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Comments re: Advance Notice of Proposed Rulemaking, Community Reinvestment Act Regulations, RIN 3064-AF81

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Introduction

Fahe writes respectfully in response to the Federal Deposit Insurance Corporation's request for comments on the Joint Notice of Proposed Rulemaking on the Community Reinvestment Act (CRA). Fahe is a Network of 50+ organizations building the American Dream in Appalachia. Since 1980 Fahe has invested over $1.32B generating $1.69B in finance. This investment was channeled through our members and community partners, directly changing the lives of 778,114 people 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. The CRA was brought about in part in response to the history of banks refusing to lend in what they deemed as the riskiest communities, often where many people of color lived. The history of redlining and other discriminatory lending practices kept communities and generations of black and brown Americans from having equal access to loans and mortgages. These actions left a negative ongoing legacy on homeownership rates and wealth-building across race and class. Moreover, because banks traditionally serve the areas around their branches, the legacy of banking discrimination has harmed certain geographies including but not limited to the Mississippi Delta, Appalachia, American Indian reservations, and predominantly black and brown communities in many American cities.

The CRA has the potential to help us correct the history of discriminatory banking practices in our nation. Fahe is supportive of the idea of modernizing the CRA. We particularly support the CRA being expanded to better serve existing beneficiaries with additional investment and to channel investments to black, brown, and low-income people in areas where banks make loans but do not have branches or carry out community development-type investments. We understand that the CRA, on its own, cannot undo the concentration in the banking industry or the financialization of the economy that has been permitted. Nor can the CRA alone undo these two developments' enabling of structural preferences in accessing capital and investment for powerful and well-connected entities. Yet the CRA, if reinvigorated with these recommendations, can encourage banks to triple their lending and investment activities in underserved communities, and can be a meaningful step to move resources towards a more equitable economy.

Notably, many parts of the Appalachian region, like other small town areas in our country, face greater challenges making the CRA work for them. While the CRA intended to improve access to economic tools and services in underserved areas, it has continued to fall short in many low-income, and predominantly black and brown communities. Currently, over 98% of banks have a passing grade, while our communities face persistent disinvestment. Study after study indicates that people living in large swaths of the Appalachian region, which includes both cities and small rural towns, lack banking institutions in their communities. In all of these places, communities cannot build wealth without access to investment, and cannot overcome systemic barriers and histories that have left them with fewer opportunities for economic development. Fahe works to incentivize bank activity and investment in underbanked and underserved areas.

Example

For an example of how CRA investment has failed to reach our areas in the past, 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, PNC, and others all declined. Our understanding was that because the housing was located outside of these larger banks' CRA assessment area, they passed on the opportunity to invest in small town and rural Appalachia, despite the fact that they frequently make loans in these areas. The new CRA needs to focus on challenged areas, rather than allowing banks to continue investing where it is most 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 unless the incentives are revised.

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. Without the larger institutional investors we could not create the consistency of sustained funds needed to continue this work. If the larger regional and national banks had engaged in community development activities in smaller towns in the region, we may have been able to replicate a successful investment strategy that could bring additional investments into small town and rural America today and for decades to come.

In fact, this story is representative of the challenge in furthering economic development in our region. There are still many communities where economic stagnation and disinvestment continue to be the norm: with CRA we have an important opportunity for investment to be directed to knit our country back together, jumpstart Appalachian women and men seeking to grow small businesses and achieve economic independence, and build the American Dream in Appalachia and nationwide. With this example in mind, we ask that the Final Rule incorporate the following recommendations to incentivize and maximize community development impact.

