Community Development Financial Institution

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Board of Governors of the Federal Reserve
Office of Comptroller of the Currency, Treasury
Federal Deposit Insurance Corporation

Clearinghouse Community Development Financial Institution (CCDFI) is pleased to provide comments and feedback on the joint notice of proposed rulemaking (NPR) for updating the Community Reinvestment Act (CRA). CRA was a key factor in the formation of CCDFI over 27 years ago and it has been central to our growth and success since then. We applaud the regulatory agencies for their work in updating this important legislation and ensuring accountability to all stakeholders. The following comments and suggestions are specifically organized around regulatory proposals or questions corresponding to sections of the NPR.

III Community Development Definitions

Section F. Activities with MDIs, WDIs, LICUs, and CDFIs

While we recognize the importance of bank support for all of the above entities, we ask that **bank activity with CDFIs be considered as separate and distinct** and receive higher priority than deposits in MDIs, WDIs, and LICUs. CDFIs, with a primary focus on mission, have a much different approach to lending and investments than do the other three entities. MDIs, WDIs and LICUs are all depository institutions and as such have depository insurance compliance obligations through the FDIC or NCUA. This influences their focus and creates safety and soundness parameters imposed on all regulated financial institutions. While some MDIs, WDIs and LICUs are CDFIs, most are not; and do not have the same primary focus on low-income community benefits as would CDFIs. We applaud the NPR requirement of 50% ownership, control, and profit accrual for MDIs and WDIs This requirement will ensure that MDI and WDIs are not circumventing the real definition of these entities.

Should a bank get CRA credit for making FDIC insured deposits into an MDI or WDI that is not making loans or operating in low-income communities?

CDFIs most closely embody the spirit and intent of the CRA legislation. CDFIs are best structured to make loans and investments that truly benefit low-income communities and populations. Therefore, additional incentives should be provided to encourage banks to support CDFIs and CDFI activities. Equity investments, equity-like instruments and loans, to CDFIs for mission-driven activities, should warrant enhanced CRA credit/ incentive particularly when compared to a no-risk FDIC insured deposit into an MDI.

We strongly support previous efforts to ascribe double (2x) credit for equity, or equity-like investments into CDFIs. Equity investments enable many multiples of

financing for qualified community development activities as CDFIs leverage these equity dollars. Strengthening CDFIs and strongly encouraging banks to participate with CDFIs will optimize positive outcomes when measuring the effectiveness of CRA over time.

IV. Qualifying Activities Confirmation and Illustrative List of Activities

The creation and maintenance of publicly available list of activities eligible for CRA consideration, is a good idea and should reduce the perceived need of banks to obtain agency approval for delineated eligible CRA investments.

The challenge will be in articulating activities that may fall within broad guidelines, but outside of specific exclusive or inclusive requirements. For example, we recognize that investments in mortgage-backed securities (MBS) with loans to low-income persons should qualify for the list. What if a certain percentage of the loans in the MBS are made to high-income borrowers? Should not every loan in a CRA qualified MBS be required to benefit low- or moderate-income borrowers? We recommend the Illustrative List of Activities prioritize those activities with higher impact on low-income persons and communities.

It is essential that the procedure for reviewing/adopting new items to the list should be clear and timely.

Historically some banks have refrained from making CRA-eligible investments due to concerns with Dodd Frank/Volker Rule compliance. Submitting requests for approval under the Volker Rule has caused delays and prevented some banks from making CRA eligible investments. Public Welfare investments that are included in the Illustrative List of Activities should automatically qualify under the Volker Rule.

V. Impact Review of Community Development Activities

Section B. Impact Review Factors

Overall, we applaud this qualitative overview of determining CRA compliance. Persistent poverty counties, or regions, along with areas of low levels of Community or Economic Development Financing should warrant consideration for a higher level of responsiveness from banks. As previously discussed, activities with CDFIs should be viewed as more responsive, curated, and more impactful than deposits, or investments into MDIs and WDIs - unless those MDIs and WDIs demonstrate their clear and consistent mission of "meeting the credit needs of low- and moderate-income individuals, communities, and small businesses". Certified CDFIs must demonstrate to the CDFI Fund that no less than 60% of its dollars and deals address these credit needs. MDIs and WDIs do not have such requirement. Equity investments, particularly in CDFIs, and long-term debt should have a much higher qualitative consideration than a short-term timed deposit in MDIs or WDIs. Additionally, consideration should be given to what the MDI or WDI does with the deposit or investment prior to receiving CRA credit.

> 6.) *Activities benefiting Native Communities* should warrant favorable impact review. Activities benefiting Native communities, but not located in Native Land Areas should also be eligible and receive favorable impact review consideration. Among other structural issues, trust lands inhibit most regulated financial

institutions from making loans in Native Land Areas. The new regulation should encourage and recognize bank investment in qualified activities, including investment in CDFIs, that benefit, Native populations, families, and Native-owned small businesses, regardless of their location.

U.S. territories, including Puerto Rico, American Samoa, Guam, the Northern Mariana Islands, and the U.S. Virgin Islands, should be specifically mentioned as eligible under this section.

