Opportunity Fund

February 16, 2021

Board of Governors of the Federal Reserve System
Via email to regs.comments@federalreserve.gov

RE: ANPR – Community Reinvestment Act
Docket No. R-1723
RIN 7100-AF94

Board of Governors of the Federal Reserve System:

Opportunity Fund appreciates the opportunity to comment on the Advance Notice of Proposed Rulemaking (ANPR) by the Board of Governors of the Federal Reserve System (Board) Docket No. R-1723/RIN 7100-AF94, the "Community Reinvestment Act." The Community Reinvestment Act (CRA) was a landmark response to redlining, a persistent pattern of discrimination in bank lending that harmed communities of color. The CRA has encouraged banks to provide appropriate access to capital and credit to minority, low- and moderate-income (LMI) people and communities. Opportunity Fund strongly supports the original intent of the CRA, while acknowledging there are aspects of the law and its administration that could be improved to reflect current banking trends and to maximize positive impact for minority and LMI people and communities.

Opportunity Fund understands the Board's desire to modernize the CRA and is grateful for the thoughtful consideration that has been given to the changing banking landscape, including the closing of bank branches and the rise of digital banking. Within the ANPR we have identified a number of positive improvements to CRA that we strongly support, as well as some areas that could be strengthened further. Furthermore, Opportunity Fund believes that modernizing the CRA must be undertaken in conjunction with the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC) and Congress in order for the changes to be most effective. We had significant, serious concerns with the OCC proposal (the letter we submitted to them in April, 2020 is linked here) and hope that this ANPR can serve as an important re-starting point for interagency dialogue and consensus.

This ANPR offers thoughtful notes on modernization. Given the COVID-19 pandemic and its long-term implications, it is crucial that banks are incentivized and held accountable to invest and engage in truly impactful activities that help minority and LMI communities and the economy recover from this health and economic crisis. As we have seen through this pandemic, people in minority and LMI communities are at a higher risk than those in wealthier communities of losing their jobs, homes and businesses when the economy weakens, and depend on banks to engage responsibly to deliver capital to communities across the country. CRA is a critical piece of ensuring our nation's equitable recovery.

The intent of the CRA will be upheld and strengthened to get capital to minority and LMI individuals and communities in need if the following policies are implemented by the Federal Reserve, but more importantly in collaboration with the OCC, FDIC and Congress:

1. Allow banks to receive CRA credit for loans, investments, grants or services in conjunction with CDFIs across the country,
2. Small business loans continue to be defined as those under $1 million and a small business should be defined as those with gross annual revenue under $1.65 million,
3. Banks do not discriminate against and are held accountable for meeting the needs of minority and LMI communities that they conduct business in,
4. The Board ensures economic development definitions under the CRA are truly guiding banks to help serve underserved small businesses.

Opportunity Fund: Our Track Record

Opportunity Fund is a certified community development financial institution (CDFI) and the country's leading nonprofit small business microlender. Since 1994, Opportunity Fund has received over **$94.5 million** in CRA motivated investments from banks, which has allowed us to originate more than **$550 million** in more than 20,000 small business loans – with more being originated every day – with a dollar-for-dollar leverage ratio of nearly 6:1 (six dollars lent for every CRA dollar invested). Our research has shown that every loan Opportunity Fund makes to small businesses supports/retains 2.9 jobs and every dollar lent generates approximately two dollars in *additional* annual economic activity in the form of downstream spending, tax revenues and job creation. This means that our CRA-funded lending activity has generated more than 36,000 jobs and over $1.1 billion in new, annual economic activity.

These impacts demonstrate the community development power of the CRA. We are encouraged to see that the Board's objectives with this ANPR include strengthening regulations to ensure that minority and LMI banking needs are met, promoting financial inclusion, incentivizing investments in CDFIs and continuing community engagement. The CRA was created to combat the negative effects of redlining and must continue in its congressionally-mandated purpose of supporting minority and LMI communities, which is needed now more than ever due to widening income inequality and our current crisis. The Board's proposals are an important step in the right direction.

