February 12, 2021

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

RE: Regulation BB; Docket No R-1723 and RIN 7100-AF94

Comments on Federal Reserve System 12 CFR Part 288
Community Reinvestment Act

Attached are my submitted answers to questions on the proposed changes to the Community Reinvestment Act (CRA).

Sincerely yours,

Dan Tatar

Dan Tatar
Community Affairs Officer
Federal Reserve Bank of Richmond - *Retired*

<u>Question 42</u>. *Should the Board combine community development loans and investments under one subtest? Would the proposed approach provide incentives for stronger and more effective community development financing?*

- NO.

- All lending (debt) should be considered under the retail test, and all investments (equity) should be considered under the Community Development Financing metric.

- Combining debt with equity confuses the idea of a "community development *<u>investment</u>*."

- Commercial lending in low- and moderate-income areas should absolutely count in the retail test. That's what it is: lending.

- Making a standard lending product – commercial loans, for example – equivalent to investing in LIHTC and/or CDFI undermines the community development aspects of those community development investments.

- Lending to community development organizations (who undertake more risk than regulated financial institutions) should be counted under the Community Development Test.

- Commercial lending and investments should NOT be combined into one metric. Debt and equity are different capital sources, and they are employed in community development activities according to different financing needs.

<u>Question 43</u>. *For large retail banks, should the Board use the ratio of dollars of community development financing activities to deposits to measure its level of community development financing activity relative to its capacity to lend and invest within an assessment area? Are there readily available alternative data sources that could measure a bank's capacity to finance community development?*

- The metric for the Community Development Test should be the numerator of community development ***<u>equity investments</u>*** relative to the dominator of deposits. (The equity equivalent should be included in the numerator as well.)

- Community development lending (debt) and commercial lending for community development (debt) should be included under the retail test.

- Establishing equivalent credit in the numerator for a standard bank lending line of commercial loans -- to the much more complex and difficult of an equity investment in the numerator -- discourages the bank from making complex equity investments into LIHTC and investment into a CDFI.

<u>Question 45</u>. *Should the Board use local and national benchmarks in evaluating large bank community development financing performance to account for differences in community development needs and opportunities across assessment area and over time?*

- Yes, absolutely use local and national measures in two different metrics.

- However, the *<u>local metric</u>* of investing should be the main focus of the local assessment area's CRA rating.

- Different banks will have different concentrations of deposit-taking facilities in different areas. That is why the local deposit-taking metric is the most important to compare banks across the same local area, as that is the main focus of the CRA.

- The fractions illustrated in the proposed regulations are excellent.

- As stated in conjunction with other questions answered here, NO community development loans (commercial loans) should be included in the numerator, only investments: equity investments or equity equivalent transactions.

<u>Question 46</u>. *How should thresholds for the community development financing metric be calibrated to local conditions? What additional analysis should the Board conduct to set thresholds for the community development financing metric using the local and national benchmarks? How should those thresholds be used in determining conclusions for the Community Development Financing Subtest?*

- Setting specific metric thresholds for CRA evaluations is a positive move to help bankers gauge how much to lend and invest in low- and moderate-income areas.

- Using the established definitions of large, medium, and small bank groupings, one bank's metric can be compared to another "group metric" of banks in the same category by asset size and geographical area.

- The geographical areas are the most important factor for the "group metric." The BOG must use comparisons among all of the banks in a specific geographic area in order to determine a local CRA rating. Being compared to banks in New York will not make sense for banks in Richmond, Virginia.

- Every year, when the tables are updated, each bank can view its metric in relationship to the group metric for banks in the defined asset class based on geography.

- For each bank every year, a new metric for that new year's investing should be illustrated. Then, the metric since that bank's last exam should be illustrated. Thus, each bank would have two metrics per year.

- The group metric for banks of the same size should be illustrated as well. This should include both the annual metric and a 3- or 4-year group moving average of investing.

- Local economic conditions will affect all banks equally, and the local metrics will illustrate that.

- The BOG should establish metrics for thresholds ratings.
    - If the individual bank metric and the group bank metric are within +/- 200bps, the bank should receive a satisfactory rating.
    - If the individual bank metric and the group bank metric are +201bps, the bank should receive an outstanding rating.
    - If the individual bank metric and the group bank metric are -201bps, the bank should receive an unsatisfactory rating.

<u>Question 47</u>. *Should the Board 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?*

- Yes, using impact scores for complex community development transactions such as investing in a syndicated LIHTC fund or a CDFI is appropriate.

Question 48. *Should the Board develop quantitative metrics for evaluating community development services? If so, what metrics should it consider?*

- NO quantitative measures should be developed for services. Only a *qualitative list of the services provided by the institutions* should be used.

- Including a quantitative metric with a "service" would be very difficult for an examiner to evaluate.