Recommendations

<u>Encourage banks to triple their lending, services and investment in underserved markets for underserved people</u>

Many of our comments deal with the distribution of CRA-motivated resources, however, with expanded ability and incentive to invest in areas of need and modernized assessment areas, it is important that the level of investment overall increase. Updated metrics to receive “satisfactory” and “excellent” ratings should be calibrated with the approaches outlined in our other recommendations to encourage that triple the overall resources be deployed. This means that communities currently served by CRA would continue to be served in the ways that work for them. They should not be deprived by an additional focus on the needs of the most deeply underserved people in this nation we focus on in our comments. Better targeting of CRA investment towards those historically underserved, as well as increasing that investment overall, would be in line with the directives of Executive Order 13985 on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, which included rural places as those which had historically been underserved and poorly targeted via federal policy.

<u>Modernize assessment areas to address historic underinvestment: facility-based assessment areas</u>

While the Proposed Rule goes a long way to bringing CRA into the technological reality of the present, including with the new definitions of “remote service facility”, “branch”, and “accepts deposits”, it neglects to adequately cover online banks. Online banks should be specifically mentioned as a type of bank that needs to both delineate facility-based assessment areas and retail lending assessment areas (Questions 40 & 42).

Regarding blended bank models (Question 41), where staff assist customers making mobile deposits with the customer onsite, Fahe believes that if a deposit is sent electronically, it should be treated as originating from the customers home or business address, not the location of the assistance provided by the staff. Making every effort to reflect the reality of the geographic distribution of bank customers will allow us to accurately target CRA investment.

Fahe believes banks of all sizes should be required to delineate whole counties as facility-based assessment areas, which will ensure that cut-outs are avoided (Question 39). It would be attractive for banks to exclude low- and middle-income areas from their assessment areas; requiring that entire counties be designated avoids this possibility. The same principle extends to a case where facility-based and retail lending assessment areas overlap within an MSA (Question 43): as long as the entire MSA, or state-nonmetropolitan statistical area is contained within the facility-based assessment area, the rule functions adequately.

<u>Modernize assessment areas to address historic underinvestment: retail lending assessment areas</u>

The retail lending assessment areas created by the Proposed Rule must be defined in such a way as to account for the wave of bank branch closures seen across the country in recent years. As rural and low-income communities once under-banked become branch deserts, CRA regulations must step in to ensure continued investment in areas from which banks draw revenue. To achieve this, the retail lending test must take variably-dense geographies into account. For example, the Proposed Rule asks (Question 44) if thresholds of 100 mortgages and 250 small business loans are appropriate trigger points for CRA evaluation of a retail lending assessment area. They are not appropriate; rural and persistently impoverished counties will almost never cross a 250 small business loan threshold. The economy in such places simply does not support that level of enterprise development. Owsley County, KY for instance is a persistently poor, rural, county in huge need of investment – as of the 2020 census, this county of 4,000 people had only 43 businesses of any size located within its borders. Importantly however, in such places, each new small business loan represents a critical provision of capital in an area starved of such investment. This sort of place is exactly where CRA investment is most needed and could be most impactful. Fahe believes that banks should be evaluated wherever they lend.

Relatedly (Question 46), even if a large bank provides a significant majority of its retail loans inside its facility-based assessment area, it should not be exempted from delineating other retail lending assessment areas. Large banks should not receive exceptions, being those banks most easily able to cope with CRA regulations, and they should be evaluated wherever they conduct business.

<u>Modernize assessment areas to address historic underinvestment: community development activities</u>

While Fahe operates in urban and in rural areas, we are acutely aware of the consequences that a weak CRA can have on struggling rural communities. Under the Proposed Rule, large, wholesale/limited purpose, and intermediate banks would receive consideration for qualifying community development activities outside of their facility-based assessment areas. Essentially, this system would award community development credit regardless of the geography, while maintaining an emphasis on banks adequately serving their local facility-based assessment areas. This, combined with the provisions in the Proposed Rule which delineate the Impact Review Factors attention to geographic areas with high community development needs, may create a CRA environment where investment is sent to those historically disinvested and rural geographies. Fahe supports this effort; these designated areas of need should receive bonuses in the CRA credit which are attractive enough to drive investment there (Question 47). Without this intentional focus, these areas will continue to be failed by CRA and continue their history of disinvestment. Furthermore, all community development activities outside of facility-based assessment areas should be considered for credit for banks of all sizes, not just those cited above (Question 48).

