Federal Reserve Community Reinvestment Act Advanced Notice of Proposed Rulemaking

February 15, 2021

To:
Federal Reserve Board of Governors

From:
Massachusetts Association of Community Development Corporations
15 Court Square
Boston, MA 02108

Re: Public Comment Docket Number R-1723 and RIN Number 7100-AF94

MACDC appreciates the opportunity to comment on the ANPR for the Community Reinvestment Act. We also respect the open approach the Board has taken the last several years and appreciate the opportunity MACDC has had to participate in frequent conversations with officials from the Federal Reserve Bank of Boston.

MACDC is the policy and capacity building arm of the community development movement in Massachusetts. We represent all 63 state certified CDCs on the Commonwealth, as well as most of the non-profit CDFIs in Massachusetts and many other community non-profits. Our mission is to build and sustain and high performing and adaptive community development sector that is supported by private and public investment and sound public policies. We advance racial and economic equity by creating healthy communities where everyone lives in housing they can afford, benefits from economic opportunities and can fully participate in the civic life of their community.

MACDC is a founding member of the National Alliance of Community Economic Development Associations and we align with the comments they have submitted. Much of our response will echo that or NACEDA and our other sister associations across the country.

Summary of MACDC's Comments and Responses

MACDC agrees that now is absolutely the time to bring CRA into the 20th Century. In general, we think this ANPR mostly asks many of the right questions and we have answered several of them in our response below. We also wanted to highlight a few themes that we are think are critical and cut across different questions. As the Fed considers changes to its CRA regulation, we ask that you consider the following ideas.

1. **Community** – There is a reason that the Community Reinvestment Act begins with the word "community". The reason is that the Act seeks to ensure that banks meet the diverse needs of different communities and offers a range of products and services that are responsive to the specific needs of a particular community. We believe that banks, including national banks, engage locally with local stakeholders, community leaders and non-profits. Bank should also partner with local and state government, especially when they offer subsidies, tax credits and other incentives designed to meet the needs of their constituents. For example, Massachusetts offers the One Mortgage Program which is by far the most affordable mortgage product in the Commonwealth. Massachusetts also offers the Community Investment Tax Credit which provides a 50% donation tax credit to banks that make donations to qualified community development corporations. Many banks leverage these programs to better serve their community, but many other banks do not because they do not fit into their national product mix. This is a missed opportunity. Again, we are talking about the Community Reinvestment Act not a National Reinvestment Act so the Fed should be wary of one-size-fits-all national products that do not respond to specific local needs and opportunities and encourage community specific programs and services.

2. **Communication**: Effective CRA performance depends on effective communication between the bank and community leaders, community-based organizations, small businesses, local elected officials, and other local stakeholders. Banks should demonstrate they have invested the time in building the relationships and creating opportunities to listen and learn from community stakeholders. While we understand that the Federal Reserve wants to focus on outcomes more than process, the process still matters and should be considered.

3. **Collaboration**: We believe that the Federal Reserve should reward and encourage collaboration between banks and local community partners as such collaboration is a way to ensure responsiveness and accountability.

4. **Balance**: The Federal Reserve must be careful to ensure that its efforts to create clarity and consistency do not undermine efforts to promote equity and balance in how banks meet their CRA obligations. We strongly oppose the use of simple ratios to determine or overly influence bank ratings because they tend to reward large, standardized, low-risk, national products that can achieve high volume but may not meet the specific needs of local communities or harder to reach communities, including communities of color, immigrants, low wage/wealth families and others. We are particularly concerned about ratios that emphasize dollar volume because such ratios would discourage the very loans that the CRA was intended to promote such as small and micro business loans and mortgages for LMI households which tend to be smaller. A $400,000 home mortgage loan to a young professional white couple should not count 8 times more than a $50,000 loan to an African American entrepreneur starting a new business. Such ratios will also discourage innovation because innovation, by definition, involves low volume transactions. We believe simplified

ratios would undermine the Act’s goal of serving formerly redlined communities and other vulnerable populations.

