UTAH BANKERS
ASSOCIATION

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Ms. Ann E. Misback, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Av., NW
Washington, D.C., 20551

*VIA EMAIL TO: regs.comments@federalreserve.gov*

Re: Docket no. R1723, RIN 7100-AF94

Dear Ms. Misback,

The Utah Bankers Aassociation (UBA) appreciates the opportunity to submit the following comments on the proposed changes in the rules implementing the Community Reinvestment Act (CRA) and ways in which we believe the programs could be further improved. The UBA represents a broad array of banks based in Utah, which is home to one of the largest and most innovative banking industries in the nation. UBA and its members are vitally interested in the CRA and community development generally and we support the goals of the Community Reinvestment Act. We fully concur in the goals described in the Advance Notice of Proposed Rulemaking (ANPR) published on October 19, 2020 and hope the following comments help develop a CRA rule that best meets the needs of LMI people and communities.

At the outset, our members believe the basic considerations that should guide the development of new CRA rules are the following.

Our members agree with the statement in the ANPR that the current rule is significantly outdated. When the CRA law was first enacted there was generally one business model for banks designed to provide a full range of products and service to a local market and individual banks differed only in size. The law was designed to fit that particular business model. With the advent of electronic banking, a diverse array of new products, services, delivery systems and markets have emerged along with new bank business models to provide and serve them. Flexibility is necessary to adapt CRA programs to the unique and widely divergent characteristics of each bank. That is the only way for CRA programs to work their best and to achieve the maximum benefits for the people and communities they target.

Simplicity is another critical feature of an optimal CRA rule. By that our members do not mean reducing all CRA programs to simple metrics. Because of the wide diversity of bank models now and the rapid evolution of financial services that will produce additional banking models that cannot be known now, the best rule would be based on principles, not hard rules. Each bank should be allowed to develop CRA programs adapted to its specific circumstances, otherwise known as performance context, and be evaluated by not just the numbers it achieves but an array of other factors such as innovation and success in providing products and services to LMI people and communities that are difficult to serve. It is fair and important that qualitative factors be given significant weight within the context of each bank's opportunities and challenges. Minimizing or eliminating qualitative factors will arbitrarily constrain programs that might be significantly beneficial to an LMI community. Ideally, both in practice and in the spirit of CRA, a bank should be evaluated on the thoroughness with which it identifies communities it will serve and the needs of that community and then how well it meets those needs. In that regard our members fully agree with Fed Governor Lael Brainard's statement before the Urban Institute in January, 2020:

> After analyzing ways to use metrics across the board, we concluded that the value of retail services and community development services to a local community do not lend themselves easily to a monetary value metric comparable to the monetary value of loans and investments. The value of these services may vary greatly from community to community. It is difficult to monetize this value in a consistent way relative to the value of lending and investment, thus introducing the risk of skewing incentives inadvertently. For example, the services and leadership provided by a small bank located in a rural community may be vital to the success of that community, even if the dollar value of those services is small compared with a branch in a large city. Because of this concern, we are inclined to propose a set of qualitative standards to evaluate retail services within the retail test, and a separate set of qualitative standards to assess community development services within the community development test.

Performance context is not a consistent factor among all banks. It varies widely from bank to bank and place to place and cannot be adequately described or measured by one standard set of aggregate numbers. That is why flexibility to design programs to meet the specific needs of each community is crucial to effective CRA programs that deliver the maximum benefits to each community.

Put another way, we believe the best CRA rule will not follow the tendency among many regulators to write very complex and comprehensive rules that attempt to capture every existing and future circumstance and specify detailed requirements for compliance in each of those situations. As we will describe in additional detail below, a rule like that would dramatically increase costs for many banks. CRA resources are finite and these added costs will, in most cases, diminish the benefits a bank can ultimately deliver to LMI people and communities.

It will also add burdens that increase the competitive disadvantage banks in general encounter in today's financial services markets. It is a fundamental principle of regulation that the burdens should be borne equally by all competitors. The CRA law was always intended to ensure that all people and all communities have access to financial services in order to develop and prosper. It was never intended to drive certain kinds of banks, especially newer kinds of banks that are otherwise safe and sound businesses, out of the market by imposing burdens making their form of business uneconomical or impractical. This is especially acute when compared to credit unions, which are not subject to CRA requirements even when they directly compete with banks that also pay taxes. This disparate situation has already distorted national and local financial services markets. Any additional CRA burdens will aggravate this unfair imbalance further.

One of the biggest concerns that must be considered in developing this new rule is the extent to which non-bank financial services companies are rapidly replacing the banks. CRA costs are not the sole reason this is happening but CRA costs are a contributing factor.

