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April 8, 2010

The Honorable Jelena McWilliams
Chairman
Federal Deposit Insurance Corporation
1776 F Street, NW
Washington, DC 20006

Re: Comments on FDIC Notice of Proposed Rulemaking, Community Reinvestment Act Regulations, RIN 3064-AF22

Dear Chairwoman McWilliams:

Please find below the comments of the Hope Enterprise Corporation / Hope Credit Union (HOPE) in response to the FDIC Notice of Proposed Rulemaking, Community Reinvestment Act Regulations, RIN 3064-AF22.

HOPE (Hope Enterprise Corporation, Hope Credit Union and Hope Policy Institute) was established to ensure that all people regardless of where they live, their gender, race or place of birth have the opportunity to support their families and realize the American Dream. Since 1994, HOPE has generated over $2.5 billion in financing that has benefitted more than 1.5 million people throughout Alabama, Arkansas, Louisiana, Mississippi and Tennessee.

Sixty-nine percent (69%) of HOPE members have household incomes below $45,000 and eight out of 10 members are people of color. Our branches are located in areas often left behind from other types of investment, with 86% in counties where the majority of the residents are Black. One-third of our branches are located in counties that have been in deep poverty for more than three decades, and three branches are in small Delta towns with no other depository institution.

The Community Reinvestment Act (CRA) has been a critical, though imperfect, tool for HOPE to leverage the resources it needs to serve low-income communities, rural communities, and communities of color in the Deep South. Rooted in our experiences in serving communities that are frequently underserved by banks and our experience in utilizing the CRA to help do this work, HOPE is deeply troubled the changes and urges a withdrawal of the current proposal.

The FDIC and OCC proposal, in the totality of its parts, essentially moves the CRA – and economic opportunity for our communities – further out of reach in three ways:

- Incenting larger, easier activities, potentially reducing the smaller, more intensive investments that Deep South communities so often need,
- Deprioritizing meaningful CRA activities in the country's most distressed communities, and
- Diverting investments to activities far from the CRA's original intent of redressing redlining.

Ultimately, the proposal widens the wealth gap and further inhibits economic opportunity in already hard-pressed areas of the country, particularly here in the Deep South.

The following comment responds to the questions asked in the proposal, beginning with its most fundamental flaw: the General Performance Standard.

Questions 14 to 19: General Performance Standard.

The harm of the General Performance Standard outweighs any potentially positive part elsewhere in the proposal. It is problematic in many ways, which is discussed herein, but the most concerning is the shift to the use of a dollar value - rather than number - as the unit to measure activities. During the 2018 Advance Notice of Proposed Rulemaking, HOPE voiced its concern over such a shift, noting the devastating impact it would have in large transactions crowding out small ones, which would disproportionately harm both the communities we serve as well as Community Development Financial Institutions (CDFIs) as a whole.[1] This proposal, rather than addressing concerns raised by HOPE and many others, now confirms them.

In regards to treatment of community development activities, the proposal includes components that attempt to acknowledge their importance, but the proposed metric itself does not ensure banks will meaningfully engage in these activities to the levels needed by our communities. For example, the proposed multiplier is perhaps meant to reflect an emphasis on investments in Community Development Financial Institutions (CDFIs), HOPE is concerned it will not work that way in practice, given the context of the proposal as a whole. There are better ways than a multiplier to incentivize CDFI investments, such as giving more weight to these types of activities in a CRA exam which also allows for consideration of the nuances, context, and perhaps depth of need being met by the investments. Additionally, the proposed required two percent threshold for community development activities is simply too low, both because it is too easily met, and it is not sufficiently weighted against a bank's retail lending activities. The threshold is further insufficient considering the greatly expanded, and diluted, list of activities that the proposal would deem to meet the definition of a community development activity even though they are far from it. HOPE also opposes the public reporting for community development at the bank-level only. Instead, this information should be disseminated on at least a county or census tract level to determine whether a bank is adequately serving its full assessment areas as well as historically underserved communities, such as persistent poverty communities, rural communities, and/or communities of color.

