



COMMENTS ON FEDERAL RESERVE BOARD COMMUNITY REINVESTMENT ACT ADVANCE
NOTICE OF PROPOSED RULEMAKING

BY THE NATIONAL DISABILITY FINANCE COALITION

Federal Reserve System 12 CFR Part 228

[Regulation BB; Docket No. R-1723] RIN 7100-AF94

AGENCY: Board of Governors of the Federal Reserve System

ACTION: Advance notice of proposed rulemaking; request for comment

- I. **Who we are:** The National Disability Finance Coalition (NDFC) is the only national organization in the United States promoting the socially impactful work of community development financial institutions (CDFIs) serving the target markets of people with disabilities, their families and the communities in which they live, work, and go to school. Launched in 2015 and incorporated in 2017, NDFC operates as a 501c3 membership network of CDFIs, financial institutions, disability service providers, and individuals with disabilities addressing the unique set of challenges faced by people with disabilities and their families. Our network represents over 100 organizations across the United States, including over 40 organizations that have received dedicated funding from the CDFI Fund to advance lending and development services to people with disabilities.
- II. **Background:** As the Board of Governors modernizes the Community Reinvestment Act, the NDFC strongly encourages the Board of Governors to provide greater clarity and guidance for regulated banks to respond to the historical patterns of exclusion and lack of fair and equal access to credit, capital, and financial services for low- and moderate-income (LMI) individuals with disabilities in underserved LMI neighborhoods.

Thirty years after the passage of the Americans with Disabilities Act (ADA) and more than 40 years after the passage of the CRA, there has never been a more timely opportunity to relook at the approaches, roles and responsibilities of regulated financial institutions to proactively address the financial access and economic needs of people with disabilities in each assessment area nationwide.

Under CRA, for over forty years, banks have a role and responsibility to respond with investment, lending and services to help support the economic recovery of LMI neighborhoods and LMI populations. The disability community strongly supports the need for CRA regulation modernization. Modernization is long overdue for some 22 million working-age adults with disabilities and one in five families with a member with a disability who are disproportionately represented among households living in long-term poverty.

Unless the challenges of LMI people with disabilities are intentionally addressed as an essential part of evaluation of bank performance, people with disabilities will be unintentionally excluded from the financial system and be overlooked as a target of community development activities.

Financial institutions have not routinely targeted LMI populations with disabilities as part of investment in workforce development, affordable and accessible housing and technology infrastructure. Financial institutions have not routinely focused on disability-owned small business lending for startup and growth. Financial institutions have not been proactive in offering affordable and accessible financial services and building financial capability through financial counseling for LMI individuals with disabilities.

III. **Comments:** In collaboration with others in the disability community, we seek to bring needed attention to specific issues that deserve consideration if LMI people with disabilities are going to have equal opportunity to access credit, benefit from diverse community development activities and be a focus of future bank performance evaluations by regulators. We believe the Board should follow the lead established by the Office of the Comptroller of the Currency (OCC), which included LMI people with disabilities with specific examples of CRA-qualifying activities.

1. The Advance Notice of Proposed Rulemaking (ANPR) does not require banks to disaggregate reporting data by gender/race/ethnicity or disability thereby failing to compel banks to address the historical lack of access and equitable treatment of sub-populations of the LMI community.

Without specifically identifying people with disabilities as a part of LMI populations, banks will likely overlook the specific needs of this population. For example, they may miss the unique challenges of providing housing that is both accessible and affordable. They may fail to ensure their retail banking apps meet the accessibility needs of people with a variety of functional limitations. Their financial education programs may not appreciate the complexities of making informed financial decisions faced by people with disabilities.

Without specifying this population in a modernized CRA, regulators will not consider whether the needs of people with disabilities are being met when evaluating bank performance in lending practices, the availability and effectiveness of retail banking services and related community development investments that impact this large segment of the underserved population.

Moreover, if banks begin to measure, more specifically, how they are meeting the credit and other needs of people with disabilities, such efforts will be signposts for whether bank lending, investment, and services are in fact cutting to the core of restoring resources also to Black, Indigenous, and People of Color (BIPOC) and to the most economically vulnerable Americans in LMI communities.

It is crucial that banks be required to disaggregate their data by demographic category (including disability) because the old adage, “What gets measured, gets done,” is particularly relevant for banks as they consider CRA-qualifying activities.