Furthermore, the impact review component (Question 47) should be weighed equally, if not more, than the metric and benchmarks. As it stands, banks are scored equally for funding one large program in a large city as they are for funding many smaller projects in harder-to-reach areas. If this continues, banks will prioritize investment in high-capacity CDFIs who fund large projects in large, prosperous cities. As impact reviews evaluate banks based on their investments and lending in persistent poverty counties, in geographic areas with low levels of CD financing, or to CDFIs, impact reviews are the most efficient way to incent banks to give back to their most vulnerable, most underserved communities. Additionally, the impact review can add quantitative aspects to improve the CDFI's rigor. As suggested by the National Community Reinvestment Coalition, Fahe supports a holistic impact review "by asking examiners to calculate the percentage of community development finance that was devoted to persistent poverty counties, counties with low levels of finance and the percentage of activities that involved collaboration and partnerships with public agencies and community-based organizations."

Fahe opposes the proposal to count both new and prior activities remaining on the bank's balance sheet in the numerator of the assessment area community development financing metric. While the provision of long-term capital is a critical, and unfilled, need in our Appalachian communities, this is not the correct way to incentivize it. Allowing banks to carry the prior activities on their review will disincentivize new investment, cutting down overall in the CRA investment in our historically disinvested communities.

Fahe also wishes to express concern at the proposal for the large bank community development financing test to combine lending activity and investment activity into the same category of evaluation. By combining these two discrete types of activity, the proposal allows for banks to fulfill community development financing requirements with more lucrative, easier to execute, lending activities. This would have the effect of decreasing bank interest in crucial community investments like housing tax credits and equity investments. In Appalachia, as evidenced by our earlier example in this comment, our most unmet need are the very community development investments that this proposal de-incentivizes. Fahe supports separating lending and investments into two separate community development financing tests.

Finally, Fahe is concerned that the proposed comparative weighting of the four tests will have a disincentivizing effect on bank efforts to excel in the areas evaluating community development activities. As proposed, only 30% of a bank's CRA score would be determined by the proposed community development finance test. This relatively low percentage weight would allow banks to focus elsewhere, having the effect of lowering CRA capital investment in crucial community development programs and projects. A weighting structure which does not allow for banks to focus on one area at the expense of others should be developed.

Ensure investments, lending, and banking services comprise community development activities

Fahe asks that only investments and banking activity be counted towards community development activities. We oppose the suggestion in the Proposed Rule that volunteering may count as community development activities in rural areas. The suggestion that nonmetropolitan areas provide "fewer opportunities to provide community development services" is belied by the list of allowable volunteerism; if there are affordable homes being built, or homeless services provided, at which to volunteer, then there is undoubtedly a community development capital investment need to be filled too. While volunteerism is an important gesture, the influence of volunteering does not mirror the impact that actual dollars can have in underserved communities. We object to the premise of Question 127, which asks if these volunteer options be allowed in all communities, or only in nonmetropolitan areas. The types of investments that qualify for CRA credit should be ones that deliver direct, meaningful economic change in communities, such as equity, secondary capital, or equity equivalents.

Bank size can be categorized in a way that protects investments in the diversity of American communities

The Proposed Rule proposes to redefine bank size definitions across the board by increasing thresholds for small, intermediate, and large institutions. This will have the effect of damaging investment incentives across the industry, lessening overall CRA investment. For example, according to an analysis by the National Community Reinvestment Corporation, the proposed changes would convert nearly 780 existing intermediate banks into small banks, removing community development requirements worth $1 billion annually. Question 51 asks if the small bank asset threshold should differ from the Small Business Administration's size standards, and if the proposed threshold of $600 million is appropriate? Fahe opposes changing bank asset thresholds at all from those currently in effect.