- Using a quantitative metric for a "service" in conjunction with one or more quantitative metrics for actual dollars of investing seems like confusing apples with oranges.

Question 49. *Would an impact score approach for the Community Development Services Subtest be helpful? What types of information on a bank's activities would be beneficial for evaluating the impact of community development services?*

- There should be NO impact score of any kind for the service test.

- Because every community is different, it would be impossible for an examiner to judge the amount of success of one community development service in relation to another.

Question 50. *Should volunteer activities unrelated to the provision of financial services, or those without a primary purpose of community development, receive CRA consideration for banks in rural assessment areas? If so, should consideration be expanded to include all banks?*

- NO. CRA credit is about the work that a bank does within its assessment areas.

- Only activities related to the provision of "financial services" should receive CRA service test credit. The CRA is about lending and investing in communities, whether rural or urban.

<u>Question 51</u>. *Should financial literacy and housing counseling activities without regard to income levels be eligible for CRA credit?*

- NO.

- Counseling activities outside of helping low- and moderate-income communities or people should not be included. These are not what the CRA is all about.

- Any financial literacy classes outside of low- and moderate-income communities can help the bank open new accounts and increase its deposits, but no CRA credit should be given for these.

<u>Question 52</u>. *Should the Board include for CRA consideration subsidized affordable housing, unsubsidized affordable housing, and housing explicit pledges or other mechanisms to retain affordability in the definition of affordable housing? How should unsubsidized affordable housing be defined?*

- Every form of affordable housing (defined below) in low- and moderate-income areas should count for CRA credit.

- If that housing is financed with debt, it should be counted under the retail test.

- If debt was used, the rehab of affordable housing should count as lending. If equity was used, it should count in the community development area.

- If that housing is financed with equity, it should be counted under the Community Development Test.

- All definitions of affordable housing – whether subsidized or unsubsidized – should agree with the following definitions:
    - HUD maximum rent of 30% of the household income.
    - The LIHTC definition of the apartment being rented for 60% or lower of the median family income for the area.

<u>Question 53</u>. *What data and calculations should the Board use to determine rental affordability? How should the Board determine affordability for single-family developments by for-profit entities?*

- This is a very thorny question. Single-family housing developed by for-profit housing developers and CRA credit is fraught with several tradeoffs. For example:
    - Is the housing affordable to low- and moderate-income individuals and families?
    - Is the housing being gentrified for middle- or upper middle-income individuals and families? Yet, should society not actively pursue economic integration (between lower-income and middle-income people and families) as an important social issue?

- If the housing is affordable for LMI groups, then YES – it should count for CRA lending debt or community development equity.

- If the housing is for non-LMI groups, then NO. It should not count for CRA credit, even if the non-LMI area is being improved.

- The following is a simple definition of an affordable single-family housing development built by a for-profit or non-profit housing developer:
    - If a person or family that is at or below 60% of the median income level can secure a mortgage loan on the single-family home…then YES, it is affordable. (There is no requirement regarding the 30% of income metric; that is to be determined by the individual or family.)

- Mixed-income housing achieves the important social issue of the economic integration of housing. The part of the housing *pro rata* share that helps low- and moderate-income individuals and families should receive CRA lending/community development credit.

<u>Question 54</u>. *Should the Board specify certain activities that could be viewed as particularly responsive to affordable housing needs? If so, which activities?*

- Banks should receive full CRA credit, under the retail test, for all affordable mortgages underwritten by the bank and held on the bank's books. This is an activity that is particularly responsive to affordable housing needs.

- Purchasing MBS is a minimal effort by the bank to meet the credit needs of a community for affordable housing needs. When the bank, prior to a bank's CRA exam, purchases MBS specifically in low- and moderate- income areas and then after the exam, sell the same bonds back into the open market for another bank to purchase for the same reason is not responsive to affordable housing needs. This bank "***churning***" of MBS should be given a serious discount towards the banks CRA community development test.
  - For example:
    - MBS on the bank's books for over three years, or more, should receive 75% community development test credit.
    - MBS on the bank's books two to three years should receive 50% community development test credit.
    - MBS on the bank's books for less than two years, up to 6 months, should receive 25% community development test credit.
    - MBS on the bank's books for less than six months, should receive 0% community development test credit.

- Providing equivalent credit on the community development test to market purchased MBS and real community development investments in LIHTC or CDFI undermines the spirit and intent of CRA.

- To help with bank liquidity, the bank could receive more service test recognition for holding classes to increase the bank deposit base. Or, as stated in the example above, be willing to accept discounted investment test credit for the churning of MBS.

Question 55. *Should the Board change how it currently provides pro rata consideration for unsubsidized and subsidized affordable housing? Should standards be different for subsidized versus unsubsidized housing?*

- Pro rata shares for low- and moderate- income people is totally the correct approach.