Supporting & Investing in Mission-Oriented Financial Institutions (Q67)

Banks generally receive CRA credit for lending, investing or providing grants to CDFIs, but Opportunity Fund believes that CRA regulations could provide stronger incentives for these activities. We support the Board's proposal to grant automatic CRA community development credit for community development activities with Treasury Department-certified CDFIs.

Additionally, Opportunity Fund believes that investments in CDFIs should be considered on a nationwide basis, and supports the Board's proposal to treat bank activities with CDFIs similar to activities with MDIs, women-owned financial institutions and low-income credit unions. This way, banks can receive CRA credit for loans, investments, or services in conjunction with CDFIs across the country. This approach removes the geographic uncertainty regarding whether a CDFI's service area appropriately overlaps with a bank's assessment area.

Opportunity Fund is developing a national microlending strategy to meet the credit needs of small businesses across the country. We are developing new products, establishing new partnerships, providing coaching and financial education and leveraging digital technologies and data analytics to support small businesses in every corner of the U.S. This ambitious strategy will provide more underserved small businesses than ever before with affordable and responsible capital. Providing CRA credit to banks that invest in scalable, mission-oriented organizations such as CDFIs, even when outside their current assessment areas, will allow for greater capital and resources to reach those who need it most.

However, we agree with the Board's observation that this approach could inadvertently reduce the incentive for banks to focus on their assessment areas by granting them CRA credit for investing in CDFIs outside of their assessment areas. To address this concern, the Board articulated that the proposed use of the community development financing metric and associated benchmarks to evaluate a bank's assessment area activities is intended to maintain a strong emphasis on serving their assessment areas and communities and thus local CDFIs.

Small businesses should be prioritized (Q37)

Opportunity Fund strongly urges the Board to continue defining small business loan thresholds at $1 million and gross annual revenue thresholds increased to $1.65 million. 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[1], yet the proposal would give banks CRA credit for business loans up to $1.65 million, versus the current $1 million. While we understand that there has been inflation since the regulation was last updated, increasing the small business loan threshold would disincentivize the provision of the smaller dollar loans that are truly needed by the smallest businesses – especially those operated by women and people of color. However, we do support the Board's proposals to increase the small business threshold for annual gross revenue to $1.65 million. We believe that there are many small businesses with annual gross revenues above $1 million that fall within the target market and are in need of affordable capital.

A Consumer Financial Protection Bureau report examined banking trends in small business lending from pre-Great Recession (2004-2007), through the Great Recession (2008-2009) and then through the post-Great Recession (2010-2017) period. The study revealed that, by 2017, small business lending from banks had not returned to pre-Great Recession levels and, in fact,

[1] "Small Business Credit Survey: 2021 Report on Employer Firms," Federal Reserve Banks. https://www.fedsmallbusiness.org/survey/2021/report-on-employer-firms

had only recovered to just half of the lending levels of 2004.[2] We believe that the economic crisis associated with the pandemic will further reduce bank lending to small business.

While we understand the arguments for revising the small business loan threshold for inflation, there is a lack of affordable, small dollar capital in the marketplace, and maintaining the $1 million small business loan threshold at its current level will serve as an incentive for banks to meet smaller dollar financing needs. If the threshold is increased, banks would instead focus on making larger loans to more easily meet their CRA obligations, resulting in fewer underserved small businesses receiving affordable loans – loans that would propel economic opportunity in their communities. It is also worth noting that larger small business loans tend to be the most profitable loans for banks, and are thus likely to get made regardless of CRA considerations.

Assessment Areas & Defining Local Communities for CRA Evaluations (Q8&9)

Opportunity Fund supports the Board's desire to more predictably delineate assessment areas around physical locations, such as bank branches, and to ensure that assessment areas are contiguous, do not reflect discrimination and do not arbitrarily exclude LMI census tracts. We also support the Board's proactive steps to define the local communities where banks' CRA activities are assessed to both reflect changes in the banking industry and to retain fair lending requirements.

