As background, I am a retired national bank examiner who worked for the OCC for over 30 years. My experience includes conducting CRA examinations and developing guidance, procedures, and training for examiners. I have prepared CRA performance evaluations, read hundreds of public performance evaluations, and discussed CRA compliance with bankers, examiners, and other stakeholders. I've also conducted extensive industry outreach, including training bankers at ABA conferences/schools and CRA colloquia, as well as consulting with numerous banks on identifying and improving CRA performance.

Based on the comments received following the OCC/FDIC NPR in 2019, wholesale changes to the CRA rules are not necessary. The vast majority of commenters agreed that these implementing rules required some updating, given changes in the banking industry over the past 25 years. Unfortunately, the OCC's 2020 CRA Rule makes dramatic, substantive, and unnecessary changes to the CRA evaluation process, which results in a test that is largely quantitative, focused on large dollar volume projects, complicated formulas, expanded data collection, and diminished value of bank branches. It also greatly expanded the definition of community development activity to include nonsensical activities such as tunnels, athletic stadiums, and tax shelters.

<u>Summary:</u>

Overall, the CRA rule should not be subject to wholesale changes. A better way forward would be to build on the existing interagency examination framework. Fix the elements of the current rule that are out-of-date or ill-advised, but don't "fix" those aspects of the current rule that are working. It is time for all three agencies to work together to update the rules to improve transparency and consistency. Incorporating the use of public benchmarks, in order to encourage more responsive CRA programs instead of re-affirming the status quo, would seem to be a timely strategy. It's also time for the agencies to development and implement interagency training to improve consistency of examination results.

<u>Recommendations for all interagency examination types</u>

1. <u>Assessment areas (AA) and geographic consideration:</u>

- Retain existing AA geographic delineation requirements for branches, including the retention of the option for banks to delineate a geography smaller than a county if it cannot reasonably service the entire county
    - Make optional the delineation of an AA around a deposit-taking ATM, with consideration given to needs in the area and existence of bank branches
- Add deposit-based assessment areas for banks conducting significant levels of mobile/internet banking
    - Criteria for deposit-based AA TBD after interagency analysis of prevalence of such banking, locations to be impacted, and related banking needs/opportunities
    - Additional data would be required for depositors

- Add CRA consideration for community development (CD) activities anywhere in the country that respond to needs in Indian Country, major disaster areas (as declared by FEMA), and CRA deserts (to be defined by the agencies)

2. <u>Definitions</u>

- Retain current definitions of CD, small farm/business loans with some updates:
    - Add naturally-occurring affordable housing to CD definition of affordable housing
    - Add activities that partially meet the definition of CD
    - Add CRA deserts and Indian Country; (major disaster areas are already included)
- It would be a mistake for the agencies to define home mortgage loans with reference to Call Report data instead of HMDA. The tools to analyze HMDA data are well established and the data are available to the public as well as to bankers, which enhances performance management and transparency. Replacing HMDA data with call report data is confusing, costly, and counter-productive.

3. <u>Analysis of retail lending activities</u>

- Retain evaluation of originations/purchases for retail loan analyses, using reported HMDA and small biz/farm data when available
- Develop and implement uniform interagency sampling procedures to be used in absence of reliable reported CRA/HMDA data
- Consider loan counts; dollar volumes provide additional value
- Include affiliate data
- Continue to allow CD loan data to help mitigate retail lending weaknesses

4. <u>Analysis of community development activities</u>

- Allow pro-rated consideration of CD activities, i.e., for those activities that partially meet the CD definition
- Use book value for both qualified investments and CD loans
- Address concerns about churning (through repeated sales of MBS) by
    - Limiting CRA consideration to primary-issue MBS, either directly or through a fund that purchases primary-issue MBS
    - Refraining from the application of any type of multiplier to dollar value of CD investments, loans, or services
- Quantify CD services by hours/full-time-equivalent employee
- Add CRA consideration for CD activities anywhere in the country that respond to needs in Indian Country, major disaster areas (as declared by FEMA), and CRA deserts

- Include affiliate data

5. Performance Context

- Performance context data/information should include common elements and should be considered in a more consistent manner
  - Include this topic in interagency training

6. Administration and Benchmarks

- Make public a list of qualifying CD activities
  - Implement a process at the agencies to provide feedback on whether an activity would be qualified – within a short turn-around of no more than 30 days – and update the public list frequently
- Establish performance benchmarks that will encourage improvements in performance rather than the status quo
  - Make public the performance benchmarks
  - Allow benchmarks to address a range of values to allow examiners to apply performance context data
  - Test these benchmarks through a pilot program or a side-by-side CRA analysis before implementation
- Conduct a pilot program before full implementation of final rules
- Hire and train sufficient staff to handle CRA questions, conduct examinations in a timely manner, and provide training to all examiners
- Work with CFPB to roll back changes in HMDA rules that exempted most banks from reporting these important data

Bank Types

Small Banks

Retain the current CRA examination process for small banks, with the addition of explicit public performance benchmarks. Increase the size limit for banks under the Small Bank Test; FRB needs data to determine level, i.e., consider number of assessment areas, types of lending offered, sophistication of investment/CD lending implementation.