CDFIs themselves have different access to wealth, bank investments, and deal sizes

Fahe supports the notion to confer automatic CRA community development consideration for community development activities with Treasury Department-certified CDFIs. All activities with Treasury Department-certified CDFIs – specifically, lending, investment, and service activities – should be eligible CRA activities. Currently, banks are motivated to invest in large-capacity CDFIs in metropolitan cities and thus ignore rural CDFIs. Immediate CRA credit for Treasury Department-certified CDFIs will influence more banks to invest in and lend to these smaller CDFIs in smaller areas, expanding the influence of the CRA. In combination with extra-assessment-area credit allowance for community development activities, and the geographic bonuses applied via the proposed Impact Review Factors, the blanket CDFI consideration may drive CRA investment in rural, disinvested communities where there was little to none before.

However, not all types of investments have the same value to communities, and as such there should be – at the very least – weight given to various types of investments. Question 35 asks if short-term deposits should be excluded for credit. Short-term deposits are certainly worth very little to communities when compared to higher-value investments such as equity and equity-like investments, long-term debt financing, and donations. Fahe supports an approach that most highly incents banks to make such equity and long-term capital investments in CDFIs in underserved communities and historically disinvested areas.

It is important that the CRA continues to reward bank investments in CDFIs. However, incentives must be aligned to direct those investments to the areas most neglected and disinvested in. As long as banks are scored equally for funding one large project in a large city, as they are for funding many smaller projects in harder to reach areas, banks will continue prioritizing investment in high capacity CDFIs who fund large projects in large cities. We recommend leveraging CRA to reward bank investment in CDFIs located in and with long track records of serving these hard-to-serve regions. And that bank investment must be high-value investment of capital in the ways that most positively impact community development efforts and the communities in question.

Measuring and ensuring satisfactory performance

Cutting across the various proposed assessment areas, tests, and benchmarks lies the source of data chosen to evaluate bank performance and how that performance compares across banks and geographies. It is imperative that the CRAs success in reaching rural, historically disinvested places with investment be kept at the forefront when determining performance weights and other comparative data. If it is not, rural places will continue to be unreached by CRA-driven investment.

Under- and dis-invested rural places as far apart as the Southwest and Appalachia have much in common regarding the economic challenges faced by those communities and their residents. But they will express those challenges differently across various data measurements: average incomes, poverty rates, housing burdens or homeownership levels, family size and more may all vary between location. Even within a region, counties vary widely, expressing different amounts of disinvestment between neighbors. This is why it is crucial that *local* nonmetropolitan benchmarks be given priority over *national* nonmetropolitan local benchmarks. The choice between local and national benchmarks could be used to inflate a rating. Using data that is as local as possible mitigates this risk.

Another issue related to measuring success in rural areas is the weight of the metrics used to determine performance. The proposed approach would result in the possibility of larger areas (e.g. metropolitan areas) contributing more to a banks overall rating, while obscuring that banks poor performance in rural counties. Fahe understands that the Proposed Rule tries to mitigate this risk by requiring that banks with 10 or more assessment areas receive at least a Low Satisfactory rating in 60% of the assessment areas in order to pass overall. We believe this does not solve the issue, because it remains a possibility that a bank could focus efforts on the larger area and still pass the threshold. Fahe supports a proposal that requires all banks, not just those with less than 10 assessment areas, to achieve a Low Satisfactory rating in 60% of its metropolitan and rural assessment areas. Meaning, a Low Satisfactory rating in 60% of its metropolitan assessment areas, and in 60% of its rural assessment areas.

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, and the Proposed Rule represents a move towards a more responsive and equitable CRA. To achieve this, we state our aforementioned recommendations, and offer our expertise as a CDFI in one of the most economically underserved regions in the country. 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, and we look forward to working with our federal agency partners to make sure the CRA delivers investment to communities whose great potential is not currently being met with sufficient attention and investment.