A tangible consequence of the proposed General Performance Standard, both as a whole and its many problematic components, will be vanishing bank-motivated investments into CDFIs as. A reduction of bank investments will result in a significant reduction of capacity for CDFI credit unions, loan funds, and banks to lend in low-income communities, particularly those not reached by banks. CRA-motivated bank investments are a significant source of CDFI capital.

To understand the importance of bank investments in CDFI capitalization, HOPE analyzed information reported by CDFI Fund awardees to the U.S. Treasury. Based on HOPE's analysis of CDFI Fund Awardees from 2015 to 2017, bank investments accounted for nearly 20% of total capitalization – essentially $1 out of every $5 dollars of capital -- compared to philanthropy which accounted for about 2%.

This reliance on banks is more pronounced for CDFIs located in counties in which the majority of residents are people of color. Among the 315 CDFI Fund awardees in 2017, 40% of capital held by CDFIs in majority people of color counties came from banks, compared with just 2.3% from philanthropy. By contrast, CDFIs located in counties where the majority of residents are white, just 12.5% of their capitalization came from banks, with a similar 2.3% from philanthropy. Therefore, any drying up of bank-motivated investments into CDFIs is very likely to hit CDFIs in communities of color the hardest, and further reduce these organizations' ability to lend and build wealth in the very communities in which banks otherwise are failing to serve.

Such changes will further exacerbate the investment gap for rural CDFIs. Rural CDFIs are already deeply underinvested in by banks, and the CRA proposal will widen this disparity. According to an analysis by the Opportunity Finance Network, only 29 cents of every dollar borrowed by rural CDFIs came from a bank. In contrast, over half of borrowed funds from urban CDFIs came from banks.[2]

Finally, HOPE urges the rejection of proposed balance sheet evaluation, which allows banks to count investments that are already on their books with little regard to recent or new investments over time. HOPE is deeply concerned about the impact this will have on banks' investments in tax credit deals, particularly Low Income Housing Tax Credits (LIHTC). It is possible that a bank with a LIHTC investment on its books for the 15-year compliance period will now get to count that investment every year for the next 15 years, and therefore have little incentive to do any additional deals within that time. This disincentive is further fueled by other changes in the proposal which give equal weight – in terms of dollars – to other types of more streamlined, less complex, and less impactful investments for our communities. A better solution would be an evaluation mechanism that takes into account both outstanding investments as well as current investments.

Question 1 – 3: CRA Qualifying Activities

HOPE is concerned about the combined effect of changes to the statutory definition of community development and the broad range of activities that would now be considered eligible for CRA credit. Together, this allows banks to receive CRA credit for activities not aligned with the CRA's original intent. With this proposal, banks may be able to receive credit for large scale infrastructure products or other activities which divert resources away from things that actually build wealth and create jobs in the communities we serve, such as mortgage loans, small business loans, and investments in Low Income Housing Tax Credit or New Market Tax Credit projects.

In terms of the statutory definition changes, HOPE is specifically concerned about deletion of the criteria for economic development and revitalization from the definition of community development and urges the definition remain in its current form. Furthermore, HOPE opposes the following deletion from the definition of economic development: "a bank having to demonstrate that its activities that finance businesses or farms support job creation, retention, and improvement for LMI individuals, LMI census tracts, and other areas targets by federal, state, local, or tribal governments." Additionally, HOPE opposes the proposed removal of the requirement that community development services be related to financial services. It is critical that CRA activities have a nexus with the provision of financial services, given the CRA's history of rectifying banks' denial of lending in communities in which they were taking deposits.

Quantifying the dollar value of a bank employee's volunteer time for a park clean-up day does not build wealth for low-income communities in the same way that providing access to mortgage loans and small business loans would do. There are many reasons and motivations for banks to engage in the former, but the CRA is the only unique tool intended to leverage the latter. HOPE is also concerned that this diluted framework of CRA qualifying activities would extend to small banks, even those who opt to out of these new proposed evaluation measures.