Intermediate Small Banks

Presently, ISB are those banks with assets between about $330M to $1.3B. They are subject to a two-part test: retail lending, which is identical to the current small bank test, and a community development test. The CD Test considers all CD activities (qualified investments, CD loans, and CD services) together but does not include a retail services/branch review.

One option to update the ISB test is to add a branch review for any ISB that meets a minimum number of branches, to be determined. The branch review could be the same – or similar – to the current service/branch test used in Large Bank Tests. Also, raise the total asset limit for these banks, perhaps to $2.5B, but add a requirement for CRA loan data to allow more robust retail lending analyses. Note banks under current large bank test already collect/submit these data. Continue option for any bank to opt into the current large bank test.

Banks above $2.5B would continue under the current large bank test, with the changes as noted above for all banks. For example, CD lending (for all banks) would be considered using book value, consistent with current treatment of qualified investments. This would close the loophole of banks “renewing” CD loans annually so that they get annual origination credit – and save customers and banks money, time, and paperwork for these annual renewals. In addition, performance benchmarks would be made public.

<u>Large Banks</u>

Large banks are presently evaluated under a three-part test: lending, investments, and services. They have some data reporting requirements. The agencies could retain this test - again with the additions noted above that would apply to all banks.

Instead of the massive burden shift that goes along with the OCC’s 2020 CRA Rule, these changes could be done easily and quickly. The burden would remain with the agencies to hire and train sufficient examiners to carry out evaluations efficiently and consistently and to add an illustrative list.

<u>Strategic plans, limited purpose, wholesale banks</u>

The agencies should retain the Strategic Plan option and the Community Development Test for Wholesale and Limited Purpose Banks. The regulation should require Strategic Plans to include explicit, measurable performance goals. The regulation should establish CD lending, investment, and service thresholds for banks subject to the Community Development Test. Again, performance benchmarks for LP/WH bank tests should be made public.

FRB’s ANPR

A second option – consistent with the ANPR issued by the FRB – would be to fold ISB, along with large banks, into an OPTIONAL new Retail-CD Test, which would be similar to the current CD test with the addition of retail services/branches into the retail side and all CD activities combined on the CD side. Examiners would continue to review the borrower and geographic distribution of loans compared to demographic comparators and to the performance of other banks in the market (or peer market aggregates).

Formalizing benchmarks for mortgage, small business, and small farm loan distribution and for bank branch distribution and comparing data readily available from Home Mortgage Disclosure Act (“HMDA”) and CRA Small Business loan application registers (LARs) to demographic and peer data would be more cost effective and easier to implement compared to the OCC’s 2020 Rule. In addition, the agencies should adopt the above recommendations, as applicable, should they decide to add the FRB’s retail-CD test.

Comments on use of interagency Q&A:

Official interagency guidance is structured in the format of questions and answers (Q&A). Unfortunately, they are not user-friendly, which probably explains why so many people support the use of a list of activities that are CRA-qualified. The FRB is urged to adopt a list as soon as practicable and work with the FDIC and the OCC to update and streamline the Q&A by removing examples (moved to the list) and focusing on a discussion of application of CRA.

Comments on selected questions from the FRB's ANPR:

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?

No. All banks (except see #8 below) should be subject to the current interagency rules, which include enough flexibility for banks to adjust AA as needed based on their market footprint and business strategy. Instead, train examiners in how to evaluate the reasonableness of these AA.

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?

Because the purpose of this update needs to address mobile and internet banking, the agencies need to find a way to assess banks' CRA performance more broadly. Adding deposit-based AA is a reasonable response. However, it appears that the threshold adopted by the OCC may be too high, at 50%. The FRB needs to evaluate how many banks would be impacted with lower thresholds.

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?

Nationwide AA is a reasonable approach for these banks. LP/WH already allow consideration of all activities nationwide given adequate performance in their AA. To better implement this approach for these LP/WH banks the agencies should establish public benchmarks that will provide transparency for these banks' performance. I also support the use of a nationwide AA for Internet banks, again with public benchmarks.

Question 53. What data and calculations should the Board use to determine rental affordability? How should the Board determine affordability for single-family developments by for-profit entities?

From a practical standpoint, the OCC's approach is reasonable for rental units located in LMI areas and in middle-income areas that are adjacent to or located in urban areas with high housing costs. However, for rental units located in upper-income areas, it makes more sense to look at rent rolls, to ensure tenants are LMI.

Question 56. How should the Board determine whether a community services activity is targeted to low- or moderate- income individuals? Should a geographic proxy be considered for all community services or should there be additional criteria? Could other proxies be used?

Current Q&A address this issue.

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

This prong of the CD definition has been an issue for decades; it's ripe for an update and a consistent application of same.

Input on Questions 62, 64, 67, 69, 71: Yes, these are all good ideas.

Question 80. Barring legitimate performance context reasons, should a "needs to improve" conclusion for an assessment area be downgraded to "substantial non-compliance" if there is no appreciable improvement at the next examination?

Not necessarily. Management may be focused on survival of the organization; it is reasonable for such a focus and that it could delay CRA compliance.

<u>Benchmarks, in general</u>

The OCC has used informal benchmarks for many years. They are a good starting point for interagency discussions.