



August 5, 2022

Via Electronic Submission

James P. Sheesley, Assistant Executive Secretary
Federal Deposit Insurance Corporation

Attention: Comments — RIN 3064-AF81

Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

RE: Cross River’s Comments, Joint Notice of Proposed Rulemaking, Community Reinvestment Act

Dear Mr. Sheesley,

On behalf of Cross River Bank (“Cross River or “the Bank”), I thank you for the opportunity to comment on the joint notice of proposed rulemaking regarding the Community Reinvestment Act (CRA) [released on June 3, 2022 as RIN 3064-AF81]. Cross River is a New Jersey State Chartered FDIC-insured bank that provides technology infrastructure powering the future of financial services to serve communities across the nation. To do this, the Bank partners with some of the largest fintech companies across the financial services space. While this work is conducted nationally, the Bank maintains a strong local presence in the New Jersey-New York area through the Bank’s Ft. Lee headquarters and bank branches in Teaneck, New Jersey and Brooklyn, New York.

Throughout Cross River’s history, the Bank has been responsive to local credit needs of the Bank’s community primarily through multifamily affordable housing and commercial lending to small businesses with gross annual revenues of less than \$1 million. In addition, the Bank originates a majority of its CRA reportable loans in the amount of \$1 million or less. For example, during the Bank’s previous CRA examination, the Bank reported 665 core bank loans totaling approximately \$576 million. Specifically, the Bank originated 439 small business loans totaling \$236 million, 175 residential and multi-family loans totaling \$254 million, and 51 community development loans totaling \$86 million.

Beyond Cross River’s lending products, the Bank has consistently pursued community development services to assist its communities through donations and staff volunteering. For example, during the Bank’s previous CRA examination period, the Bank’s officers provided a total of 933 hours of community development services, serving over 8,372 individuals and

through a partnership providing “private label” financial education services. Further, staff provided additional financial literacy courses to high schools in the CRA assessment area. In addition, Cross River worked closely with Habitat of Humanity, specifically in Bergen County, where employees have donated time to help build houses for low- and moderate-income (LMI) families and veterans. Further, in 2021, Cross River partnered with Operation Hope—a non-profit community group—to offer programs that focus on credit and money management, small business development and to provide a course for entrepreneurial training for aspiring business owners. Cross River plans to expand on and grow these efforts in upcoming years.

Cross River is encouraged by the efforts made to adapt CRA to the changing financial services landscape and agrees with the regulators’ intent behind expanding CRA assessment areas and creating non-exhaustive lists of qualifying and non-qualifying community development activities; however, there are still aspects within these areas where the Bank believes CRA can be improved. By primarily operating through bank-fintech partnerships, Cross River has been able to effectively serve consumers nationally through lending products that fit consumers’ needs in a responsible manner. However, as detailed further below, current and proposed CRA requirements do not allow the bank to adequately reflect the impactful lending, volunteering, and other activities it conducts to serve LMI communities across the country.

Expansion of the CRA Assessment Areas

While Cross River recognizes that the proposed reforms explained in the rulemaking could allow for more accurate assessments of banks, the existing CRA assessment area requirement does not adequately allow for banks like Cross River, which leverage partnerships with fintech companies to conduct national lending both inside and outside of LMI communities.

As an alternative to this standard evaluation method, regulations permit an insured institution to comply with CRA by electing to implement an approved strategic plan. Accordingly, the Bank has elected to pursue operating under this strategic plan in order to satisfactorily fulfill its CRA obligations. Currently, to ensure the Bank can meet its CRA goals, the Bank may from time to time engage in CRA-qualified activities outside its primary assessment area, but within the state of New York and New Jersey. In addition, as discussed further below, the Bank may engage in CRA-qualified service activities on a nation-wide basis, consistent with its unique business model. However, the existing assessment area criteria and the proposed reforms do not adequately consider the situation of banking operations such as Cross River, who serve customers throughout a broad region and who do not have significant concentrations of its loan and deposit portfolios within its designated assessment area.