5. **Racial Equity:** While the CRA is generally focused on income and wealth rather than race, we know that our country suffers from vast racial disparities in both areas due to a long history of slavery, Jim Crow, segregation and discrimination. Indeed, the Community Reinvestment Act was clearly part of a larger effort by Congress to rectify this history by ensuring that communities of color would have equal and fair access to banking services and products. We urge the Federal Reserve to consider racial equity in its approach and to require, to the degree possible, that banks develop diversity, equity and inclusion goals as part of their CRA efforts and track progress toward those goals.

MACDC Responses to Questions in the ANPR

Beyond these broad themes, we offer our thoughts on some of the specific questions in the ANPR.

Question 1. Does the Board capture the most important CRA modernization objectives? Are there additional objectives that should be considered?

The ANPR misses a core objective of CRA modernization. CRA modernization should help banks clarify how to ***identify*** local community development needs.

Taking the ANPR as a whole, MACDC has one fundamental criticism of the ideas and themes put forward in the ANPR that we hope the Board will take time to address. The ANPR puts a lot of time and effort into the technical aspects of CRA examination and accountability, while allowing a core part of CRA’s mission - strengthening the relationship between a bank and the communities in which they do business - to somewhat atrophy. The very first objective listed at the top of the ANPR illustrates this shortcoming. It reads:

“More effectively meet the needs of LMI communities and address inequities in credit access, in furtherance of the CRA statute and its core purpose.”

Meeting a community development need – at least for banks – is often a relatively technical challenge… create a new loan product, put financial or human resources here instead of there, count the resources in this way or that, etc. But in order to *meet* the need, the bank has to *identify* it first.

Aside from a small number of questions, we do not think the ANPR does enough to address how banks are documenting and identifying community development needs and engaging with community stakeholders. As you will see in our response to Question 71, we find the

Board's proposed non-exhaustive list of activities particularly problematic, though you will see references to these themes in a number of our responses.

When considered together - the ANPR's failure to clarify how to *identify* community needs AND its proposed non-exhaustive list of activities - the Board is tacitly relinquishing banks from their responsibility to do the hard work of knowing their communities.

Why would a bank participate in six months of community planning meetings when they can pick something from a list developed by their regulator?

Question 5. Should facility-based assessment area delineation requirements be tailored based on bank size, with large banks being required to delineate facility-based assessment areas as, at least, one or more contiguous counties and smaller banks being able to delineate smaller political subdivisions, such as portions of cities or townships, as long as they consist of whole census tracts?

MACDC feels that tailoring facility-based assessment areas by bank size, as outlined in the ANPR, is a reasonable approach, provided that a bank's assessment areas are detailed, clear, and publicly available. We would ask the Federal Reserve what the reasoning is for eliminating the intermediate category.

We do think the Federal Reserve should take care to ensure that all parts of the Country have some CRA coverage – we need to avoid so-called CRA deserts. Therefore, in reviewing the proposed assessment areas of banks, regulators should consider modifications to those assessments areas that help reduce/eliminate such CRA deserts.

Question 7. Should banks have the option of delineating assessment areas around deposit-taking ATMs or should this remain a requirement?

MACDC recommends assessment areas around ATMs should remain a requirement but with a mechanism for the bank to 'opt out' of them, as opposed to giving them the option to 'opt in.' In other words, assessment areas around ATMs would be the assumed unless the bank provided a compelling reason to remove the assessment area, for example, if the ATM is not heavily utilized.

Question 8. Should delineation of new deposit- or lending-based assessment areas apply only to internet banks that do not have physical locations or should it also apply more broadly to other large banks with substantial activity beyond their branch-based assessment areas? Is there a certain threshold of such activity that should trigger additional assessment areas?

The delineation of new assessment areas should apply to both internet and hybrid banks and be primarily based on lending activity with an option for banks to delineate deposit-based assessment areas, depending on their business model.

Question 9. Should nationwide assessment areas apply only to internet banks? If so, should internet banks be defined as banks deriving no more than 20 percent of their deposits from branch-based assessment areas or by using some other threshold? Should wholesale and limited purpose banks, and industrial loan companies, also have the option to be evaluated under a nationwide assessment area approach?

MACDC is opposed to nationwide assessment areas. The organization considers nationwide assessment areas to be inconsistent with the legislative intent of CRA to ensure banking and community development investment and services are available locally. Also, MACDC fears that giving banks the ability to designate a nationwide assessment area will allow banks to gravitate toward the easiest to serve markets where bank activity is likely already present.