- NO credit for other income levels.

Question 56. *How should the Board determine whether a community services activity is targeted to low- or moderate- income individuals? Should a geographic proxy be considered for all community services or should there be additional criteria? Could other proxies be used?*

- The assessment area and income of the people should be the only measures.

- Activities outside of the bank's assessment area of low- and moderate-income communities should not be measured or rewarded with CRA credit.

Question 57. *What other options should the Board consider for revising the economic development definition to provide incentives for engaging in activity with smaller businesses and farms and/or minority-owned businesses?*

- In the proposal, the BOG has outlined excellent guidelines for helping small businesses and boosting economic development.

- No CRA consideration should be allowed for any workforce development unless all of the individuals in the workforce are low- or moderate-income. Workforce development funded by any source that is open to the general public should not receive any consideration under the CRA.

Question 58. *How could the Board establish clearer standards for economic development activities to "demonstrate LMI job creation, retention, or improvement"?*

- No CRA consideration should be allowed for any workforce development unless all of the individuals in the workforce are low- or moderate-income.

- Workforce development funded by any source that is open to the general public should *not* receive consideration under the CRA.

Question 59. *Should the Board consider workforce development that meets the definition of "promoting economic development" without a direct connection to the "size" test?*

- Yes.

- Any workforce economic development activities that promote jobs or training _for people who are low- or moderate-income_ should receive CRA credit.

- No workforce development activities that are _open to the general public_ should be given CRA credit. While some low- and moderate-income individuals could benefit from the training, separating the trainees by income level would be problematic.

Question 60. *Should the Board 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?*

- Yes, a listing of activity would be helpful.

- The activities must take place in low- and moderate-income geographical areas or to low- and moderate-income individuals.

Question 61. *What standards should the Board consider to define "essential community needs" and "essential community infrastructure," and should these standards be the same across all targeted geographies?*

- The CRA is about lending and investing in low- and moderate-income communities and to low- and moderate-income individuals and families. Nothing in the spirit and intent of the CRA speaks to any CRA credit for government financing.

- "Essential community needs" and "essential community infrastructure" are very dubious and hard-to-define concepts. Even if state or local governments offer lists of these, what might be essential in one community may not be essential in another. There should be less examiner discretion.

- CRA credit should be given for lending (debt) and investing (equity) in a specific area.

- Infrastructure is the state/local area's problem, ***not a CRA depositor's problem***.

- Banks can purchase state and local bonds for infrastructure, sport stadiums, etc. ***<u>However, they should NOT receive any CRA credit for these investments.</u>***

<u>Question 62</u>. *Should the Board include disaster preparedness and climate resilience as qualifying activities in certain targeted geographies?*

- NO.

- The CRA is about lending and investing in underserved communities.

<u>Question 63</u>. *What types of activities should require association with a federal, state, local, or tribal government plan to demonstrate eligibility for the revitalization or stabilization of an area? What standards should apply for activities not requiring association with a federal, state, local, or tribal government plan?*

- Many CRA Q&As address these issues, and they should all be removed.

- The only element of the CRA that is important is bank lending and investing. If a bank engages in such activities and other government programs are also helping that underserved area, that's great.

- However, no CRA credit should be given except for loans and investment.

- All of the Q&As are moving to more consideration of one activity over another, which is counter to the metric idea being put forward in the proposal.

<u>Question 64</u>. *Would providing CRA credit at the institution level for investments in MDIs, women-owned financial institutions, and low-income credit unions that are outside of assessment areas or eligible states or regions provide greater incentives for investment in these mission-oriented institutions? Would designating such investments as a factor in "outstanding" ratings provide appropriate incentives?*

- Within any bank's assessment areas, any deposits or equity investments made into MDIs, women-owned financial institutions, and or low-income credit unions should be counted under the Community Development Test.

- Only investments in the regulated financial institution's assessment area should be counted. The CRA is about the deposits from the bank's assessment areas and the lending and investing in those assessment areas.
    - No, this one type of investment should not add any additional credit above any other activity or service.

<u>Question 65</u>. *Should MDIs and women-owned financial institutions receive CRA credit for investing in other MDIs, women-owned financial institutions, and low-income credit unions? Should they receive CRA credit for investing in their own institutions, and if so, for which activities?*

- An institution investing in another institution with a similar mission should not receive any CRA credit for that investment.

- The CRA is about direct lending and investing in the community where the bank's deposits are received. Shifting resources between institutions with similar missions is not serving the community.

- The shifting of resources between the two entities just provides CRA credit to the institution; it provides nothing for the community.

Question 66. *What additional policies should the board consider to provide incentives for additional investment in and partnership with MDIs?*

- A clear statement that investing in any MDI will provide the regulated financial institution with CRA community development recognition should be sufficient.