Allowing for additional flexibilities, including expanding assessment areas for banks that operate through bank-fintech partnerships, is crucial to ensuring that LMI communities are served by these banks and that the banks receive proper CRA credit for their lending activities. Under the proposed reforms to CRA assessment areas, large banks would be required to include in their assessment areas delineated geographies where they have a large concentration of retail loan originations outside of the facility-based assessment areas. This would allow the bank to receive CRA credit for its CRA qualified lending efforts outside of the current assessment area of Bergen and Kings Counties, which would be helpful in ensuring the Bank’s activities are

properly captured under CRA. For example, Cross River originates many consumer loans for its fintech partners. These loans are originated nationally, including in LMI communities. However, these loans, and other activities, such as remote deposits, are not always counted for CRA credit for Cross River and other banks with similar business models due to the rigidity of the existing CRA assessment area requirements. With that said, Cross River recommends that regulators consider the facts and circumstances of each bank, and not require, but instead allow banks to elect to receive credit for their activities outside of their assessment areas.

Community Development Services Test

Currently, the Bank is only given credit for those services impacting the bank's assessment area. Through the Covid-19 pandemic, Cross River, and other banks have pursued hiring strategies that include remote and hybrid working schedules. While this has been beneficial to employees, it also means that their volunteerism is not credited to the bank for CRA purposes, because it is outside of the bank's assessment area. Therefore, the Bank believes it is important to ensure that the proposed rules to CRA include the ability for banks to count community development services that fall outside of a bank's assessment area. In turn, this would increase opportunities for providing CRA qualified services to LMI communities and small businesses across the nation. Thus, Cross River agrees with the proposed reforms to assess a bank's record of helping to meet the Community Development Service needs in the bank's assessment area as well as the state, multistate MSA and nationwide areas.

In addition to a broader assessment area for community development services, the Bank also believes that it is important to have a non-exhaustive, illustrative list of qualifying community development activities. The proposed reforms state that stakeholders indicated broad support for a non-exhaustive, illustrative list of qualifying community development activities. Cross River wholly agrees with stakeholders regarding the importance and benefit of having a non-exhaustive, illustrative list of qualifying community development activities. Further, the Bank also agree with stakeholders that regulators need to ensure the list and those creating it have a broad view of what will serve LMI communities and small businesses. To ensure that communities are properly served, and that regulators pursue a broad view of community development activities, the process should be pursued through an advisory board. In the Bank's view, the advisory board should consist of a diverse group of stakeholders to provide expert opinions to regulators on which activities should and should not be counted under CRA. The list and the timeline for review should be iterative and allow for additional items to be added as innovations that could assist LMI communities develop.

Specifically in response to Question 31 of the proposal, the Bank believes it is important for regulators to maintain a non-exhaustive list of activities that do not qualify for CRA credit. By maintaining a non-exhaustive list of activities that do not qualify for CRA credit, it would provide much needed clarity to the types of activities banks should and should not pursue for CRA credit. Further, it would be helpful for educating non-profits seeking bank involvement in their activities.

However, regulators should be aware that broadly limiting the allowable activities for banks to consider for CRA credit could have negative impacts for the bank and LMI communities. For example, with a small employee count relative to the Bank's asset size, the Bank may from time to time encounter limited volunteer participation from employees for CRA-related service opportunities. This could constrain the Bank's ability to meet its community development service goal detailed in its Strategic Plan. While the Bank has an established history of employee volunteerism and finding unique or innovative ways to provide service within the assessment area, further limiting allowable CRA activities could pose difficulties for some banks.

Conclusion

Cross River strongly supports the overarching goals of the Community Reinvestment Act and appreciates the opportunity to comment on the proposed reforms. As noted above, we believe that Cross River, and other banks like it, can uniquely serve LMI communities and reach the intended purpose of CRA; however, additional reforms and flexibilities for obtaining CRA credit are required before these efforts can be fully realized. We greatly appreciate FDIC's consideration of our recommendations. Please feel free to reach out to Phil Goldfeder, SVP Public Affairs at pgoldfeder@crossriverbank.com or 201-808-7234 with any additional questions. We look forward to continuing to engage with relevant FDIC officials regarding CRA and its reforms.

Sincerely,

A handwritten signature in cursive script that reads "Ian P. Moloney".

Ian P. Moloney
Head of Policy and Regulatory Affairs | Cross River