity Zone.
- Qualified opportunity fund investment that finances the establishment of a business incubator for start-up businesses in an LMI Opportunity Zone.

¹⁵ 85 Fed. Reg. 34,734 (Jun. 5, 2020).

¹⁶ These first five examples are in § 25.04(c)(11) of the OCC’s illustrative list of qualifying activities under 12 CFR 25.04.

- Qualified opportunity fund investment that finances essential infrastructure in an LMI Opportunity Zone.

However, similar to the OCC rule, these should be non-exclusive examples, and an institution should be able to show by facts and circumstances that an Opportunity Zone investment benefits LMI communities or individuals. We recommend that the Federal Reserve also provide a mechanism by which interested parties can submit new examples for confirmation that such activities are qualifying activities, consistent with 12 CFR 25.05. We further recommend that the list of qualifying activities be updated every three years, consistent with the interval by which full scope reviews of large institutions are conducted.

Finally, we support the definition of “designated areas of need – for example, in Indian Country or in areas that meet an ‘economically distressed’ definition – where banks could conduct community development activity outside of an assessment area.”¹⁷ By definition, the vast majority of Opportunity Zones are economically distressed areas. Of the over 8,700 census tracts that have been designated as Opportunity Zones, many are in rural areas that have a dearth of new economic investment. In addition, 362 Opportunity Zones overlap with Indian tribal lands,¹⁸ and some Opportunity Zones encompass impoverished communities along the Mexico border, including colonias. While much of the focus of CRA investments has been on urban communities, it is important to promote investments in communities that are outside of a bank’s service areas and often become CRA deserts. In response to Question 69,¹⁹ we encourage proposed regulations to include provisions allowing CRA credit for an institution’s bank-wide evaluation for activities in designated areas of need, including underserved Opportunity Zones.

III. Maintain Incentives for Community Development Investments

Question 42 requests feedback on whether the Board should “combine community development loans and investments under one subtest” and whether that would encourage “more effective community development financing.”²⁰ We are concerned that this would decrease, not increase, community development investments from current levels.

The Federal Reserve’s current CRA regulations separately test a bank’s CRA performance in three areas: loans, investments, and services. We are concerned that by measuring loans and equity investments together, banks would be disincentivized to engage in equity investments to meet their CRA requirements. Equity investments have a greater cost of capital and may have higher capital requirements, and it is easier for banks that are in the business of lending money to simply make loans. Community development investments are critically important for

¹⁷ 85 Fed. Reg. at 66,411.

¹⁸ Opportunity Zones in Indian Country, U.S. Department of the Interior, at 3, available at: https://www.bia.gov/sites/bia.gov/files/assets/as-ia/ieed/ieed/pdf/Opportunity_Zones_Primer.pdf.

¹⁹ 85 Fed. Reg. at 66,451.

²⁰ 85 Fed. Reg. at 66,438.



communities, and the significance of investments would be diminished through the combination of lending and investments into one evaluation. We support retaining the investment test as a separate test or, alternatively, establishing three subtests for loans, investments, and services under the Community Development Financing Test. If a separate investment test or subtest is not retained, we suggest that a financial institution should only be able to achieve an outstanding rating for the Community Development Financing Subtest if it engages in adequate levels of equity investments.

Question 47 asks whether “the Board [should] 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?”²¹ In response to Question 47, we support the use of impact scores assigned to community development activity based on the assessment of local impact. Community development activities are part of the core purposes of the CRA intended to benefit LMI communities and should be given extra weight in the institution’s evaluation based on their degree of impact. To ensure that investments remain an important part of community development, an impact score would be an appropriate way to assess an institution’s commitment to and level of investments for purposes of determining whether the institution qualifies for an outstanding rating. Additionally, longer-term activities should be rated as more impactful than short-term activities. The Opportunity Zone investment is expressly designed to meet community needs for long-term investments, and financial institutions should be given extra consideration for such responsiveness.

We appreciate the ability to provide feedback on the ANPR and your consideration of these recommendations. If you have any questions about these comments, please contact me at catherine@eig.org.

Sincerely,

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²¹ 85 Fed. Reg. at 66,442.