Another worrisome and unintended consequence of this expanded list of qualifying CRA activities will be the devaluing of tax credits for Low Income Housing Tax Credit and New Market Tax Credit projects. The proposed changes may lead banks to find these projects less appealing if they are able to get the same about of CRA credit for simpler, easier to conduct transactions. The resulting impact will be a downward pressure on tax credit prices, meaning there will be less equity available to make the projects work.

In our Deep South communities, every penny of equity matters in determining whether a proposed project can come to fruition or not. This is particularly true for many of the borrowers with whom HOPE works, as most are non-profit organizations in rural or poor communities which have a higher hill to climb when trying to raise equity from other sources. To provide context of HOPE's NMTC activity compared to the industry as whole, between 2003 and 2017, only five percent of all NMTC supported investments, industrywide, went to projects in rural, persistently poor areas. For HOPE, by contrast, nearly one-third (29%) of its NMTC supported investments went to projects in these persistently poor rural areas, all in the Deep South.[3]

On CRA-eligible NMTC projects, there is an increased demand for tax credits, which increases the price for the credit, thus resulting in more equity for the project. The extra premium on tax credit pricing on CRA qualifying deals can be the difference between a project not being able to come together or getting it across the finish line. As an example, for one project in which HOPE is currently working with a non-profit borrower in Alabama, the difference between pricing of 82 cents versus 86 cents represents $141,000 in equity. This is a huge gap for this small non-profit borrower to close on their own, and it is likely they would not be able to do so.

For Opportunity Zone investments, CRA credit should only be provided if there are sufficient guardrails to ensure that the investments benefit low and moderate-income individuals in the communities in which they are located. Currently, the proposal does not have any guardrails at all. HOPE proposes that the determination of whether Opportunity Zone investments receive CRA credit should track the same process by which New Market Tax Credits are currently determined to receive CRA credit or not. HOPE's experience with Opportunity Zones and the New Market Tax Credit program drives this recommendation, as HOPE created its own Opportunity Zone fund which leveraged investments to complete two affordable housing developments serving people at or below 60% area median income in the Mississippi Delta's Sunflower County.

Question 4: Small Business Threshold

HOPE urges the FDIC and OCC to reject the proposed increases for the small business revenue and loan sizes to $2 million, as well as the adjustment for inflation. The proposed increase to $2 million for both the definition of a small business and a small business loan is reflective of the proposal's move to incent few, larger, easier transactions over the smaller, more nuanced investment on which our communities rely. HOPE echoes the concerns raised in the comment submitted by the Expanding Black Business Credit Initiative (EBBC) that "[a]ny move to incentivize larger loans to larger businesses, as the proposal does, will disproportionately benefit white-owned businesses over Black-owned businesses."[4]

As the EBBC notes, nationally, "In terms of revenue (as measured by annual receipts) white owned business, have over $640,000 in annual receipts, dwarfing that of businesses of color ($160,000) and Black-owned businesses ($73,000)." These disparities persist throughout our region. See Table 1.

Table 1: Business Value by Owner Race/Ethnicity in the Deep South[5]

Location	White	Black	Latino
Alabama	$598,063	$45,458	$254,716
Arkansas	$590,597	$40,697	$314,479
Louisiana	$800,065	$34,648	$280,816
Mississippi	$605,388	$35,169	$161,796
Tennessee	$525,493	$47,178	$252,958
United States	$641,742	$73,226	$155,806

HOPE's own lending experience confirms that supporting small business owners in the Deep South generally requires loans significantly lower than $1 million, and a significant number of our borrowers had revenues less than $1 million. Between 2017 and 2019, 88% of HOPE's business loans (excluding NMTC project loans) were under $1 million. Even including NMTC project loans, 72% were under $1 million. In 2019, 78 (68%) out of 114 HOPE business borrowers had gross revenues less than $1 million. Finally, HOPE launched a new small business product in March 2020. Based on HOPE's analysis of the demands and needs in our region, this product will have a maximum loan size of $100,000.

