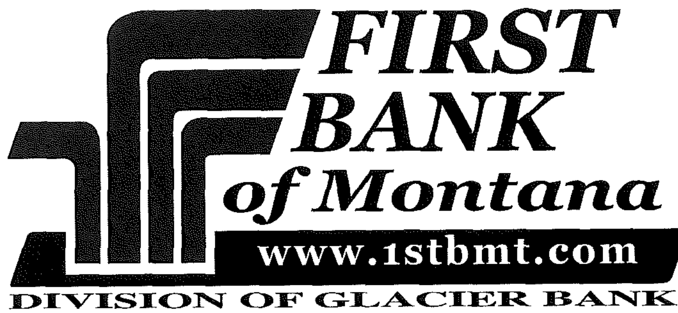

April 2, 2020

Mr. Robert E. Feldman, Executive Secretary
550 17th Street NW
Washington, DC 20429

RE: FDIC RIN 3064-AF22 Proposed Changes to Community Reinvestment Act

FDIC questions for proposal:

The intent of the proposed changes is good, but has many flaws. Please consider our answers to your questions and some of our other concerns regarding these changes as documented below.

The underlying foundation for CRA is to encourage depository institutions to help meet the credit needs of the communities in which they operate, including low and moderate income (LMI) individuals or geographies. The primary intent was to combat the practice of redlining, which significantly inhibited low and moderate individuals and families from becoming homeowners and achieving other socioeconomic levels. Because redlining predominantly impacts minorities and the poorer populations, it is discriminatory and a detriment to building strong, healthy and vibrant communities in our country. The underlying foundation was expanded to include not just credit needs, but also services and investment/donation needs. Responsible investments in communities served by banks that benefit low and moderate income individuals, families and geographies are also crucial to building vital communities.

The intent of the proposed regulatory changes to CRA is good, but the intent is meaningless if it is clouded by a law that is not clearly defined. The current proposal has many flaws that would render the intent impotent. When the law is not clearly defined and is left up to the judgment or discretion of an examiner, for example, their judgment is based on their own personal opinion or experience, which does not always concur with the judgment of other examiners. We have experienced several occasions where we complied with the "opinion" of one examiner only to find another examiner at the next exam who didn't agree with the previous opinion that was rendered and we had all of our hard work thrown out. If transparency is a goal of the reformed CRA, leaving judgment up to the subjective opinion of the examiner will not achieve that goal. Discretionary powers does not equate to fairness or the same outcome.

The current CRA regulation is seriously outdated and indeed needs reform. Technology has changed the banking environment considerably and should have provisions updated to keep up with the evolution of technology. While most if not all banks have some form of using

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technology to serve and help our customers, we are not all the same. Treating all banks the same as those who choose only to engage in technology as a delivery system is not a fair application to those who are predominantly a traditional bank with branches in their communities; nor is it fair to treat banks who predominantly engage in online or internet banking the same as a traditional community branch bank.

Despite the changes and evolution of technology, branch banking continues to be an important part of the overall needs of the communities banks serve. Certainly the younger populations are more likely to use some form of technology for their banking access, older populations still like a face to face interaction with their bankers. The current CRA proposal would actually penalize banks in some respects for branch banking. For example, we have several assessment areas in our bank that have no low or moderate income census tracts, and no designated distressed or underserved middle income census tracts. We have no control over that factor, and yet we would be penalized under the proposed measurements for not having a branch in a census tract that is not a low, moderate, or designated distressed/underserved tract. Additionally, in some of our assessment areas, the only low and moderate income census tract areas are residential in nature and would not allow a branch to be built in that census tract. However, we have branches located in surrounding areas that still provide convenient access to LMI individuals who reside in the low or moderate income tract areas. Why should a bank be penalized for not having a branch physically located in an LMI, distressed or underserved area if they are still providing convenient access to banking services for that community?

As stated previously, the intent of the proposed changes is good, but there are inherent flaws in the proposal that would negate the intent. Please consider our responses to the questions posed in the proposed changes to CRA.