Delineation of new deposit and/or lending-based assessment areas should apply to both internet banks that do not have physical locations and large banks with substantial activity beyond their branch-based assessment areas. We believe that reforms to assessment areas should be based on a hybrid approach of where banks lend and take deposits. Opportunity Finance Network has previously noted that reforms to 'deposit-based' assessment areas, aimed at addressing how the banking industry has evolved to include banks with no or limited 'bricks & mortar' presence, are unlikely to do enough to address the 'CRA deserts' problem facing rural, Native and other low-wealth markets.[3] Additionally, communities with high concentrations of people of color and low-income residents are unlikely to generate the level of bank deposits to trigger the creation of a deposit-based assessment area. Similarly, low population communities are also likely to be missed. This new approach can incentivize banks to make loans, investments and provide services to underserved communities in areas beyond their branches and help reduce racial and income disparities in access to credit.

Additionally, we are cautiously optimistic about the Board's consideration to allow internet banks to delineate nationwide assessment areas. Currently, an internet bank's assessment areas are based on the location of their headquarters, which leads to assessment areas that are much smaller than their actual business footprint. As the Board contemplates how to define an 'internet bank' for CRA purposes, we are flexible in supporting a hybrid definition that includes

[2] "Data Point: Small Business Lending and the Great Recession," Consumer Financial Protection Bureau. https://files.consumerfinance.gov/f/documents/cfpb_data-point_small-business-lending-great-recession.pdf

[3] Opportunity Finance Network, OFN Comments to the FDIC and OCC on Proposed Changes to the Community Reinvestment Act, April 8, 2020

both deposits and loans originated and allows for both limited branch-related activity in combination with a substantial majority of activity conducted online. Any new national assessment area must be implemented in a way that encourages banks to prioritize communities of color and meet their local assessment area needs simultaneously or before engaging in nationwide assessment areas.

However, as the financial services industry continues to change and innovate through time, we do not support an 'internet bank' definition only limited to banks that exclusively use online business models to deliver products and services. Over the last decade, traditional banks have increased their digital and online banking while moving away from physical branches – which must be taken into consideration.

We also share concerns with other stakeholders that a national assessment area for internet banks might leave communities of color or severely economically distressed areas underserved. As the National Community Reinvestment Coalition notes, this would allow internet banks to cherry pick which areas to serve in their retail and community development activities.[4] In other words, internet banks would gravitate towards serving those areas in which it is easiest to conduct CRA activities rather than areas most in need of credit and capital. Using a hybrid deposit or lending based assessment area approach to create local assessment areas for internet banks is a better approach.

Economic Development Activities are needed to Support Small Businesses (Q57)

Opportunity Fund is encouraged by the Board's desire to ensure that economic development definitions under the CRA are truly guiding banks to help serve underserved small businesses. The Board should find ways to provide incentives for banks to engage in economic development activity with the smallest businesses, as well as minority-owned small businesses.

We support the Board's approach that specifies that economic development activity focused on the smallest businesses and minority-owned firms would be considered responsive and impactful in developing a Community Development Test conclusion or rating. The number of minority-owned firms has been growing rapidly, yet minority-owned small businesses have significantly more difficulty than white-owned firms in getting access to bank capital.[5] Opportunity Fund is committed to serving the smallest minority-owned small businesses and knows that access to financing for these businesses is vital in fostering continued growth and broader economic opportunity in their communities.

Additional guardrails and incentives are necessary to ensure that banks are providing microloans that serve smaller businesses and minority-owned businesses. The Board should qualify economic development activities, as it relates to small businesses, using a gross annual revenue threshold of $1.65 million.

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[4] Ibid.

[5] "Small Business Credit Survey: 2021 Report on Employer Firms," Federal Reserve Banks, https://www.fedsmallbusiness.org/survey/2021/report-on-employer-firms

CRA reform needs to be built on consensus and data

Our final concern relates to the CRA regulatory reform process broadly, specifically the lack of consensus between federal regulators. Any new policy proposal, and particularly a proposal of this magnitude, should be grounded in data and evidence as the Board has sought to do. To our knowledge, the OCC continues to move forward with their CRA reforms from 2020 and the FDIC has not developed final rules, thus potentially setting different CRA rules for banks depending on their regulator.