The harm of the proposed increase to $2 million is further exacerbated by other changes in this proposal, including the use of dollar amounts as measurement of activity rather than units, the balance sheet evaluation, and potential for banks to receive a passing grade even if they are not adequately serving half of the bank's assessment areas.

Question 7: What Types of Retail Loans Should be Counted?

Auto loans, high-cost credit cards, student loans and consumer loans should not be counted as qualifying CRA activities. These loans do not provide as meaningful opportunities for wealth-building as do mortgage and small business loans, and, when made on predatory terms, further extract wealth.

Question 10: Retail Services Test

The Retail Services Test is critical to ensure branches for depository institutions are present in low-income communities. The proposal essentially decimates this important component of the CRA. The proposed one percentage point bump in the proposed General Performance Standard and simply listing an example of bank branch partnerships among the list of possible qualifying activities is not sufficient. The retail service test must be retained and not deleted as currently proposed.

A November 2019 report from the Federal Reserve highlighted the importance of bank branches in rural communities in particular.[6] Overall, bank branches remain the most widely used way for individuals to access a bank account. Yet, the majority of communities most deeply affected by bank branch closures are rural counties. In looking at the characteristics of these counties, the report "found that rural counties deeply affected by branch closures had higher poverty rates, lower median incomes, a higher share of their population with less than a high school degree, and a higher share of their population who were African American relative to all rural counties."[7]

The paper also notes that online lending is not an adequate substitute for a branch's presence in a local community, stating that "A growing share of consumers with bank accounts are adopting online and mobile banking, primarily for more simple functions such as checking balances. However, branches continue to be an important banking channel for consumers, especially for deposit and withdrawal transactions and for resolving problems."[8]

The proposal's lack of priority given to bank branches in low and moderate income areas will be acutely felt in the Deep South, where already much of the region is already in a banking desert and includes areas with the highest percentage of persons who are unbanked in the United States. Mississippi (15.8%) and Louisiana (14.8%) have the highest percentage of unbanked residents among all states. As shown in Table 2, the rate of unbanked Black households is even higher at 27.9% in Mississippi and 28.3% in Louisiana. Data for unbanked Latino households is not available for these five Deep South states, but HOPE is aware of and working to address these needs in our region through its Crece con HOPE initiative.[9]

Table 2: Unbanked Households in the Deep South by State[10]

Location	% Unbanked All	% Unbanked Black
Alabama	8.7%	18.8%
Arkansas	7.5%	no data
Louisiana	14.8%	28.3%
Mississippi	15.8%	27.9%
Tennessee	7.5%	no data
United States	6.4%	16.9%

Due to a partnership with Regions bank made possible by the CRA's retail services test, HOPE is now the only depository institution in three small towns in the Mississippi Delta. Through this experience, HOPE heard first-hand about the how bank closures effect a community and the importance of having physical branch presence:

> *R. L. Barrett remembers when Shaw, Mississippi, was a bustling center of activity, its streets lined with grocery stores, clothing shops, a movie theater, and blues clubs showcasing the Delta's original music.*
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> *"We don't have any industry in Shaw now," Barrett says, pointing to the shuttered storefronts. "They tell me to keep the barbershop open all the time so this town won't look like it's closed down."*
>
> *As Shaw's businesses began dying, hope in the town seemed to die along with them.*
>
> *When the doors of the town's only bank closed, Shaw residents had no place where they could save for the future, cash a check or even get change. It appeared the final blow had fallen upon the once vibrant, now fast-fading community. Then, Hope Credit Union opened in Shaw.*
>
> *"Hope Credit Union saved us," Barrett says. "It's really helped the town better than anything we have had here in the last 10 or 15 years…Like a preacher told me, there's hope for the hopeless," Barrett says with a smile. "So I like that name, Hope."*[11]

Question 11 - 13: Assessment Areas

There are a number of problematic proposed changes related to assessment areas. These include contemplating banks to fail in half of their markets, but still receive a passing grade; using only bank deposits to determine banks' assessment areas; and allowing bank investments in areas outside of their assessment areas to count towards their CRA requirements without ensuring that those investments target economically distressed communities. While HOPE is glad to see the proposal recognize the need for banks to have CRA obligations in other areas in addition to where their branches are located, the proposal misses the mark for benefitting Deep South communities.