- If the institution is certified as a CDFI by the treasury, it should automatically be recognized as helping low- and moderate-income individuals and small businesses.

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

- Yes. CDFIs take on more risk than a regulated financial institution can.

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

- The spirit and intent of the CRA is clear: the bank should make its loans and investments in the bank's assessment area.

- Why should a bank receive CRA recognition for something outside of its assessment area? ***Are all of the credit needs within the assessment area being met?***

- Giving any CRA credit outside of an assessment area makes it easier for the bank to receive CRA Community Development Test credit without working to meet the credit needs within the assessment area.

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 areas or eligible states and territories be considered particularly responsive?*

- The spirit and intent of the CRA is clear: the bank should make its loans and investments in the bank's assessment area. No separate designations should be made.

- Why should a bank receive CRA recognition for something outside of its assessment area? ***Are all of the credit needs within the assessment area being met?***

- Giving CRA credit outside of a bank's assessment areas makes it easier for the bank to receive CRA Community Development Test credit without working to meet the credit needs within the bank's own assessment areas.

Question 70. *In addition to the potential designated areas of need identified above, should other areas be designated to encourage access to credit for underserved or economically distressed minority communities?*

- The spirit and intent of the CRA is clear: the bank should make its loans and investments where it raises deposits in the assessment area.

- Why should a bank receive CRA recognition for something outside of its assessment area? ***Are all of the credit needs within the assessment area being met?***

- Giving CRA credit outside the bank's assessment area makes it easier for the bank to receive CRA Community Development Test credit without working to meet the credit needs within the bank's own assessment areas.

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?*

- The list of activities proposed by the OCC during last year's discussion of changes to the CRA is excellent.

- It should be made clear that only assessment areas will gain CRA credit.

- The list should be updated annually.

Question 72. *Should a pre-approval process for community development activities focus on specific proposed transactions or on more general categories of eligible activities? If more specific, what information should be provided about the transactions?*

- It must be a combination of both.

<u>Question 82</u>. *Does the use of a standardized approach, such as the weighted average approach and matrices presented above, increase transparency in developing the Retail and Community Development Test assessment area conclusions? Should examiners have discretion to adjust the weighting of the Retail and Community Development subtests in deriving assessment area conclusions?*

- The weighted average test is an example of increased transparency in the Retail Test and Community Development Test.

- To maximize the transparency, the weighting should NOT be adjustable via examiner discretion.

- The local metric will be effective for all the banks in the same geography, and thus effected by the same economic conditions.

<u>Question 83</u>. *For large banks, is the proposed approach sufficiently transparent for combining and weighting the Retail Test and Community Development Test scores to derive the overall rating at the state and institution levels?*

- Yes, absolutely.

- This is assuming that minimal examiner discretion is used to determine the grade.

<u>Question 84</u>. *Should the adjusted score approach be used to incorporate out-of-assessment-area community development activities into state and institution ratings? What other options should the Board consider?*

- NO. Lending or investing that takes place ***<u>out of the bank's assessment areas</u>*** should not be considered in the numerator of the Community Development Test's metric.
    - That is, unless the bank can prove that ***<u>all of the credit needs</u>*** in the bank's assessment area have been fulfilled.

<u>Question 85</u>. *Would the use of either the statewide community development financing metric or an impact score provide more transparency in the evaluation of activities outside of assessment areas? What options should the Board consider to consistently weight outside assessment area activities when deriving overall state or institution ratings for the Community Development Test?*

- No monetary value should be subscribed to the Community Development Test investments outside of the bank's assessment areas. <u>***Except***</u>, if the annual local metric shows the bank is within the satisfactory range, only then, give the bank credit outside the assessment area.

<u>**Question 87.**</u> *Should the Board specify in Regulation BB that violations of the Military Lending Act, the Servicemembers Civil Relief Act, and UDAAP are considered when reviewing discriminatory or other illegal credit practices to determine CRA ratings? Are there other laws or practices that the Board should take into account in assessing evidence of discriminatory or other illegal credit practices?*

- YES, absolutely.

<u>**Question 88**</u>. *Should consideration for an outstanding rating prompted by an investment or other activity in MDIs, women-owned financial institutions, and low-income credit unions be contingent upon the bank at least falling within the "satisfactory" range of performance?*

- No, the metric determines the grade, not specific investments.

<u>**Question 90**</u>. *Is it appropriate to rely on SOD data for all banks, a subset of large banks with multiple assessment areas based on business model or the share of deposits taking place outside of assessment areas, or only for small banks and large banks with one assessment area? What standards would be appropriate to set for business models or the appropriate share of deposits taking place outside of assessment areas, if such an approach is chosen?*

- The SOD is the best dataset.

- Examiners should determine if the amount of deposits outside of a bank's assessment areas are enough to establish a new assessment area for the bank.