

March 31, 2020

Mr. Robert E. Feldman, Executive Secretary  
Attention: Comments, Federal Deposit Insurance Corporation  
550 17<sup>th</sup> Street NW  
Washington DC 20429

Re: FDIC RIN 3064-AF22 Proposed changes to Community Reinvestment Act

Dear Mr. Feldman;

The underlying foundation for CRA is to encourage financial institutions to help meet the credit needs of the communities they serve, including low and moderate income (LMI) individuals and geographies. The primary intent was to combat the practice of redlining, which significantly inhibited the low and moderate income individuals and families from becoming homeowners and achieving other socioeconomic levels. The regulation has needed updating for some time, but I have several concerns that some of the proposed changes are not changes for the good and depart from the founding principles of the regulation.

I am further disturbed that the agencies are not in unified agreement on the proposals and the discord could lead to a fractured regulatory environment. I believe the intent of the proposed regulator changes is good, but the intent is meaningless if it is clouded by ambiguity. If the principles and intents of the regulation are not clearly defined, and are left up to the subjective opinion of the examiners, it could actually create more problems than it would solve and consequently have an adverse impact those whom the regulation was meant to help. It has been my experience over the past 38 years in banking that the subjective opinions of the examiners are based on their own experiences and prejudices, and do not always match the opinions of other examiners. Discretionary powers do not always equate to fairness or the same outcome regardless of the intent behind the law. Therefore, the regulation must be consistent and clearly written so the expectations are defined and easy to follow. The fact that there is a lack of uniform understanding among the banks, and even among the agencies, indicates the proposed changes are not clearly defined.

There are many components in the proposed regulation that I think are flawed, but I'm only going to comment on a few of them. I am very passionate about the purposes of CRA, and have worked with community organizations for many years. The measurement of our performance should be how well we are meeting the needs of our communities – not just the dollar amount of the activity. Also, by using quantitative rather than qualitative factors for measuring a bank's CRA performance, the agencies will strip away the incentive for banks to look for innovative and flexible forms or options to extend credit and just do "cookie cutter" loans without regard to the impact because just the numbers matter under the proposed measurements. That will have a very adverse impact on the economically disadvantaged populations. Impact is always a critical element in measuring the effectiveness of a CRA program.

Each bank should be identifying those needs and demonstrating how well they have met those needs. Many banks think they have a handle on the needs of their communities by just whatever

walks in the door – but there are many needs we are not aware of. For this reason, our bank conducts an annual Needs Assessment for every single assessment area we serve. In assessment areas that are comprised of multiple counties within an MSA, we do a Needs Assessment for each county separately. We look for needs in five specific areas: Affordable Housing, Homelessness, Employment/Economic Development, Community Health, and Financial Literacy/Asset Poverty. We also look at demographics, minority populations, pockets of higher poverty rates, access to broadband particularly in our rural areas, and for any other elements that might adversely impact the health and wellbeing of our communities and the low and moderate income populations within them. Not all counties or assessment areas have the same needs. In some areas, homelessness is a big issue, whereas in other areas it is hardly visible. In some areas there is a serious need for availability of affordable housing, and in others, there is an ample supply of affordable housing but it is need of rehabilitation.

To complete our Needs Assessment process, we review the City or County Comprehensive Plans, conduct Community Outreach Interviews with organizations in our communities, look at FFIEC data, and peer data, and determine what the needs are for each of our communities. Then we form an action plan on which needs we are going to focus on for the year and what efforts we will make to meet those needs. Our budgets are strategized around those identified needs as well. Needs change from time to time so we continue to monitor the communities throughout the year with additional Community Outreach interviews and interaction with organizations. It is easily measured how well we are meeting the needs of our communities because we are actually digging down deep to identify them – not just picking the “low hanging” fruit.

On another issue, the proposed changes to the regulation indicate that banks will be penalized for not having branches in low or moderate income census tracts. The premise behind this is flawed. Census tract designations change; so a branch established at one time in a low or moderate income census tract may not be in a low or moderate census tract at the time of an exam. We’ve seen that several times for our bank. Additionally, zoning restrictions may prevent the bank from building a facility in a low or moderate income tract because it is not zoned for commercial purposes. In some of our areas, we don’t have low or moderate income census tracts. None of these situations are within the control of the bank, so why should we be penalized for it? Shouldn’t the measurement be whether we are convenient in our services and hours, and have products that will help the low and moderate income individuals no matter where they reside in the community? Indeed, in some areas we have all middle and/or upper census tracts but there are pockets of people in those tracts that are well below the poverty line. Whether or not a census tract is designated as low or moderate income is not always an applicable circumstance but every effort is still being made to help the low and moderate income individuals within the community.

Additionally, part of the proposal indicates that banks could count rental housing as affordable housing if lower income people could afford to pay the rent without verifying that lower income people would be tenants. If there is no verification of income or specific restriction on income for the affordable housing, individuals of greater means could reside there, which would create additional strain on the available housing units for truly LMI individuals and families. This would not meet the purposes of CRA. Income of the residents has to be measured to make rental housing fit the definition of affordable and to target LMI as is intended by the regulation!

There also seems to be an emphasis on activities in “Indian Country” throughout the proposal. We have many Indian Reservations within our footprint, but reservations are essentially a sovereign nation, so we have significant challenges in trying to help them in the lending arena. For example, we cannot perfect collateral or repossess or foreclose on Indian Reservations. Our experience shows that many from the reservation who apply for loans cannot qualify for unsecured credit based on their credit histories. That limits what we are able to do to help them. We have been making donations and grants to organizations serving “Indian Country”; we have tried to help organizations set up a CDFI to serve the reservations; and we have provided non-lending services; but it would appear from the proposal that we would be somewhat penalized for not having significant lending in “Indian Country”. Although we will continue to provide donations, grants, services, and other activities, we should not be penalized for having our hands tied with respect to lending.

I am also opposed to the partial credit for loans made that are sold on the secondary market. Selling these loans helps provide the availability of credit to other low and moderate income individuals. I understand the intent behind the proposal, but the recommended solution will only diminish the incentive for banks to make these types of loans.

I do agree that the volunteer services we provide our communities should not require financial expertise as a factor. Our commercial department, for example, takes time every year to help build a Habitat for Humanity house. We have not been able to have that count for CRA consideration in our exams because it was manual labor not financial expertise – and yet every house benefited a low or moderate income individual/family. We spend 1 day a year with the bank lobbies shut down and all of our employees not running the drive-up facilities are out in the community performing necessary volunteer functions that benefit the community as a whole, but that low and moderate income individuals as well – such as helping the Food Banks stock their shelves, painting and helping the homeless shelters, working in community gardens that provide food to the needy, etc. – and yet, we haven’t been able to count those efforts either because it was manual labor. However, the low and moderate income individuals were impacted just the same by our efforts. I commend the agencies for understanding there is more to providing these essential volunteer hours than just whether or not we lend financial expertise.

Please consider my comments in your proposal for changing CRA. We need to make sure any changes are true to the heart of the regulation in helping low and moderate income individuals in our communities, regardless of whether they actually live in a low or moderate income census tract.

Respectfully,



Larjette Marcum  
Vice President/CRA Compliance Officer