While the Board's reforms seek to increase transparency and standardization across banks' CRA exams, this cannot be achieved without consensus with the OCC and FDIC. Therefore, we urge the Board to encourage the OCC to place their CRA reforms on hold until the Board, OCC and FDIC come together and develop a common interagency proposal that is grounded in data, serves the original intent of the CRA and demonstrates positive impact for underserved communities. This coordination is crucial to helping vulnerable communities grow and recover in a more efficient and equitable manner.

If we can be of any assistance, please contact Gwendy Brown, Vice President of Research and Policy at gbrown@opportunityfund.org or Gilberto Soria Mendoza, Senior Policy Advocate, at gmendoza@opportunityfund.org.

Sincerely,

Luz Urrutia
Chief Executive Officer, Opportunity Fund

Attachment: Opportunity Fund Letter to the OCC Re: Docket ID OCC-2018-0008/RIN 3064-AF22

April 3, 2020

Department of the Treasury, Office of the Comptroller of the Currency
Federal Deposit Insurance Corporation

RE: Community Reinvestment Act Regulations
Docket ID OCC-2018-0008
RIN 3064-AF22

Comptroller Joseph Otting and Chairwoman Jelena McWilliams:

Opportunity Fund appreciates the opportunity to comment on the joint Notice of Proposed Rulemaking (NPR) by the Office of the Comptroller of the Currency ("OCC") and the Federal Deposit Insurance Corporation ("FDIC") Docket ID OCC–2018-0008/RIN 3064-AF22, the "Community Reinvestment Act Regulations." The Community Reinvestment Act (CRA) was a landmark response to redlining, a persistent pattern of discrimination in bank lending that particularly harmed communities of color. The CRA also insured that banks provide appropriate access to capital and credit to low- and moderate-income (LMI) people and communities. Our organization, Opportunity Fund, strongly supports the original intent of the CRA, while acknowledging that there are aspects of the law and its administration that could be improved.

Opportunity Fund understands the OCC and FDIC's desire to modernize the CRA and we believe that thoughtful consideration must be given to the changing banking landscape in order to account for the closing of bank branches and the rise of digital banking. However, Opportunity Fund believes that modernizing the CRA must be undertaken in conjunction with the Federal Reserve and Congress in order to be truly effective.

While this NPR offers some thoughtful notes on modernization, it also makes several proposals that, if implemented, would fundamentally undermine the intent and effectiveness of the CRA in uplifting underserved communities. Additionally, **given the current COVID-19 pandemic, it is crucial that we not distract banks with new regulatory changes at this time. They should be focusing on investing and engaging in activities that truly help LMI communities and the economy recover from this health and economic crisis**. LMI communities are at a higher risk than wealthier communities of losing their jobs, homes, and businesses and depend on banks to engage responsibly to deliver capital to communities across the country.

Opportunity Fund: Our Track Record

Opportunity Fund is a community development financial institution (CDFI) and the nation's leading nonprofit small business microlender. Since 1994, Opportunity Fund has received over **$84 million** in CRA motivated investments from banks which has allowed us to originate nearly **$500 million** in small business loans as of February, 2020 -- with more being originated every day and a dollar-for-dollar leverage ratio of about $3:$1 (three dollars lent for every dollar invested). Our research has shown that every dollar Opportunity Fund lends out to a small business generates approximately two dollars in additional annual economic activity in the form of downstream spending, tax revenues, and job creation. This means that, through Opportunity Fund alone, our CRA-funded lending activity has generated almost $1 billion in new, annual economic activity.

These impacts demonstrate the community development power of the CRA. We believe key aspects of the proposed rules would fundamentally undermine the intent and effectiveness of the CRA in uplifting underserved communities and small businesses. The CRA was created to combat the negative effects of redlining and must continue in its congressionally-mandated purpose of supporting LMI communities, which is needed more than ever due to both widening income inequality and our current health and economic crisis.