Question 38. Should the Board provide CRA credit only for non-securitized home mortgage loans purchased directly from an originating lender (or affiliate) in CRA examinations? Alternatively, should the Board continue to value home mortgage loan purchases on par with loan originations but impose an additional level of review to discourage loan churning?

MACDC feels the practice referred to as loan churning should no longer receive the kind of CRA credit it currently receives. However, the ability of banks to purchase loans originated by another lender provides liquidity that is, ultimately, important for the ability of lenders to serve LMI people and places. The ANPR offers two alternatives for how examiners could treat loan purchases. While both approaches seem reasonable and would address loan churning, MACDC would lean toward the alternative that only counts loan purchases directly from originating lenders. That policy alternative provides liquidity to mortgage market, prevents churning, and is relatively simple to evaluate for CRA purposes. However, MACDC acknowledges that the alternative also lacks nuance and may potentially be unnecessarily rigid.

The other alternative presented by the ANPR is reasonable, to a) provide an extra layer of review, b) look at how the loans were originated and c) look more favorably upon loans originated by community-serving institutions for CRA purposes. MACDC thinks this also is a reasonable approach, so long as examiners have the teeth and mandate to search for undesirable churning.

Question 42. Should the Board combine community development loans and investments under one subtest? Would the proposed approach provide incentives for stronger and more effective community development financing?

MACDC thinks there is a strong need to incentivize longer term, patient capital. In that respect, the Board's approach is sound. However, MACDC strongly discourages treating debt and equity equally or 'combining' them into one numerator for some type of ratio. Equity investments, such as LIHTC or other types of equity, are difficult to raise for developers in LMI

areas and are badly needed. Combing their consideration with debt would dilute the incentive for banks to contribute this desperately needed capital.

Further, this approach may also disincentivize the use of grants which are also incredibly valuable to community organizations. It would be helpful if the board clarified how grants will be counted in any CD Financing Metric(s). MACDC and its members have found that CRA is a strong incentive for banks to provide riskier capital (such as equity) and money that does not get a rate of return (grants). Combining them with debt capital would erode these needed financial resources. Further, combining all these different types of capital would complicate or muddy the impact the capital is having.

Also, the dollar value of the investments (equity, grant, or debt) is not the only metric that should matter. Transaction volume (or units) should matter just as much as dollar value. Relying solely on dollar volume incentivizes large deals over small, even though smaller transactions may have more impact. Examining both dollar volume and transaction units should be part of any set of CD Financing Metrics.

The bottom line is that we strongly oppose the use of these simplified ratios that lump lots of different activities into a single number.

Question 43. For large retail banks, should the Board use the ratio of dollars of community development financing activities to deposits to measure its level of community development financing activity relative to its capacity to lend and invest within an assessment area? Are there readily available alternative data sources that could measure a bank's capacity to finance community development?

As noted several times, we oppose the use of simple ratios that undermine the goals of the Act and fail to distinguish different types of activities. While the regulator might want to calculate several different ratios in order to help assess a bank, the bank's ultimate CRA rating should not be derived by a simple formula.

Question 45. Should the Board use local and national benchmarks in evaluating large bank community development financing performance to account for differences in community development needs and opportunities across assessment areas and over time?

A narrowly defined benchmark at both the local and national level could potentially have the effect of banks meeting the benchmark and then retreating their focus and activities for the remainder of their exam period. In other words, we don't want banks to meet their dollar ratio and then stop making investments. Again, MACDC does not believe a single dollar based metric is appropriate. Also, as stated previously, dollar value in and of itself does not necessarily tell the story of the investment portfolio's impact. Transaction volume (or units) should also be a consideration to retain incentives for banks to make smaller investments that may have as much or more impact.

Question 51. Should financial literacy and housing counseling activities without regard to income levels be eligible for CRA credit?

CRA credit for critical financial education (including housing counseling and debt counseling among other activities) must be limited to LMI people and families. This type of free education is already scarce enough among these populations without this rule further watering down a `bank's incentive to provide it.