2. Performance measurement and metrics must draw specific attention to the economic needs of LMI people with disabilities and impact performance scores.

No bank should receive an outstanding rating without both the Community Development and Retail Services Subtests demonstrating a direct response to identified community needs of LMI people with disabilities. Quantitative and qualitative data should be identified and analyzed regarding utilization of retail banking products and services and community development financing that directly responds to needs of LMI individuals with disabilities within and across assessment areas.

3. The ANPR discusses the applicability of other relevant laws, but does not mention the Americans with Disabilities Act.

In the ANPR there is discussion of adding to the list of existing laws other statutes such as UDAAP, the Military Lending Act and the Servicemembers Civil Relief Act to help assess whether there is evidence of discriminatory or other illegal credit practices.

The ANPR fails to mention the applicability of the Americans with Disabilities Act, Pub. L. No. 101-336, which requires that banks ensure equal access to services. This includes, for example, making reasonable accommodations including, but not limited to, alternative formats for materials, accessible phone communications with video relay and ADA-compliant websites. In addition, fintech must include a full range of accessibility features that allows it to be navigated by people with a variety of disabilities. For example, it needs to be navigable by screen readers used by people who are blind, captioned videos that are accessible to people with hearing impairments and materials in simple language accessible to people with intellectual, developmental, or learning disabilities. In the absence of robust accessibility features, this important component of LMI customers will not have equal opportunity to use mainstream banking innovations.

Since the passage of the ADA in 1990, banks and retailers have faced legal action, based on ADA violations, under both Title II and III of the law. Issues covered include, but are not limited to, inaccessible telephone communications and inaccessible websites and discriminatory decisions not to extend credit to people with disabilities. These lawsuits have resulted in settlement agreements that have changed the way banks address some of these issues. However, despite its importance, the ANPR fails to specifically reference applicability of the ADA. As a result, it fails to remind banks of their legal responsibility to address the needs of this often-overlooked population. Not only should the ADA be listed, but it also should become a routine area of exploration in bank performance evaluations by regulators.

4. A qualifying illustrative list of CRA activities should be included in the final rule that contains specific examples of LMI people with disabilities benefitting from investments, lending and/or service activities in housing, assistive technology and/or transportation.

Such a list would begin to provide regulated financial institutions specific ways to meet the needs of this underserved population. Such a list could be developed with input from the disability and financial communities.

As examples, investments, lending, and/or services activities can address these needs of people with disabilities: 1) Housing: There is a great need of affordable and accessible housing. People with disabilities want to live in the community, and people want to age in place. 2) Assistive technology: The Center for Technology and Disability¹ outlines the types of technology which make it possible for people to work, go to school, live more self-sufficiently, and participate in the community. 3) Transportation: Adapted vehicles make it

1. Center on Technology and Disability. (2018). *Assistive technology 101*. Retrieved September 28, 2018, from https://www.ctdinstitute.org/sites/default/files/file_attachments/CTD-AT101-V4.pdf (PDF 1.75 MB)

possible for people with disabilities to get out into the community, go to medical appointments, go to work, etc.

5. Banks should receive CRA credit for investment in workforce development activities including apprenticeships, internships, on-the-job skills training and skill certifications that are vitally important to many LMI populations, including those with disabilities.

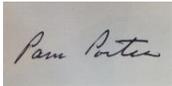
Workforce development activity should be identified separately, rather than simply as a subpart of economic development activities. In light of millions of job losses due to COVID-19, an emphasis on workforce development activities deserves specific attention for CRA credit.

Vibrant communities are best supported when economic opportunities are inclusive of LMI populations, including people with disabilities. Unless the challenges of LMI people with disabilities are intentionally addressed, people with disabilities will be unintentionally excluded from the financial system and overlooked as a target of community development activities.

The Board needs to revise the ANPR in its current form and offer, for the first time, a set of rules that responds to improved financial inclusion and economic stability for low- and moderate-income people with disabilities.

Thank you for your attention to and support of our comments.

Sincerely,



Pam Porter, Executive Director on behalf of

National Disability Finance Coalition and its Board

Charles D. Hammerman, Disability Opportunity Fund, Board Chair
Susan Tachau, Pennsylvania Assistive Technology Foundation, Board Vice Chair
Cheryl Cherry, Self Help Credit Union, Board Treasurer
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