Comments re: Reforming the Community Reinvestment Act Regulatory Framework
April 2, 2020
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Fahe writes respectfully in response to the OCC and FDIC's request for comments on CRA reform. Fahe is a Network of 50+ organizations building the American Dream in Appalachia. Since 1980, Fahe has reached over 763,000 people with over $3.7 billion in investments throughout the region. This investment was channeled through our Network of organizations working in some of the hardest-to-reach places in Appalachia.

The CRA, enacted in 1977, is a critical tool throughout much of the country to ensure banks lend, invest, and provide services to low income people. We are supportive of the idea of modernizing the CRA and particularly the sentiment that the good work of the CRA be expanded to better serve existing beneficiaries with additional investment, and to channel investments to low income people in areas where banks make loans but do not have branches or carry out community development-type investments. We are disappointed that the proposed changes miss an opportunity to strengthen the CRA while also missing an opportunity to invest in communities, including many communities in small town and rural America, which have lost out on CRA benefits as regulators have permitted the banking industry to consolidate.

Notably, many parts of the Appalachian region, like other small town areas in our country, face greater challenges making the CRA work for them. Study after study indicates that people living in large swaths of the Appalachian region lack banking institutions in their community. While it is theoretically possible that the proposed reforms would open under-banked areas to CRA investment, a practical look rooted in our expertise on the ground leads us to believe this positive outcome is highly unlikely, whereas the negative effects of the proposed reform are almost certain. Consequently, Fahe writes today to urge serious reconsideration of the proposed reforms.

I. The proposal's dollar metric, its enabling of additional large projects, and its cherry-picking passing assessment areas fails to maintain or expand investments for low income people currently receiving meaningful CRA investments

Based on our expertise in financial services to disadvantaged communities in Appalachia, we worry that the overall, the proposal will make it easier for banks to do fewer projects that would more likely happen even without CRA in the private market. Banks will then have less reason to engage in smaller, more challenging community reinvestment activities benefiting those Americans who could most use the investment. As Fahe wrote in our 2018 comments, "while expanding the geographical reach of the CRA is necessary, it is equally necessary to maintain (or strengthen) the existing regulatory infrastructure and provisions that ensure investments are made in the communities that need them most." We wrote "we therefore are skeptical of any approach such as a simple ratio that would not clearly lay out an expectation for continued community development investment in existing bank assessment areas and an investment in rural and small town America."

But, in fact, the proposed rules lay out just such an overall dollar ratio of lending, without an expectation for lending in small town America. OCC and FDIC say that the proposed rules will avoid these problems by giving additional credit for serving low income communities. But we note that the proposed bonus for core community development activities could also let a bank do half as much of these activities and receive the same amount of credit as they do today, with a current 98% CRA passage rate for banks. We contend that CRA reform should increase this CRA investment, not permit it to be deceased with no consequence as proposed.

Of additional and related concern is that the proposal actually seems to be deprioritizing community development activities both by removing them from the definition of economic revitalization and adding to the list of CRA qualifying activities major infrastructure items such as stadiums, large agriculture projects, and other things not directly tied to investing in low-income people. We are supportive of infrastructure investment in Appalachia – we need more good infrastructure investment. But those large projects are not what CRA was designed to address and are not the investment that is most difficult to come by; CRA investment done right could boost Appalachia's low income people and businesses.

To top off our concern about not serving current (or future) hardest-to-serve communities, the proposal requires high CRA performance in only 51% of the bank's assessment areas. Although the regulators are requesting comments on whether they should raise this threshold to 80%, the effect is the same: it can lead to allowing lower CRA activity in the most distressed communities where the bank should have the greatest incentive to invest and to score highly.

II. The proposal fails to effectively expand investment to low income people living in areas not currently well served by the CRA

The proposed rules create and define assessment areas located outside of a bank's branch footprint, but one must look 'under the hood' at what banks actually are likely to do based on profitability. Fahe requested a change in assessment areas our 2018 CRA reform comments, writing that the current CRA already contains provisions that allow banks to invest outside their geographic areas once a threshold of local investment has been met and noting how our experience has shown us that many banks are reticent to make this investment. Given this experience, we asked regulators to ensure that small town, rural, American Indian reservations, and persistently poor counties become part of assessment areas for additional CRA investment. Unfortunately, the proposal misses the mark by calculating new assessment areas for certain banks based upon those banks having over 5% of deposits in a defined assessment area. Where do most banks have the most of their deposits? Not in additional low income, rural, or American Indian areas, but instead in affluent areas parts of the country – banks would just have more options to serve other affluent areas.