1. Are the proposed criteria for determining which activities would qualify for credit under the CRA sufficiently clear and consistent with the CRA's objective of encouraging banks to conduct CRA activities in the communities they serve?

Response: NO. There are still some vague statements in the proposal that leave room for interpretation that may or may not be in keeping with the intent of the regulation. For example, the term "significant" is extensively used in the proposal, but there is no definition for what is "significant". Will there be clarification in the final changes that would define what "significant" is?

2. Are there other criteria for determining which activities would qualify for CRA credit that the agencies should consider?

Response: YES. Perhaps the agencies should consider adding high poverty rates above the national average as a designated targeted area. We have seen multiple times where a census tract is designated as middle or upper income census tract, but the FFIEC data shows the percent of people in that tract living below the poverty line as exceeding the percentages of the state, and yet the tract is not designated as distressed. Economically disadvantaged individuals are not always limited to living in low and moderate income census tracts.

Additionally, Opportunity Zones are an issue – we have seen many census tracts designated as an Opportunity Zone but they are upper income tracts or even middle income tracts that are not distressed or underserved. We were told by an examiner that we cannot consider Opportunity Zone designations if the tract is not a low or moderate income tract. If we look at the list of "approved" Opportunity Zones, it specifically states they are low income tracts. The majority of the time they are moderate or above tracts. Understandably we can make a case for activities that benefit low or moderate income census tracts that are also designated as Opportunity Zones, but the definition of Opportunity Zone has been blurred because of the inclusion of middle and upper income census tracts in Opportunity Zones.

Disability should be qualifying criteria for CRA. The disabilities community is notoriously underserved by the financial industry and while the ABLE Act has improved this situation, there is still need and opportunity to do more. This is a highly vulnerable segment of the population that is twice as likely to live in poverty, therefore supporting programs and services that target this segment of the population should always qualify for CRA credit.

Student housing should also be looked at more definitively for CRA. Although there are clearly some students who are not LMI, the majority of students seem to fit that mold. Many of our assessment areas have universities or colleges and we make a considerable amount of loans to developers who strictly do student housing units. As a general rule, we cannot count these units unless they are construction loans, or specifically part of a city's plans to revitalize and stabilize a low or moderate income area that is in close proximity to a university or college campus, with the intent that the housing be offered primarily to students. Many of the students work low wage jobs, but they play an important role in the economy of the community. Most of these housing units do not track income; only that the students are registered at the university/college if they track it at all.

In one of our assessment areas, there is a high population of refugees. These individuals are generally LMI. It is difficult for housing to be addressed. One of the non-profit organizations we work with had some challenges because Fair Housing would not let them dictate where the refugees could live – even though it was temporary housing until the permanent housing could be secured. The organization was told it was discriminatory to tell these people where they could live. As a result, they ended up putting them in hotels for months on end until permanent housing could be secured instead of providing them the temporary housing. It was very expensive and didn't help the refugees adjust to their new world. Additionally, government rules for financing the temporary housing determined that it was transitional housing and therefore didn't qualify for temporary housing. The only way the bank could provide financing for this organization was to maintain the loan on our books. As such, it would have been classified by the examiners because the organization lacked the financial capacity to qualify for the loan – they were a new organization with little capital or assets for the size of loan they would need. We struggled to find ways to help the organization, including involving a CDFI. CRA credit cannot mitigate negative factors for making a loan, but it would seem that there should be something more that can be done. We called the FDIC and asked for their suggestions, and they pointed out that these refugees would fall under the definition of homeless. That helped us get

some other organizations involved, but it shows a deficit in programs that are available to help this segment of the population.