The proposal asks whether fifty percent of a bank's assessment areas is sufficient to be considered a "significant portion" of their assessment areas for evaluation purposes. The answer is clearly no, it is not sufficient. Such a low-threshold will very likely mean that harder to serve Deep South communities, particularly rural communities, will be left out of the equation. Just like the proposal as a whole, allowing banks to fail in half of its assessment areas, will lead banks to overlook and significantly underinvest in the most distressed communities in rural and persistent poverty areas.

The proposed deposit-only concentration as a way to determine assessment areas beyond bank branch locations will not reach already underserved communities. By their very nature, low-income communities have very little money and therefore very few deposits. The small Delta town of Itta Bena, Mississippi, where HOPE is the only depository institution, provides a good example. Itta Bena has 42% poverty rate, median income of about $20,000, and 91% of its residents are Black. HOPE estimates the total deposit potential in Itta Bena is approximately $1.1 million. It will be nearly impossible for such areas to comprise a five percent concentration of a banking institution's total deposits.

To gauge how the deposit-only concentration would affect low-income communities and communities of color throughout the country, HOPE analyzed data from the FDIC deposit database.[12] The data allows for an examination of deposit-levels in certain communities, and whether they might comprise five percent of a bank's total deposits. This serves as a type of proxy to assess whether these communities would be included in the deposit-only assessment areas as contemplated by the proposal.

In this analysis of 2019 data, HOPE found that overwhelming low-income communities and communities of color would likely not benefit from the assessment areas based on the proposed deposit-only concentration because of the low-level of deposits in these regions:

- 71% of branches in persistent poverty counties had deposits totaling less than five percent of their bank's deposits.
- 88% of branches located in counties where the majority of residents are people of color had deposits totaling less than five percent of their bank's deposits.

Finally, the proposal's provision allowing banks to lend outside of their assessment area is too vague to ensure those investments reach economically distressed communities, and not enough to ensure they also sufficiently serve the assessment areas to which they are obligated.

While HOPE agrees that it is necessary to establish additional assessment areas for places where there are no physical bank branches, there are better ways to accomplish this goal than what is currently in the proposal:

- HOPE urges that non-branch based assessment areas be determined by examining where banks both lend and take deposits. The OCC commentary states that it considered and rejected such a hybrid approach of significant concentration of deposits and significant concentration of lending, but did not provide any justification or documentation as to why.
- For a bank to receive CRA credit for activities outside of its assessment areas, it must be tied to serving low-income people in economically distressed communities, such as persistent poverty counties.
- To expand economic opportunity in persistent poverty areas, CRA incentives should be created to make equity and debt available for CDFIs located in, and with long track records of serving, rural persistent poverty regions. Such incentives could take the form of favorable treatment of such investments by banks when undergoing the CRA examination by the bank regulator.
- To improve identifying gaps in CRA assessment areas, HOPE recommends the development of a CRA assessment area mapping tool of the United States, similar to the Federal Reserve Bank of Atlanta's mapping tool to illustrate the network of branches for the twenty largest banks in the Southeast region.

Fair Lending Concerns

The proposal does not go far enough to address discriminatory lending practices by banks. Simply stating that the "CRA performance will be adversely affected by evidence of discriminatory or illegal credit practices," is insufficient protection against discriminatory or disparate lending practices. HOPE urges that fair lending exams as part of any CRA evaluation. Furthermore, fair lending examinations should be more robust than current reviews and include quantitative analysis of lending to people and communities of color. Any evidence of illegal and abusive lending must be penalized via lower ratings.