For an example of how this CRA investment is likely to go in our areas under the proposed rules new assessment areas, several years ago Fahe worked to raise a $15.5 million multi-investor equity fund for workforce and recovery housing projects at scale to leverage Low Income Housing Tax Credits in small town and rural Appalachia. Fahe attempted to raise the capital from a few large investors, but could find no participation from large banks serving the region for whom the proposed projects were outside their assessment areas: BB&T, 5/3 Bank, and PNC among others all declined. Our understanding was that because the housing was located outside of these larger banks' CRA assessment area, they would pass on the opportunity to invest in small town and rural Appalachia, despite the fact that they frequently make loans in these areas. It strains the imagination to believe that any larger national banking institution that would be subject to the proposed rules for new assessment areas has 5% of deposits arising from southern West Virginia, eastern Kentucky, southwest Virginia, the Cumberland Mountains of Tennessee, small town Appalachian Alabama, or far western Maryland. Instead of focusing CRA on challenged areas, the new rules emphasizing deposit concentration actually make it easier for banks to invest where it is more profitable to them, which is almost never the lower-wealth smaller cities and towns. Regions like Appalachia, lacking branches and money to deposit, will continue to be least prioritized.

Fahe ended up raising that equity fund from eleven smaller state-based financial institutions, some who had CRA assessment areas in the three small town or rural areas where the housing would be located. We are glad for those eleven institutions' investment, but working with eleven financial institutions on a $15.5 million deal complicated and raised its cost. We therefore have not attempted this kind of larger project fund again. Even the small banks who invested did so largely for return rather than CRA because they were small enough in size not to be motivated by CRA (i.e. weren't subjected to a CRA exam). These institutions were also small enough that they did not need to invest regularly and without the larger institutional investors we could not create the consistency of funds raised to continue this work. If the larger regional/national banks had engaged in community development activities in smaller towns in the region, we may have been able replicate a successful investment strategy that could bring additional investments into small town and rural America.

In fact, this story is representative of the challenge in furthering economic development in our region. With notable exceptions like Knoxville, Birmingham, Huntsville, and a few others, economic stagnation and out-migration seems to settle in with each passing month: with CRA we have an important opportunity that investment could be directed to knit our country back together, jumpstart Appalachian women and men seeking to grow small businesses and economic independence, and work toward prosperity for all. We ask that this proposal be seriously reconsidered and particularly urge consideration of the following recommendations:

Recommendation: Strengthen existing regulatory provisions that ensure investments are made in the communities that need them most. CRA investment requirements should be increased so that existing investments are maintained while the definition of CRA assessment areas should be expanded to include small town and rural communities where banks lend and take deposits from consumers. In this time of historically high income and wealth inequality in our country, increased requirements will ensure that these communities receive additional investment without cannibalizing existing investment.

Recommendation: Leverage CRA to encourage new financial infrastructure in the areas most underserved with financial service. To focus on generating new, sustainable financial services in hard-to-reach areas through bank activity or robust funding of community development financial institutions (CDFIs) that are willing and able to serve these areas, CRA incentives should be created to make equity and debt available for CDFIs located in and with long track records of serving these hard-to-serve regions. Although we appreciate that investments in CDFIs can receive consideration regardless of the market served, simply making investments in CDFIs eligible for CRA consideration is not enough given the existing incentives proposed by the rule toward large deals that are not focused on low income people.

Conclusion

Our region is one of beauty, talent, and potential, and is an important contributor to this country. The current CRA does not serve our region well, but these reforms seem to have structurally weakened the requirement of banks' investment in low-income communities while concurrently not strengthening the expectation on banks to bolster economic independence for low income people in small town and rural areas. Fahe has been working for 40 years to build the American Dream in Appalachia. CRA could be a much more constructive part of that effort, but we are deeply concerned that this proposal instead sets us back.