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Massachusetts Community & Banking Council

Comments Regarding

FEDERAL RESERVE SYSTEM
Advance Notice of Proposed Rulemaking (ANPR)

(12 CFR Part 228)
(Regulation BB; Docket No. R–1723)
(RIN 7100–AF94 Community Reinvestment Act)

Reforming the Community Reinvestment Act
Regulatory Framework

February 16, 2021

Massachusetts Community & Banking Council, Inc.
P.O. Box 960305
Boston, MA 02196

Ann E. Misback, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, DC 20551

Re: Advance Notice of Proposed Rulemaking (ANPR)
(12 CFR Part 228)
(Regulation BB; Docket No. R–1723)
(RIN 7100–AF94 Community Reinvestment Act)

To the Board of Governors of the Federal Reserve System:

The Massachusetts Community & Banking Council, Inc. (MCBC) welcomes the opportunity to respond to the Federal Reserve System's Advanced Notice of Proposed Rulemaking (ANPR) regarding the Community Reinvestment Act (CRA).

Since its inception in 1990, MCBC has regularly convened financial institutions and community organizations across Massachusetts to consider issues of mutual importance and to develop and promote market-based banking products and programs for the benefit of low- and moderate-income (LMI) families and communities and to address the racial wealth gap across the state. Today, Massachusetts' bankers and community organizations describe their relationship as one of partnership and collaboration. In the spirit of MCBC's first board chair: "community development – successful, long-term community development – is as much about ***working relationships and shared objectives*** as it is about dollars. That conclusion does not often make headlines, but...is one that should be recognized."

We agree completely with these sentiments, which is why MCBC offers its comments on certain aspects of the ANPR consistent with the basic tenets of what we know works: ***working relationships and shared objectives***.

Divided Regulatory Agencies: We strongly encourage consistent CRA regulation and enforcement standards among bank regulatory agencies. This is even more important in the Commonwealth of Massachusetts where a state CRA statute exists. The lack of alignment among the three federal regulatory agencies and the Massachusetts Division of Banks (DOB) creates confusion for all stakeholders – financial institutions, community organizations, local governments, and individual customers – and undermines ***working relationships.*** The fundamental disagreements at the regulatory level should be reconciled so as not to diminish the ***shared objectives*** held by CRA practitioners and ***working relationships*** at the local level. Together, the three agencies as well as the DOB should develop data-driven and evidence-based rules that improve CRA for all. A unified policy approach would allow financial institutions and community partners to understand how the proposed modernization will impact access to credit, investment, and services to LMI families and communities of color~~.~~

Data Collection and Reporting: MCBC believes that collecting data is key, as we hope to see maximum transparency in reporting. The current ANPR proposes additional data reporting beyond current requirements. Requirements differ based on the size of the institution, but this would represent a change for some institutions. In particular, more precise data gathering is required as to assess deposit products under the retail services subtest and the community development financing subtest.

MCBC perceives that the additional data reporting requirements in the ANPR will be costly due to need for technology upgrades, increased automation, and hiring additional staff. MCBC believes that regulators should analyze and justify the extra burden on financial institutions, i.e. the benefits the Board of Governors expects to result from the extra reporting. The rules should state how the added cost investment required by financial institutions help to improve the availability of capital for LMI.

Assessment Areas: MCBC does not support requiring large banks to delineate facility-based assessment areas as at least one or more contiguous counties. Especially in states like Massachusetts, in which counties are large and extend through multiple different market areas, this requirement would drive substantial expansion of some existing assessment areas and create CRA responsibility in portions of counties in which large banks do little lending and that are distant from existing offices. The added cost associated with expanding existing assessment areas has the potential to be especially burdensome to relatively smaller size “large” banks. Further, it could necessitate substantial expansion of assessment area and cost as smaller size banks grow and cross the threshold to becoming a large bank.

MCBC supports continuing the current facilities-based requirements for assessment areas to incentivize CRA activities that are most responsive to local need in the market in which bank has a physical presence. We also support lending-based assessment area delineation that applies more broadly to large banks with substantial activity beyond the branch-based assessment area, in recognition of current trends in banking and the economy with more business being done electronically. MCBC recommends that a threshold trigger of this requirement be based on certain market share within a to-be-defined geographic area. MCBC feels that market share within a specific geography is as important as brick-and-mortar presence in driving CRA obligations. If a bank holds significant lending market share, its CRA performance should be measured.

MCBC does not support deposit-based assessment areas without data-driven analysis regarding the potential impact on LMI people and communities. This has the potential to exacerbate CRA deserts.

Eligible Activities: MCBC supports the ANPR’s efforts to clarify eligible activities under the Community Development Test, and to provide more certainty regarding how affordable housing, community services, economic development, and revitalization and stabilization activities will be treated.