Creative Placemaking efforts should also be included when they link a low or moderate income area, or a distressed/underserved area to other areas that are more economically sound. Creative Placemaking brings together partners from public, private, non-profit and community sectors to strategically shape the physical and social character of a neighborhood, town, city, or region to include arts and cultural activities. It helps to revitalize areas, rejuvenates structures and streetscapes, and improves local business viability and public safety while bringing together diverse populations together. By doing so, it fosters entrepreneurial opportunities and cultural industries that generate jobs, income, new products and services, attracts and retains unrelated businesses and skilled workers. It is an important component to building communities where all people with all different backgrounds, socioeconomic factors, race and cultures, and ideas can be brought together to share opportunities and promote community growth and awareness.

3. Under the proposal, CD activities conducted in targeted areas, such as Indian Country or Distressed Areas, would qualify for CRA credit. Should there be any additional criteria applicable to the types of CD activities that qualify for CRA credit in these areas? If so, what should those criteria be?

Response: There is a significant emphasis on activities in Indian Country throughout the proposal. We have many reservations in our footprint. It is not that we deliberately do not want to lend in these areas - we would be happy to lend in these areas - but we cannot perfect collateral or repossess/foreclose in the event of default. The reservations are a sovereign territory, which is like lending in another country that we cannot access. We cannot make unsecured loans to these individuals as a general rule because it has been our experience that they would not qualify for unsecured credit. Making them an unsecured loan on the premise that they live in Indian Country would be a safety/soundness issue as well as discriminatory because we don't make unsecured loans to other minorities just because they need a loan. The way we currently serve "Indian Country" in our footprint is through donations, investments and service activities such as helping them set up their own CDFI. We will continue to provide these services. However if the "Indian Country" inhabitants want access to more lending opportunities, they need to loosen up their own rules so we can make secured loans and access the collateral if needed in the event of default. Banks should not be penalized for not lending in Indian Country when it is not a safe and sound practice because we cannot access the collateral.

4. Under the proposal, the small business and small farm revenue thresholds and the size thresholds for a small loan to a business and a small loan to a farm would increase to $2 million. Do these increases appropriately incentivize banks to engage in small business and small farm lending activities, or should other changes be made to the revenue and loan size thresholds?

Response: YES – the thresholds for small businesses and small farms is seriously outdated to the current economic levels. This has adversely impacted banks for CRA consideration for quite some time because the thresholds were antiquated.

5. The agencies plan to publish the illustrative list on their websites and to update the list both on an ongoing basis and through a notice and comment process. Should the list instead be published as an Appendix to the final rule or be otherwise published in the Federal Register? In addition, how often should the list be updated?

Response: NO - It should be published on the website. The list should be updated every 6 – 12 months.

Though the list of qualifying activities will be extremely helpful and very much appreciated, the criteria is still somewhat vague and in some areas, the LMI impact purposes will be diminished. Examiner judgment is an issue because it is subjective; it is not transparent and often varies. Having a list of qualified activities and a process where we can submit questions is great, but do the agencies have the staff to maintain such a list or would such a list become outdated because there is insufficient staffing to maintain the list and the volume of submitted questions? The proposal indicates that it would be reviewed every 3 years or so, but that may not help when something was on the list but taken off – how will banks receive credit for those activities that were once on the "approved list" but are later not included if revisions fall between exams?

6. The proposal includes a process for updating the illustrative list on an ongoing basis through submission of a form to seek agency confirmation. The agencies considered an alternative process when an agency would accept all requests from banks for confirmation that an activity is a qualifying activity, aggregate these request, publish the list of requested items in the Federal Register for public comment and feedback, and update the list following this process once every six months. What process, including any alternative process, should the agencies adopt to update the illustrative list of qualifying activities?

Response: YES - It should be the same process across all agencies. It should be published on each agency's site, not the Federal Register. Again, our concern is that there would be insufficient staffing and resources to maintain a list relatively current.

It would also be helpful if there was a formal training program on CRA for CRA Officers to be certified, much like Compliance Officers receiving a CRCM or CCBC title. There really isn't such a school or program. Sometimes examiners admit that they are asked to do the CRA exam but they normally do Safety and Soundness exams or compliance exams and aren't really up to date on CRA requirements either. They would also benefit from a universal training program.