Small businesses should be prioritized, not redefined

Our first concern relates to how the NPR redefines a small business and a small business loan, in a manner that is out of touch with the needs of underserved entrepreneurs. Seventy-six percent of small business owners in America who seek financing are searching for loans of $250,000 or less,[1] yet the proposal would give banks CRA credit for business loans up to $2 million (versus the current $1 million). The proposed changes would also redefine a small business as one with $2 million in revenue, versus the current standard of $1 million. The proposal would further disincentivize the making of smaller loans by making total dollars lent the primary measure for CRA credit.

A Consumer Financial Protection Bureau report was published recently examining banking trends in small business lending from pre-Great Recession (2004-2007), through the Great Recession (2008-2009), and then through the post-Great Recession (2010-2017) period. The study revealed that, by 2017, small business lending from banks had not returned to pre-Great Recession levels and, in fact, had only recovered to just half of the lending levels of 2004.[2]

There is a lack of affordable, small dollar capital in the marketplace, and this NPR would give banks even less incentive to make the smaller loans that a majority of small business owners truly need. Fewer underserved small business owners would receive affordable loans -- loans that would propel economic opportunity in their communities.

The NPR is not considering local needs, which are often best addressed with smaller dollar financing for small businesses. For definitional purposes, we propose that a small business remain defined as one with less than $1 million in revenue. Additionally, small business loans should stay defined as loans of $1 million or less and should be the only small business loans to count for CRA credit. While an adjustment for inflation may be appropriate, doubling what counts as a small business or a small business loan is not.

Day-to-day bank operations should not be rewarded at the expense of LMI communities

[1] "Small Business Credit Survey: 2019 Report on Employer Firms," Federal Reserve Banks. https://www.fedsmallbusiness.org/medialibrary/fedsmallbusiness/files/2019/sbcs-employer-firms-report.pdf

[2] "Data Point: Small Business Lending and the Great Recession," Consumer Financial Protection Bureau. https://files.consumerfinance.gov/f/documents/cfpb_data-point_small-business-lending-great-recession.pdf

Our second concern relates to what counts towards CRA credit. The NPR provides banks with a newly expanded list of qualifying activities and definitions that are eligible anywhere in the country. The proposed "non-exhaustive list" of eligible activities now includes investments in infrastructure, transportation, Opportunity Zone investments, and even sports stadiums. Adopting these new qualifying activities would allow banks to meet their CRA obligations in many cases without actually engaging in impactful investments that directly benefit LMI communities and expand economic opportunities.

The expanded list of CRA-eligible activities include some of what banks *already* do in the ordinary course of business, thereby further diluting the effectiveness of CRA and distracting and disincentivizing bank investment away from high impact projects as intended in the law. We encourage regulators to reexamine the list of qualifying activities and only allow projects that are truly serving the specific needs of LMI communities to be CRA eligible.

Overly simplistic metrics incentivize fewer, bigger projects

A related concern regards reforms that are likely to divert attention from LMI communities currently served by bank branches. The NPR would make it easier for banks to engage in CRA-qualified activities outside of these areas. Currently, banks can engage in community development activities beyond their assessment areas only after satisfactorily serving their current areas. Under the NPR, there would be no such restriction, allowing banks to find the lowest-cost places around the country to engage in community development without first responding to needs in the LMI communities in which they do business.

Furthermore, the NPR proposes a 'one ratio' measure that consists of a bank's CRA activities in dollars divided by deposits. This ratio measure would likely encourage banks to find the largest and easiest deals anywhere in the country as opposed to focusing on local LMI needs that can often involve smaller and more complex financial structures.

Quantitative metrics should be supplemented with clear, qualitative standards to ensure that small-scale, high-impact community development activities are rewarded, along with a bank's responsiveness to local needs and priorities. Overly simplistic metrics incentivize fewer, bigger projects. CRA reform must include strong performance standards mandating banks to meet the needs of their local LMI communities before engaging in community development activity elsewhere in the country.