Question 57. **What other options should the Board consider for revising the economic development definition to provide incentives for engaging in activity with smaller businesses and farms and/or minority-owned businesses?**

Updating the definition of economic development in a way that acknowledges disparities is a step in the right direction toward addressing racial equity concerns. To advance this effort, the definition should clarify that community development activities that support minority-owned, women-owned and other small businesses defined by an established threshold, such as revenues less than $1 million, all count toward CRA credit. For these businesses, a size test should apply and the purpose test should not apply because the purpose can be presumed to assist disadvantaged, small businesses. However, just providing additional weight to the "smallest" businesses and farms and eliminating the size plus purpose test requirements – while the intention might be to become more responsive and impactful – will likely have a net effect on economic development that results in fewer LMI jobs created, if provided without this clarification around the definition. As such, for those supporting businesses that qualify under the SBA Small Business Administration's Development Company (SBDC) or Small Business Investment Company (SBIC) programs, both a size test and a purpose test should apply. The accepted definition of job creation utilized by the HHS' CED program should also be considered a good standard-setting definition with which to align. Eligible economic development investments should demonstrate benefits to LMI people or places, with extra consideration given to those investments that serve both. Community development services or financing supports economic development if it provides financial assistance or technical assistance to intermediaries or nonprofit organizations that mentor or provide physical facilities for small businesses.

The Board should avoid changes that reduce the eligible activities that qualify under the economic development definition, as well as broadening the definition in ways that no longer seeks to secure job creation. Also, a definition that is limited to start-ups or recently formed businesses does not address the needs of small businesses that are not new but are looking for financing to expand, especially as the country emerges from COVID-19 and many existing businesses struggle to survive and recover. Also, shared ownership business enterprises (such as co-ops) that might not be small in size by their nature but do empower new entrepreneurship could also be considered.

Question 58. **How could the Board establish clearer standards for economic development activities to ''demonstrate LMI job creation, retention, or improvement''?**

The types of governmental workforce development programs and CDFIs that the ANPR references regularly and successfully secure this type of data to support program outcomes. The Board should consult with these counterpart agencies, including SBA, regarding how to document job creation, retention or expansion associated with small business loans. As previously mentioned, the CED Program within the Department of Health and Human Services also offers clear job creation standards and definitions that are commonly used by community economic developers.

Question 60. **Should the Board codify the types of activities that will be considered to help attract and retain existing and new residents and businesses? How should the Board ensure that these activities benefit LMI individuals and communities, as well as other underserved communities?**

In general, codifying a list of activity types will diminish potential community impact rather than invite it. For one, a list created today cannot anticipate all of the needs or potential innovations of tomorrow. Also, approved lists tend to create a lower bar of expectation, even when "not all-inclusive" language is used, and results in justification for denials for new initiatives. Attraction and retention goals may be appropriate to codify in conjunction with "not all-inclusive" language.

While it is appropriate for the same activities to qualify in LMI census tracts and distressed or underserved tracts, local context is also important. To ensure these activities benefit LMI individuals and communities in all instances, the intent of the initial activity and the anticipated impact should be documented as locally relevant. Just as it would defeat the purpose of CRA to bring employment opportunities to LMI areas residents to keep them at that same income level, it also defeats the purpose of the Act to incentivize investment to attract residents that is certain to cause displacement. Market studies, government plans, and higher standards set to achieve the goals of CRA under various circumstances will convey and ensure better methods of achieving revitalization and stabilization.

MACDC also urges a definition of "underserved" that includes communities of color.

Question 61. **What standards should the Board consider to define "essential community needs" and "essential community infrastructure," and should these standards be the same across all targeted geographies?**

While it may make it easier to ascertain CRA creditworthiness if a finite list is provided across all geographies, establishing such could serve to both limit activities in places with critically important – but non-listed – needs and also incentivize activities that are not critically needed in other places. Improved interaction and relationship building with local communities by

banks would result in those geographies outlining what is essential in their community, making documentation easier, in the absence of a universal definition.

Question 62. **Should the Board include disaster preparedness and climate resilience as qualifying activities in certain targeted geographies?**

While appropriate to add disaster preparedness and climate resilience as qualifying activities in targeted geographies, relevance to the community – and the need for these activities – should be considered and weighted toward those with documented need. Such investments must also clearly and explicitly benefit LMI populations and communities.

Question 67. Should banks receive CRA consideration for loans, investments, or services in conjunction with a CDFI operating anywhere in the country?