With respect to affordable housing, MCBC believes that all units of housing that are subsidized, or otherwise have pledges or covenants requiring affordability for low-income persons, should be eligible for CRA consideration. Certainly, all housing developed with Low Income Housing Tax Credits, should be viewed as responsive to affordable housing needs; as should other projects selected by localities to receive State or local subsidies or federal pass-through dollars like HOME.

MCBC believes that lending/investment in so-called naturally occurring affordable housing (NOAH) should receive favorable consideration as affordable housing if there is reason to conclude that the financing will ensure long-term affordability.

MCBC suggests making activities eligible if they meet state or local income requirements for subsidized affordable housing initiatives. This consideration should be given even if income exceeds the moderate-income threshold of 80% of AMI, because the need to subsidize or incentivize affordability varies significantly across markets as they could significantly change over a census period.

With respect to a mixed income housing, MCBC supports the ANPR’s suggestion of pro rata credit for activities in connection with mixed-income properties, and we particularly support clearly defining the credit provided for such activities.

Finally, MCBC strongly supports the Board’s proposal to post a list of illustrative qualifying activities and their rating impact, to be updated frequently and informed by public comment, as a means to provide certainty to banks that certain activities will qualify and drive consistency among CRA examiners.

Mortgage Lending and Small Business Lending Retail Test: MCBC has general concerns about the various screens or ratios proposed by the Board of Governors in order for banks to earn a Satisfactory rating. If a screen is set too low, it eliminates incentives for the portion of banks that just strive for the base rating.

MCBC applauds the Board of Governors on its rigorous data analysis of the percent of home loans to LMI borrowers and communities. While we stop short of endorsing the proposal of a bank's percentage of loans being 70% of its peers or 65% of the portion of the population that is LMI, we encourage the Board of Governors to establish clear benchmarks for reaching Outstanding, Satisfactory, Needs to Improve and Substantial Noncompliance. Clarity around these benchmarks will be helpful to banks and community groups alike.

The Board of Governors has proposed to reduce the number of possible ratings on the subtests from five to four. We oppose this since the five ratings on the subtests serve an important purpose to separate bank performance into High and Low Satisfactory. Further, we oppose the blending of all retail home loan products (home purchase, refinance, and home improvement) and low-income and moderate-income borrowers for evaluation purposes. We are concerned that varying performance regarding meeting needs for home purchase, refinance and home improvement lending or to low-income borrowers could be obscured in blending these loan types and income categories together.

And finally, in an improvement over the current service test, the Board of Governors desires to use data on deposit products for LMI customers in a more systematic way. MCBC would support including evaluation of low-cost transaction accounts, prepaid cards, international remittance services and individual development accounts on the services subtest. MCBC applauds this move in the direction of standardizing the consideration of deposit products but cautions the Board of Governors to keep the data collection demands on banks minimal.

Community Development: MCBC believes that combining lending and investing activities into a single category could potentially bias banks to those products that generate the greatest financial benefit versus the community need. Certain products that benefit the community may be overlooked given the combined evaluation.

In addition, MCBC believes that using local and national benchmarks would promote transparency when banks make investment/loan decisions and could theoretically generate more community development financing volume. To ensure the success of local and national benchmarks, MCBC advises that the Board of Governors needs to define what type of financing activity qualifies as "high-impact", and what qualifies as "2" vs. a "3". The Board of Governors should consider awarding banks for making small loans/investments – which are generally less attractive due to fixed costs – in order to service the local need.

MCBC supports a qualitative approach towards evaluating community development service. Examiners could look at board positions but should focus on services that generate value in their community rather than focus on arbitrary quantitative numbers. MCBC believes that all financial literacy and related education activities are all beneficial to everyone in the community and society at large.

In conclusion, MCBC recognizes that CRA was one of several landmark pieces of civil rights legislation enacted to address inequities in bank lending. The legacies of redlining continue today as evidenced by the Federal Reserve Bank of Boston's 2015 report *The Color of Wealth in Boston,* which found strikingly high racial wealth disparities in the Boston metropolitan area. MCBC, a proponent of CRA, wants to be sure the modernization approach incentivizes long-term commitments to access to capital that are outcome driven. Performance evaluations should marry the availability of financial services and products with how effectively CRA implementation positively impacts financial inclusion and equality in local markets.

MCBC encourages the Board of Governors of the Federal Reserve System to work collectively with OCC and the FDIC to ensure there is consistency across the financial landscape in order to ensure that everyone has the same opportunities to build financial stability and wealth for themselves and their families.

Sincerely,

Kimberly Hirsh

Kimberly Hirsh
Interim Executive Director
Massachusetts Community & Banking Council

CC: Massachusetts Division of Banks
Massachusetts Bankers Association