7. Are certain types of retail loans more valuable to LMI individuals and geographies than other types? If so, which types? Should the regulations recognize those differences? If so, how? For example, could multipliers be used to recognize those differences and provide incentives for banks to engage in activities that are scarce but highly needed?

Response: YES – Government loans such as FHA, USDA, and VA loans are important to providing credit to LMI individuals. While it is understood that the intent of the proposal is to minimize banks from receiving multiple credits for making loans and selling loans, and for

multiple banks from receiving credit for the same transactions, the proposed rule could discourage banks from continuing to make these types of loans to individuals because they do not get full credit for making the loans. Selling the loans on the secondary market frees up additional capital to make additional loans to LMI individuals. These programs target LMI individuals and provide safe and sound means to provide them access to credit. Penalizing the banks by only giving them partial credit for these loans would dissuade banks from providing the LMI loan products and therefore it would adversely impacts the mission of CRA. Providing these targeted loan programs are much more labor intensive for banks, so if they provide the programs but get penalized for it, why do it? Some suggestions for consideration:

- Perhaps there should be more incentive, including the compensation weight for the lenders, for making these types of loans.
- If the final rule remains to minimize CRA credit for loans that are sold on the secondary market, perhaps the agencies can consider giving full or at least majority CRA credit to loan originators that retain serving of loans that are sold on the secondary market. Additionally, full credit should be given to loans originated under government programs or other programs that specifically target LMI individuals and families.

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!

8. The use of multipliers is intended to incentivize banks to engage in activities that benefit LMI individuals and areas and to other areas of need; however, multipliers may cause banks to conduct a smaller dollar value of impactful activities because they will receive additional credit for those activities. Are there ways the agencies can ensure that multipliers encourage activities that benefit LMI individuals and areas while limiting or preventing the potential for decreasing the dollar volume of activities (e.g. establishing a minimum floor for activities before a multiplier would be applied)?

Response: This proposed element can backfire and incentivize banks to make only the "multiplied" types of loans, rather than seek innovative and flexible forms or options. Banks should receive additional incentive for innovative and flexible loans, and activities that demonstrate leadership, responsiveness and complexity that help to meet the needs of their communities. Impact is a critical element of measurement.

9. The proposal quantifies the value of CD services based on the compensation for the type of work engaged in by the employees providing the services as reflected in the Bureau of Labor Statistics calculation of the hourly wage for that type of work. Alternatively, CD services could be valued based on a standardized compensation value for the banking industry is approximately $36, when calculated using Bureau of Labor Statistics data. Would using standardized compensation values reduce the burden associated the tracking CD services while still

appropriately valuing CD services? If so, how should the agencies establish the standardized compensation values?

Response: It is agreed that the "financial expertise" requirement should be removed from CRA services – banks have a major impact on providing volunteer service to their communities, which benefits not only LMI, but the entire community making it a better place where services are available. It never made any sense why building a home for Habitat for Humanity, utilizing employees from our bank, would not count for CRA when it was having a major impact on LMI. They benefited from the manual labor we performed. What is a more important measurement for volunteer services – the number of people impacted by the service or the dollar amount of the labor? What is the purpose of affixing a dollar value to the service hours? It is not clear to us whether it would be a standard hourly wage for all volunteers based on the type of labor performed (which seems very onerous) or based on the hourly wage/salary of the person performing the job. Some activities require more effort and labor, so they should be counted heavier in the measurement rather than everything being treated the same. For example, an employee who spends time helping to direct the affairs of a homeless shelter as a board member, seeing that the homeless individuals receive the care and services they need as well as shelter would seem to be a heavier activity than someone who spends a little time helping a small non-profit organization with reconciling their account now and then. The impact is more far-reaching in the first scenario that in the second. They shouldn't be measured as the same. Some activities have a higher value and impact and should be sought after first.