Banks can fail to serve LMI communities in most of their Assessment Areas and still get a passing CRA grade

Under the proposal, a bank cannot receive a Satisfactory or an Outstanding rating unless it also receives that rating in a "significant portion" of its assessment areas. The NPR proposes that 50% be the threshold used to determine a "significant" portion of a bank's assessment area. We believe that a bank should not be able to obtain a Satisfactory or Outstanding rating in a CRA exam if CRA activities meet the performance evaluation measures in only half of the bank's assessment areas.

Banks should be required to meet their CRA obligations in *all* of their assessment areas, not just 50% of them. Setting a threshold that allows banks to receive a Satisfactory or Outstanding rating while failing to meet the credit needs in any portion of their assessment areas would encourage banks to target their CRA activities to areas that are easiest to serve while directing fewer dollars to struggling LMI communities. We oppose establishing any threshold that allows banks to collect deposits in a community while simultaneously failing to respond to the credit needs of that community.

New deposit-based assessment area categories won't bring resources to LMI communities

The NPR also recommends the creation of a new type of assessment area to complement the existing "facility-based" assessment areas under current CRA regulations. Under the proposal, markets where a bank collects 5% of its deposits would become "deposit-based" assessment areas. This reform is aimed at addressing how the banking industry has evolved to include banks with no or limited brick and mortar presence. It is unlikely that the creation of "deposit-based" assessment areas will do enough to address the "CRA desert" problem facing rural and low income communities today, because communities with high concentrations of low income residents are unlikely to generate the level of bank deposits to trigger the creation of a new deposit-based assessment area. We encourage regulators to modernize assessment areas to meet the true needs of CRA deserts while rewarding banks for expanding brick and mortar financial services in LMI communities.

Double credit for CDFI activities reduces investments while still rewarding banks

The NPR acknowledges the valuable role of CDFIs by providing "double credit" for activities undertaken with CDFIs. However, when considering the context of the dollar volume ratio framework, the double credit is unlikely to incentivize a bank to choose a CDFI transaction over the many other options for higher dollar volume CRA-eligible activities. This may actually incentivize banks to significantly reduce the real dollar amounts invested in LMI communities while receiving the same amount of credit for the purposes of their CRA exam. We encourage regulators to not provide double credit for CDFI investments as the inverse consequences could well result in banks investing fewer actual dollars in CDFIs.

CRA reform needs to be grounded in data and built on consensus

Our final concern relates to the NPR process itself, both in terms of lack of evidence as well as lack of consensus between federal regulators. Any new policy proposal, and particularly a proposal of this magnitude, should be grounded in data and evidence. To our knowledge, the OCC and FDIC have not shared any evidence demonstrating the likely impact of these reforms on the type and scale of CRA activities. The Federal Reserve, on the other hand, conducted a detailed analysis of how their proposed CRA reform framework would impact CRA lending before and after.[3] The OCC and FDIC failed to do the same.

While the reforms seek to increase transparency and standardization across banks' CRA exams, this cannot be achieved without consensus with the Federal Reserve. Therefore, we urge you to place the proposed CRA rulemaking on hold until the OCC, FDIC, and the Federal Reserve come

[3] "Strengthening the Community Reinvestment Act by Staying True to Its Core Purpose," Governor Lael Brainard, The Federal Reserve.
https://www.federalreserve.gov/newsevents/speech/brainard20200108a.htm

together and present a common interagency proposal that is grounded in data, serves the original intent of the CRA, and demonstrates positive impact for underserved communities. This coordination is crucial to helping vulnerable communities grow and recover from times of crisis, like the COVID-19 pandemic.

If we can be of any assistance, please contact Gwendy Brown, Vice President of Research and Policy at gbrown@opportunityfund.org or Gilberto Soria Mendoza, Senior Policy Advocate, at gmendoza@opportunityfund.org.

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Chief Executive Officer, Opportunity Fund