MACDC is very supportive of CDFIs providing access to capital in hard to serve areas and wants to encourage banks to invest in and work with CDFIs. However, MACDC prefers that banks have a priority to serve CDFIs that serve the bank's assessment areas first and then a second, lower priority for working with CDFIs that work in the bank's non-assessment areas.

CDFIs through their certification process must provide at minimum 60% of their capital and services to targeted populations or in CDFI eligible investment areas. Banks should be able to get full consideration for contributions to CDFIs investing in their assessment areas and partial consideration for investing in CDFIs where the contribution is invested outside of the bank's assessment areas.

Question 69. Should the Board expand the geographic areas for community development activities to include designated areas of need? Should activities within designated areas of need that are also in a bank's assessment area(s) or eligible states and territories be considered particularly responsive?

In short, yes. MACDC believes that banks should be encouraged to invest in designated areas of need both in and outside of the bank's assessment areas. However, banks should receive full consideration for investments made in their assessment area and secondary consideration for investments make outside of their assessment area.

MACDC is not promoting any particular way to determine areas of need over other areas of need as most options being considered have both pros and cons. However, MACDC thinks the process of designating investment areas of need should be transparent and accountable and should not result in banks flooding capital into areas just to get CRA consideration.

We are not sure if this is what the Board is proposing, but we would not endorse banks getting "double credit" or extra credit for serving a designated area of need that also happens to be one of their assessment areas. This could have the unintended consequence of banks doing less than previous cycles but getting equal amounts of credit.

Question 70. In addition to the potential designated areas of need identified above, are there other areas that should be designated to encourage access to credit for underserved or economically distressed minority communities?

In general, MACDC supports designating very hard to serve areas as places where banks can get CRA credit for investments outside of their assessment areas. Like question 69, MACDC does not take a position on how to define these areas as several different methods currently exist at the federal level to designate these types of areas. However, in general, these areas should have low wages, high unemployment, high poverty rates, areas of stagnant property values, and a lack of banking options for residents. We also think the Federal Reserve should seek to reduce CRA deserts.

Question 71. Would an illustrative, but non-exhaustive, list of CRA eligible activities provide greater clarity on activities that count for CRA purposes? How should such a list be developed and published, and how frequently should it be amended?

A modern CRA that serves the law's original intent to end redlining and ensure local access to basic financial services would start with the question, "What does the community need?" The ANPR offers to develop a non-exhaustive list of activities developed by regulators and bureaucrats disconnected from the communities CRA obligates banks to serve. From a bank's point of view, a non-exhaustive list of activities threatens to obfuscate how they should prioritize resources. Should they prioritize their resources to align with a non-exhaustive list? Or should it prioritize addressing a community-identified need that may be more difficult to address but also more impactful? Put another way, how would examiners reconcile a community development investment or service that is 'on the list' but has not been identified as a community need? How should examiners balance identified community needs against CRA-eligible activities 'from the list' when the two are in conflict? How will examiners prevent banks from cherry-picking the easiest activities on the list, as opposed to the most impactful?

MACDC has concerns that introducing a list developed in Washington, DC, will distract community and bank engagement processes from the much harder work of identifying and prioritizing community needs and thus strengthening the relationship among communities and their financial institutions.

Further, the existence of a list could have the effect of limiting innovation among CRA bankers and investors. Is it possible to have a list of activities for a bank to consider, while also incentivizing innovation?

Question 79. For a bank with multiple assessment areas in a state or multistate MSA, should the Board limit how high a rating can be for the state or multistate MSA if there is a pattern of persistently weaker performance in multiple assessment areas?

Yes.

Question 95. Are the community development financing data points proposed for collection and reporting appropriate? Should others be considered?

MACDC thinks at least three additional pieces of information should be collected and made available to the public.

1) Banks should make public how they are *identifying* community needs and what it considers the community's needs to be. This would allow the public to make the connection between the identified needs and the bank's actions and investments.
2) As stated previously, the financing data points seem to weigh heavily, if not almost exclusively, on dollars invested. The 'units' (or number/volume of transactions) should also be taken into consideration, incentivizing banks to make impactful investments, not just large investments.
3) Banks should establish diversity, equity and inclusion goals and then report on their progress toward those goals.