This is a critical concern for our region of the country. Mississippi is one of a only a few states in the country that does not have any state-level fair housing or fair lending enforcement. Further, in Mississippi, between 2008 and 2017, 18% – nearly one in five – Black Mississippians earning over $150,000 who applied for a mortgage loan, were denied, in contrast to only seven percent of white Mississippians who applied for a mortgage at the same level of income. The disparities were even worse at lower levels of income, where 43% of Black Mississippians earning less than $30,000 a year were denied, compared with 28% of whites in this same income group. Finally, the 18% denial rate for Black residents earning over $150,000 is higher than the denial rate of whites earning between $30,000 and $50,000 – which stands at 15% over the 10-year period.[13]

Conclusion

The Deep South is home to more than 100 counties which have been locked in persistent poverty for more than half a century, due to a wide range of policies focused on the extraction of wealth among low-income people and people of color. The CRA, while imperfect, has been an important tool for catalyzing investment in these communities, often existing beyond the reach of traditional bank business models. Unfortunately, under the OCC and FDIC proposal, deep concerns arise as to whether those investments would have ever occurred in the first place and the anticipation of less investment in the least economically mobile region of the country. Ultimately, the proposal widens the wealth gap and further inhibits economic opportunity in already hard-pressed areas of the country, particularly here in the Deep South, and, as such, the OCC and FDIC should withdraw this proposal.

Sincerely,

[redacted]

William J. Bynum
Chief Executive Officer

[redacted]

Diane Standaert
Director, Hope Policy Institute

[1] HOPE Comment to the OCC: Reforming the Community Reinvestment Act Regulatory Framework Docked ID: OCC-2018-0008, November 18, 2018.
[2] Bank Investment Falls Short in Rural Areas. Opportunity Finance Network. February 2019. https://ofn.org/sites/default/files/resources/PDFs/Policy%20Docs/2019/OPP_054%20-%20One%20Pager%20Handout%20CRA_FINAL%20Feb%202019.pdf.
[3] Hope Policy Institute analysis of data from the CDFI Fund FY 2019 NMTC Public Data Release: 2003-2017 Data File accessed December 18, 2019 https://www.cdfifund.gov/Documents/2019%20NMTC%20Public%20Data%20Release_FY_17.xlsx
[4] Expanding Black Business Capital Initiative, Comments to the OCC Regarding Community Reinvestment Act Regulations, Docket ID OCC-2018-0008, March 11, 2020
[5] Prosperity Now, Scorecard: Business Value by Race, data from the *2012 Survey of Business Owners.*: U.S. Department of Commerce, Census Bureau, 2015 https://scorecard.prosperitynow.org/data-by-issue#jobs/outcome/business-value-by-race
[6] Board of Governors of the Federal Reserve System, "Perspectives from Main Street: Bank Branch Access in Rural Communities," November 2019 https://www.federalreserve.gov/publications/files/bank-branch-access-in-rural-communities.pdf
[7] Id. at 4.
[8] Id. at 1.
[9] Emerson Collective, Justice and Unity Series, "The Unbearable Cost of Being Unbanked," https://justiceandunity.emersoncollective.com/the-unbearable-cost-of-being-unbanked
[10] Prosperity Now Scorecard analysis of the 2017 FDIC National Survey of Unbanked and Underbanked Households. Federal Deposit Insurance Corporation, 2018.
[11] HOPE 2017 Impact Report: https://hopecu.org/manage/media/2017_Impact-Reportdig.pdf
[12] Hope Policy Institute analysis of data from FDIC Summary of Deposits/Branch Office Deposits https://www7.fdic.gov/sod/dynaDownload.asp?barItem=6 calculating the percent of institutional deposits represented by each bank branch located in Persistent Poverty Counties (data from the CDFI fund) and counties with a majority of people of color (calculated using data from the U.S. Census).
[13] HOPE's Comment to HUD, Implementation of the Fair Housing Act's Disparate Impact Standard Docked ID: 2019-17542, October 18, 2019