Additionally, helping grade school children learn to read was never an activity that qualified for CRA because it didn't lend financial expertise. However, statistics clearly evidence that if a child does not know how to read by the third grade, they fall further and further behind, and are more likely not to graduate from High School or go on to college. That equates to having low or moderate income jobs. Efforts to prevent LMI were not recognized in this regard. In one of the States we operate in, the governor declared a need for help in getting the grade school reading levels increased because of the impact it had on the future of the children. Our bank had many employees volunteer to help teach the children reading skills but it could not be counted in our CRA volunteer activity. However, helping children understand math in 8th grade received credit because it was "financial expertise". We applaud the opportunity to include all activities that can impact the economic outcome of the children in our community to help them have higher income and self sustaining employment opportunity. This would include helping to provide financial support for activities that expose children to technology based employment. Financial literacy is an important factor in building stability in communities – regardless of income. Everyone needs to be better prepared for emergencies, learn how to save, learn how to budget, learn how to use credit wisely, and learn how to build their assets and self sufficiency.

10. Should the range of retail banking services provided – such as checking accounts, savings accounts, and certificates of deposit – be considered under this proposal? If so, how could retail banking services be quantified? For example, could the types of checking and savings accounts that are offered by a bank (e.g. no fee, fixed fee, low interest bearing, high interest bearing) be considered in performance context?

Response: We already provide information in the Services Test regarding our products and services. Not every bank offers the same products because not every community is the same. Banks need to be able to tailor the products they offer to the individuals and communities they serve – having different products should not be a detriment to the Bank's CRA rating as long as they also offer products and services that are convenience and helpful to LMI individuals.

In order to quantify banking services, you would need to gather income information from every account holder to determine the percentages of them that are LMI and which products they are using. That could be costly to the bank and invasive to the consumer. Comptroller Otting indicated we would not need to ask for additional information on income from customers opening accounts, but how else will we know how to quantify the impact of our products and services to the LMI?

We offer a checking account that has no monthly service charges, but that doesn't always equate to LMI individuals using our products and services. There are plenty of unbanked and underbanked populations in our communities that are afraid of keeping their funds in financial institutions for a wide range of misperceptions or erroneous notions. While we reach out to these individuals with various programs, such as Bank On, it does not guarantee that they will open an account and yet when they participate in our programs, they receive much needed Financial Literacy training to help them better understand banks, budgeting, and credit related topics.

11. Are the proposed methods for delineating assessment areas clear, simple and transparent?
Response: NO. This is a classic example of trying to measure all banks against the same measuring formula because not all banks are the same – they differ in complexity, type, and in the communities they serve. We are not the same, and neither are our assessment areas. Perhaps the agencies needs to create a set of rules for banks that are predominantly traditional; for banks that are predominantly non-traditional (such as online or internet banks); and for hybrid banks that offer both types of services.

12. The proposal would allow banks to choose how broadly to delineate their facility based assessment areas, but it would require banks with a significant portion, such as 50 percent of more, of their retail domestic deposits outside of their facility based assessment areas to delineate their deposit based assessment areas at the smallest geographic area where they receive five percent or more of their retail domestic deposit. The requirement to designate deposit based assessment areas would impact Internet banks that do not rely on branches or ATM facilities to collect deposits as well as traditional banks that, in addition to their branches and ATM facilities, collect a significant portion of their deposits online outside of their branch and ATM footprint. Do these approaches strike the right balance between allowing flexibility and ensuring that banks serve their communities? If not 50 percent, what threshold should be used to determine if a bank has a significant portion of its deposits outside of its facility based assessment areas and why? In addition, is receiving at least five percent of domestic retail deposits from a given area the appropriate threshold for requiring a bank to delineate a deposit based assessment in that area, or should some other threshold be implemented? If so, why?