7.) *Activities that are a Qualifying Grant or Contribution* should be considered as a separate impact review. However, we ask the agencies to consider reducing the quantitative impact of grants or contributions given that they do not adhere to the spirit of CRA in providing equal access to "credit". Banks are often quick to "make a donation" but agonize over a loan or equity investment of the same amount to the same party. Grants are easy, loans are hard.

8,9) *Activities Reflecting Bank Leadership or Result in a New Community Development Financing* endeavors is important from an impact review perspective. These factors encourage innovation and solution-oriented CRA activities. For example, investment in mortgage-backed securities, for purposes of CRA compliance, lack affirmative insight or active consideration by bank executive teams. Finding bank leadership on funds, capital campaigns, and new endeavors is truly unusual. Banks helping to create, or commit, to a new fund or activity, with greater risk and benefit, should receive more favorable CRA consideration under Community Development.

We support the agencies encouragement of banks to provide grants and leadership on analyzing impact of CRA activities. This would include monitoring banks qualified loans and investments, efforts to initiate and sustain the development of complex and innovative methodologies for the design, collection, analysis, and timely reporting of longer-term data.

VI. Assessment Areas and Areas for Eligible Community Development Activity

The proposal to consider allowing Community Development Activity outside of the bank's assessment area is a reasonable and welcomed update. This is particularly important when considering investments or loans in multi-state CDFIs or other multi-state loan funds. Banks have previously had a litmus test surrounding assessment area overlap and have often failed to invest in good community development endeavors that could not demonstrate enough specific loan activity within that area.

B. Facility Based Assessment Area criteria provides a strong basis for establishing a bank's assessment area. We would request that specific provisions be made for internet banks or those that rely on a non-traditional, (i.e., Branch) method of providing banking and lending services. This would include one-branch banks that obtain deposits through brokers, or through internet or other advertisements. Areas or regions attracting significant deposits and/or banking services via the internet or through brokers or other non-traditional methods should be considered for determining a bank's assessment area.

The agencies are encouraged to closely monitor the closing of branches in low- or moderate-income areas. This includes branches that are closed on the basis of "not enough foot-traffic" and whereby banks maintain that long-established customers can now continue their bank relationship via technology.

VII. Performance Tests, Standards, and Ratings in General

We support the new asset size standards for Large, Intermediate and Small Banks. We question the rationale behind why Intermediate Banks can decide to be evaluated under the current intermediate small bank community development test or under the proposed Community Development Financing Test. Seemingly, the provision for counting broader activity outside of a bank's assessment area under the Community Development Financing Test would benefit intermediate banks equally as much as large banks. For consistency and clarity, we would recommend dropping the option granted to intermediate sized banks and evaluate them under the Community Development Services Financing Test just as Large Banks are evaluated.

4.) *Community Development Financing by a Consortium or a Third Party* recognizes the value of bank participation in consortiums or multi-bank owned entities. We strongly support the continued policy of retaining CRA consideration on a pro-rata basis according to a bank's percentage ownership of the third-party entity. The flexibility of recognizing community development loans and investments made by third-party entities, whereby a bank has invested, is one of the most impactful methods of addressing unmet credit needs of low- and moderate-income communities. Examiners should evaluate the effectiveness/impact of the third party or consortium in applying the qualitative impact review assessment of bank investments in third parties.

XII Community Development Financing Test

B. **Combined Consideration of Community Development Loans and Investments** has the potential to cause some banks to do less community development investments. While we do share this real concern with other stakeholders, we think the agencies can ensure that banks being evaluated do not exclude investments over loans when complying with this test. We support combining the loan and investment metric calculation together, including those community development activities outside of the banks assessment area, in determining a bank's overall performance.

2.) *Assessment Area Community Development Financing Benchmarks* propose to recognize the annual average of originations and the annal quarterly average balance sheet holdings. It is confusing how these two would be added together to arrive at a numerator. We support examiners looking at both measurements with an eye toward establishing a more practical and transparent long-term approach to CRA activities. Some banks currently make one-year CRA loans, that are typically renewed annually, to derive more CRA origination consideration. This practice hurts community groups who cannot project having capital available beyond the one-year term. It is a manipulation of CRA and should be discouraged by the examiners.

Summary

Clearinghouse CDFI supports the work the agencies have done to modernize and update this important legislation. Our community development financial institution is a living testament to the success and importance of CRA. Without CRA we would not be here today, nor would we have grown to an $650 million in assets, community-based lender. We believe that CDFIs are best situated to do community development lending in this country. While banks can do some direct community development lending, concern over making non-traditional loans, "outside the box" often discourages banks from making impactful loans. CDFIs can make loans that truly benefit low-income communities and go much deeper in addressing unmet credit needs. By providing equity and long-term debt to CDFIs, more community development lending will occur and benefit low-income communities and families. This is especially true when talking about serving the very low-income population (30%-60% of area median income). Therefore, we respectfully ask the agencies to consider all of our suggestions and most importantly to **prioritize CDFI equity investments and loans in the proposed NPR.**

Sincerely,

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