

FirstState
COMMUNITY ACTION AGENCY
People Helping People Build Community

August 5, 2022

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Re: *Community Reinvestment Act: Joint Notice of Proposed Rulemaking: Request for Comment*
 OCC: Docket No. ID OCC-2022-0002; RIN 1557-AF15
 Board: Docket No. R-1769; RIN 7100-AG29
 FDIC: RIN 3064-AF81

Ms. Misbak and Gentlemen:

We appreciate the opportunity to comment on the Agencies' Joint Notice of Proposed Rulemaking (the "Proposal") on the Community Reinvestment Act ("CRA"). First State Community Action Agency (FSCAA) was the first, and remains the only, nonprofit Community Action Agency in the State of Delaware. Formed in 1965 as the Sussex County Community Action Agency by a group of concerned citizens, we have grown to encompass the entire State, offering a diverse array of programs that target the root causes of poverty.

FSCAA has benefitted from relationships with our local banks and are concerned the Proposal will inadvertently divert much needed investments away from our organization. Specifically:

- **Retail Lending Assessment Areas (RLAA):** As a HUD-approved housing counseling agency, we appreciate and welcome new ways to increase loan capital that is available to low- and moderate- income ("LMI") buyers. However, we are concerned about several unintended consequences of the Proposal including the treatment of loans to LMI borrowers in middle- and upper-income census tracts, the establishment of RLAA's in geographic areas that are likely to be the most populous parts of the country, and the potential negative impact of diverting resources and attention from banks that are serving communities, like ours, well today.

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As a rural institution operating in a resort market with rising property values and an influx of affluent retirees, we are concerned that the proposed RLAA's will bypass our community. FSCAA serves many pockets of poverty, identified as "Impacted Communities" near Sussex County, Delaware. The population of these communities is largely rural, low-income, majority minority, and located within all census tracts, including middle- and upper-income tracts. It is important to us that mortgages provided within these communities receive equal CRA consideration as those in LMI communities for two reasons. First, we must ensure that families can stay and grow within the communities that they call home. Second, we must ensure that LMI families have expanded opportunities to move to communities that are closer to jobs and schools. An enhanced focus on census tract lending should not outweigh the income of the borrowers themselves.

Delaware is home to many large banks that have focused significant attention on the people we serve. Diverting that attention to what will inevitably be the largest population centers in the country is unlikely to help our clients and could have the unintended consequence of harming them by diverting important loan capital to other, more populous areas. As an example, the Salisbury Metropolitan Statistical Area (MSA), where FSCAA is headquartered, had a population of 423 thousand residents in the 2020 census. Conversely, the New York – New Jersey – Jersey City MSA had a population of 19 million. A threshold of 100 mortgage loans or 250 small business loans to create an RLAA is unlikely to benefit our rural community through the creation of new RLAA's, whereas MSA's like New York – New Jersey – Jersey City are highly likely to be flooded with RLAA's based on the saturation of their population.

I urge you to consider how RLAA's and formulaic tests will impact how banks without primary mortgage products serve the credit needs of their communities. Many banks in our area partner with the Delaware State Housing Authority (DSHA) and the United States Department of Agriculture (USDA), to provide first time homebuyer mortgages and down payment and settlement cost assistance. Discover Bank, which does not offer a primary mortgage product, directs tens of millions of dollars annually through a Mortgage-Backed Security (MBS) purchase agreement with DSHA. While not originating these loans, and therefore not receiving lending test credit for them under the proposed rule, they have significantly increased the opportunity for LMI buyers, like those that we serve, to access a safe and affordable home mortgage. In the case mentioned above, a bank that is demonstrating a strong commitment to meet the home lending needs of the community may not fare well under the proposed Retail Lending Test. It is our preference that banks be provided with flexibility to meet the lending needs of the community based on their business model, which may include utilizing community development investment vehicles in the absence of primary home mortgage, small business, or auto lending businesses.

- **Retail Services and Products Test:** FSCAA is supportive of the Retail Services and Products Test but urge the regulators to reconsider the branch distribution test to facilitate, without penalty, maintaining and opening branches in middle- and upper-income census tracts. In our county, town centers can be up to twelve miles apart and an influx of upper-income retirees plays a role in the income designation of current census tracts. However, our existing LMI community members need access to banks within walking and driving

distance and branch locations in middle- and upper-income census tracts play a significant role in the banking needs of the LMI community.

- **Community Development Tests:** Our nonprofit community action agency exists to serve the LMI community, and we do so through a variety of educational programs, community building and social service activities that give people the tools to lift themselves from poverty. We have been fortunate to have partnerships and the support of our local banks but are concerned that the structure of the proposed Community Development Financing Test and Community Development Services Test will limit the practice of banks providing innovative and creative investments that respond to community needs, reduce investments in Facility Based Assessment Areas, shrink philanthropy, and lessen deep volunteer engagement.

FSCAA has seen first-hand how innovative investments that are tailored to specific community needs can impact the people we serve. We refer our housing counseling clients to receive down payment and settlement cost assistance and affordable mortgages through CRA-tailored mortgage programs at local banks and DSHA, our small business clients benefit from access to a special economic development loan program established by a large bank in Sussex County, our nonprofit partners receive flexible financing from a Delaware-headquartered Community Development Financial Institution (that receives CRA investments) and FSCAA accessed the Payroll Protection Act Program through a special CRA program for Delaware based nonprofits. Banks that know their community are far more likely to create and participate in investments that are responsive to the people they serve within the communities where they are located.

An institutional level Community Development Financing Test will reinforce the practice of centering investments on population centers where investment opportunities are readily found, easily understood, and impact a larger population. This leaves organizations like ours, and the communities we serve, under resourced. Delaware is home to many large foundations, corporations and banks that too often overlook the rural part of the state in favor of opportunities in the state's largest metropolitan area. But for a single large bank with a single Assessment Area in Sussex County, we could not operate the critical education intervention programs for children in our neediest communities. As we struggle to attract the attention of other large banks with a presence in our area today, we are concerned that an institutional level test will further divert the attention of these banks to populous areas across the country.


Of particular concern is the lack of attention to philanthropy in the Proposal. Within the Proposal, "grants" is mentioned only once, and in connection with the Retail Lending Test. Philanthropy is a significant contributor to the financial health of nonprofits throughout the country and FSCAA has benefited from CRA grants that enable us to serve our clients. Philanthropy must be included in the final rule and specifically philanthropy that benefits LMI people where the bank has a branch or other physical location.

Finally, FSCAA has benefited tremendously from the deep engagement of our bank volunteers. Bankers have served as board and committee members, technical assistance providers, and even helped us source donated furniture. The proposed state-wide and

institutional level Community Development Services Test is worrisome because of its focus on hours versus long-term relationships and engagement. This advanced level of engagement provides the bank with a deeper understanding of FSCAA and the people we serve while providing us with skilled support for our staff and leadership.

Thank you again for the opportunity to comment on the Proposal. We would be happy to discuss the need to maintain investments in smaller communities and discuss the unintended consequences of the Proposal. Please do not hesitate to contact me at (302)856-7761 X157 or bedwards@firststatecaa.org.

Sincerely,



Bernice Edwards
Executive Director