Response: How does "broadly delineating assessment areas" under facility based assessment areas and non-facility based assessment areas help? Again, the criteria would consider all banks

or assessment areas are the same when they are not. It is impossible to fairly rate all banks over $500 million the same when they are not the same. Creating facility based assessment areas AND non-facility based assessment areas does not make sense for all banks. As stated above, the agencies should consider a different test for those banks that are traditional, non traditional and a hybrid combination of the two that have the same criteria for those types.

Determining a depositor based assessment area could be problematic. For example, depositors do not always keep their physical address information current with a bank after the open an account – particularly if they do much of their banking online. Some use P.O. Boxes, some are in very remote/rural areas and don't have physical addresses, and the increased popularity of e-statement options does not always mean the customer maintains their address current with the bank. The most current information in a bank's data base may not always be the most current information.

13. The deposit based assessment area delineation requirements are intended to ensure that banks serve the communities in which they operate. However, under the proposed regulation, it is possible that few banks would be required to delineate a deposit based assessment area in less populous areas or states, despite having a significant market share in those areas (although banks with branches in those areas would be required to delineate facility based assessment areas and banks may receive credit for qualifying activities outside of their assessment areas conducted in those areas or states). Does this framework provide sufficient incentives for banks to conduct qualifying activities in these less populous areas? Alternatively, should banks be required to delineate separate, non-overlapping assessment areas in each state, MSA, MS, or county or county equivalent in which they have at least a certain percentage of the deposit market share – regardless of what percentage of the bank's retail domestic deposits are derived from a given area – and, if so, what should the percentage of the deposit market share be?

Response: It is stated that the intent of deposit based assessment area delineation is to ensure banks serve the communities in which they operate. How is a deposit market share a fair measurement for CRA performance? It has nothing to do with the services we offer or the Community Development activities we conduct. If a bank is evaluated upon the percentage of deposit market share in an area, it may actually encourage banks not to go "above and beyond" if they can be rated satisfactory for just doing bare minimums.

Sometimes there are physical barriers that make offering banking services to parts of a county or MSA inconvenient for the customer and costly for the bank. For example, in several of our assessment areas, we have large deserts, mountain ranges, large bodies of water, or a combination of these natural barriers that makes it inconvenient for the customers in the entire area to bank with our bank when we have a rather isolated location in comparison – and to have a branch in every part of the county or MSA would be costly and non-productive for the bank. Further, in some of those areas, there is already a plentitude of banks serving the area, so adding another bank and another branch would over-saturate the area and not be beneficial to anyone. It is not likely that a bank has much in the way of depositors in those areas, so in that respect, it would make sense to have those areas not part of the bank's designated assessment area.

Additionally, we had a large number of loans being made for "snow-birds" who lived in one state for just a little over half the year, and the rest of the year in Arizona. The time spent in either place was almost equal however. The customers maintained their accounts with us, even while living in Arizona. We were strongly encouraged in one of our exams to include Arizona as an assessment area because of the snow-bird second homes there. However, the primary residences and banking relationships were not in Arizona and we had no locations in that State. How would we designate a deposit based assessment area in that instance? Would we be penalized for not having community development activities in Arizona in this instance?

14. The proposed rule would define retail domestic deposits as total domestic deposits of individuals, partnerships, and corporations, as reported on Schedule RC-E, item 1, of the Call Report, excluding brokered deposits. Is there another definition – including the alternatives described above – that would better reflect a bank's capacity to engage in CRA qualifying activities?

Response: What do deposits have to do with LMI? Isn't serving LMI and giving them access to credit the foundation of CRA? The deposit totals show absolutely no relation to LMI. While we understand we need to invest into the communities where we take deposits, it really does not have anything to do with LMI. The loan-to-deposit ratio is not part of the CRA test, but can be impactful to measuring whether we are meeting the intent of deploying sufficient lending dollar funds into our communities.

15. The proposal focuses on quantifying qualifying activities that benefit LMI individuals and areas and quantifies a bank's distribution of branches by increasing a bank's quantified value of qualifying activities divided by retail domestic deposits (a bank's CRA evaluation measure), expressed as a percentage, by up to one percentage point based on the percent of a bank's branches that are in specified areas of need. Banks with no branches in these areas will not receive any CRA credit for their branch distribution under this method, even if there are very few specified areas of need in the areas they serve. Does this appropriately incentivize banks to place or retain branches in specified areas of need, including LMI area? Does it appropriately account for the value of branches in these areas?

Response: NO. This penalizes banks where there are no low or moderate income census tracts – we have no control over the designations of census tracts so we shouldn't be penalized for it! Also, just because the physical location of a bank facility does not fall into a LMI tract does not mean that the bank does not service the LMI tracts that are located in the same general geography (town, county, etc.) or the LMI individuals in that area.

16. Under the retail lending distribution tests, the proposal would consider the borrower distribution of any consumer loan product line that is a major retail lending product line for the bank. The agencies defined a major retail lending product line as a retail lending product line that comprises at least 15 percent of the bank level dollar volume of total retail loan originations during the evaluation period, but also considered setting the threshold between 10 and 30 percent. Should the agencies consider a different threshold? Additionally, applying the retail

lending distribution test to only major retain lending product lines means that not all retail lending product lines will be evaluated for every bank. Are there any circumstances in which applying the retail lending distribution test to a consumer lending product line should be mandatory, even if it is not a major retail lending product line (e.g. if the consumer lending product line constitutes the majority of a bank's retail lending in number of organizations)? Additionally, the proposal would only apply the retail lending distribution tests in assessment areas with at least 20 loans from a major product line. Is 20 loans the appropriate threshold, or should a different threshold such as 50 loans be used?

Response: Of what benefit is the product line for the retail distribution test since not all banks are the same or offer the same product lines? How does it benefit comparisons or peer analysis? Also, the major product line measurement might negatively affect rural agricultural communities by not taking small farm lending into consideration for banks where that is not considered a major product line. It may discourage banks from bothering to make them if they aren't a major product line. Even when that product line is small compared to other lending products a bank may offer, the impact of small farm loans is huge and often vital to the agricultural community. Shouldn't the focus be on the CRA needs of the community and how they can be filled? Shouldn't banks be researching the needs of their community, particularly with low and moderate income individuals or those that are distressed or underserved, and looking for ways they can meet those needs? Maybe a standard community reinvestment percentage range that is asset based for each category (loans, investments, donations/grants and services hours) should be used. Then each individual institution can calculate their community reinvestment percentage. The institution can then decide the percentage range to be dedicated towards achieving a specific rating.

17. Under the proposal, a bank evaluated under the general performance standards could not receive a satisfactory or an outstanding presumptive bank level rating unless it also received that rating in a significant portion of its assessment areas and in those assessment areas where it holds a significant amount of deposit. Should 50 percent be the threshold used to determine "significant portion of a bank's assessment area" and "significant amount of deposits" for purposes of determining whether a bank has received a rating in a significant portion of its assessment areas? Or should another threshold, such as 80 percent be used?

Response: While we understand that it is important for banks to use the liquidity of their deposit base to invest back into their communities rather than deploying those investment dollars into other communities, using Deposits as the measurement for CRA performance does not make sense. Deposits have absolutely nothing to do with how well we serve LMI individuals, families or geographies in our communities. Many low and moderate income individuals may not be using banks to maintain their deposits – we have many unbanked and underbanked individuals within that population that may use payday lending places for their banking services even though we offer accounts with no monthly services charges. We have programs to try to draw in those individuals, but that does not always overcome the reasons they choose not to use a traditional bank for their banking needs.

Shouldn't our measurement be how well we meet the needs of each community? Each bank should be identifying those needs and demonstrating how well they meet those needs – not how many deposits they brought in. For example:

- 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 the Needs Assessment for each county separately. We look for needs in five areas: Affordable Housing, Homelessness, Employment/Economic Development, Community Health, and Financial Literacy/Asset Poverty. Not all counties have the same needs. In some areas, for example, homelessness is a huge issue, and in other areas, it's practically nonexistent. By looking at the City Comprehensive Plans, County Comprehensive Plans, reaching out to Community Organizations and looking FFIEC data, we determine the needs that are inherent for each community that will impact low and moderate income individuals or geographies. Then we formulate an Action Plan to address those needs. While it is impossible to meet every need (we are not a non-profit corporation!), we focus our time, attention, and dollars to needs that seem to be the most critical. It would be relatively easy for an examiner to ask for our Needs Assessments for each Assessment Area and measure how well we are meeting those needs.
- Our budgets for CRA are also strategized to take into consideration the needs identified in our Needs Assessments. Our bank owns 14 different banks or divisions under the holding company. To determine the budget for one of our divisions, the CRA Performance Evaluations of their peers were reviewed and the percentages of the peers activities compared to their Total Assets were averaged together for Lending, Investment, and Service Hours. Then the percentages were increased to be "above peer" and the budget allocated to meet those percentages for that division. To do a global "budget", the same process would be followed and then the percentage each division contributes to the Total Assets would be their budget number. Couldn't a baseline percentage of Total Assets be established for Outstanding, Satisfactory, Needs to Improve, and Substantial Non-Compliance?

Some communities we serve as a bank have larger populations of low and moderate income individuals, geographies, or underserved/distressed tracts. Other communities we serve have smaller populations of low and moderate income, distressed/underserved individuals or geographies (or none at all). These differences also create significant differences in available opportunities. However, under the proposed rules, they would be treated the same and those areas/populations with lower percentages of low and moderate income individuals/geographies would appear to be penalized. Again, it is not in our control, so why should we be penalized for it?

18. Under the proposal, banks that had assets of $500 million or less in each of the previous four calendar quarters would be considered small banks and evaluated under the small bank performance standards, unless these banks opted into being evaluated under the general performance standards. Is $500 million the appropriate threshold for these banks? If not, what is the appropriate threshold? Should the threshold be $1 billion instead?

Response: $500 million is too low. $1 billion seems to make more sense.

19. Under the proposal, small banks (i.e. banks with $500 million or less in assets in each of the previous four calendar quarters) may choose to exercise an opt into and a one-time opt out of the general performance standards. Should small banks that opt in to the general performance standards be permitted to opt out and be examined under the small bank performance standards for future evaluations and, if so, how frequently should this be permitted?

Response: Why does it matter? Circumstances change for everyone. If it's a valid reason, it should be allowed as often as warranted.

20. As discussed above, the proposal would require banks to collect and report additional data to support the proposed rule. Although most of this data is already collected and maintained in some form, some additional data collection may be required. For example, banks may need to gather additional data to determine whether existing on balance sheet loans and investments are qualifying activities. Are there impediments to acquiring this data? If so, what are they?

Response: Banks are already burdened enough with all the regulatory requirements – adding more reporting requirements seems unnecessary and doesn't really achieve anything since banks are not all the same – in their product lines, complexities, and demographics – so it really isn't a comparison of apples to apples by requiring more data.

21. What burdens, if any, would be added by the proposed data collection, record keeping and reporting requirements?

a) What system changes would be needed to implement these requirements?
b) What are the estimated costs of implementing these requirements?

Response: This is an unnecessary burden for banks and will be costly to implement. Although the agencies feel it will eventually become more cost effective once systems are developed, the systems are not currently available to do this and who is to say that something else won't change down the road making all the effort, expense and burden meaningless?

22. The proposal would require small banks to collect and maintain certain deposit based assessment area data. Are there other ways the agencies can limit the record keeping burden associated with the designation of deposit based assessment areas, including other ways for banks to differentiate between traditional and internet type business models?

Response: Although we are not a small bank, this is an unnecessary burden for small banks who already struggle to maintain an effective compliance program.

Thank you for your consideration of my concerns.

Sincerely,

Kris Fleharty
Corporate Community Development Officer