We see this happening in two ways. Some commenters advocate imposing new requirements that will ultimately pose a greater burden on certain kinds of banks and impede their ability to develop and compete against other types of banks. These are deliberate strategies designed to suppress competition and must be rejected in this process.

Other proposals are designed to enhance CRA programs but are ultimately counterproductive. Again, *banks are the only financial services providers in the financial services markets subject to CRA and they face extensive competition from other kinds of lenders and service providers that have no obligation to comply with the CRA laws and regulations and develop CRA programs. That is inequitable on its face, but to the extent compliance costs impact banks' ability to compete it actually reduces the impact of CRA programs. CRA programs and the benefits they provide depend on a thriving and competitive banking industry. To the extent excessive burdens and costs undermine the industry, they also undermine the goals and benefits of community reinvestment. That is why compliance costs must be a key factor in all of the proposals under consideration.*

The current structure of the nation's financial services markets shows the importance of competitive inequities. Community and other traditional banks struggle to compete with credit unions which do not pay taxes or have any responsibilities under the CRA law. The differences make it difficult for banks to compete on rates for loans and deposits. Credit unions were given those advantages because their membership is limited and they were not supposed to openly compete with banks. But some credit unions have found ways to do that and it is their whole business model. As a result, many community and other traditional banks no longer actively compete for consumer loans and deposits when rates are a factor in consumer choice. Those banks focus today mostly on commercial lending, which credit unions are largely restricted from providing, but those barriers are slowly eroding under unrelenting pressure from the credit unions and their regulatory promoters. If those barriers are torn down and competitive inequities are made worse by adding to CRA costs, it is hard to imagine how community banks will survive and that will leave more and more communities without the benefit of CRA. Thus, all agencies will be limited in their ability to expand CRA until the competitive inequities related to bank-like credit unions are addressed.

What has worked to compete with credit unions is the development of limited purpose and wholesale banks that deliver specialized products and services electronically to a nationwide market. The inherent efficiencies in that business model enable those banks to achieve operational cost savings that can support rewards programs for credit cards, for example, that credit unions cannot match. This scale also supports the development of computer-based delivery systems requiring large capital investments that smaller providers cannot match. Imposing substantial new burdens on those banks, such as extensive data gathering requirements on all of their accounts, will exacerbate the competitive inequities with credit unions and, perhaps more importantly, large scale competitors that are not depository institutions. Such data gathering costs will not benefit LMI people or communities. To further the real goals of CRA, those requirements must be eliminated except to the extent they are necessary to validate the qualifications of any loans or investments for CRA credit.

It is also important to understand why a principles-based rule will facilitate programs to fulfill the goals of CRA. A rigid set of rules would inhibit the ability of any particular bank to act on all of the opportunities to assist LMI people and communities that may arise from time to time. No one can possibly anticipate all the situations that may arise in such a broad subject as economic development of LMI people and communities. Each bank needs the ability to develop customized plans linked to the needs and opportunities they identify in their markets and assessment areas.

The best CRA rule will direct examiners to evaluate how diligently each bank has assessed the needs and opportunities to support and encourage economic development among LMI communities and people it can serve and then has developed programs to do just that. That will require examiners to exercise judgment, but that is what examiners do every day. This cannot be reduced to formulas, simple or complex.

Many of our members are uniquely situated to address these issues because of the wide variety of banks based in Utah. Despite having only about 1% of the population of the nation, Utah has developed into a banking center. Aggregate assets of Utah chartered banks rank fifth highest in the nation. Many of these are branchless banks providing specialized products and services to nationwide markets without regard to any specific geography.

Our members also support the adoption of common standards and goals by all the regulators. Banks often participate in CRA activities with other banks and need common requirements to make those programs work. Differences in requirements can also significantly impact banks if competitors subject to other regulations have an advantage. However, this should not be understood as recommending adoption of the OCC's new rule because our members believe it has several unworkable provisions, especially relating to assessment areas and data gathering, described in more detail below.

Finally, our members want to stress again that they genuinely support the goals of CRA. Our members believe contributing to the communities they serve and in which they operate benefits everyone, including the banks. How our members are perceived by their communities is critical to their success. CRA programs are important not just to ensure banks serve the whole community, but they also help the community, customers and policy makers need to understand the role and important contributions banks make in those areas.

With that introduction, we offer the following comments on specific areas covered by the ANPR.

### *Assessment Areas*

Designation of "assessment areas" (AA) adjacent to a bank's retail offices is required by the law and our members uniformly support maintaining primary assessment areas in those communities where their main office and any branches are located.

Most of the new issues discussed in the ANPR do not arise for a bank that primarily serves its AA, and conducts the majority of CRA activity in those primary markets. The new CRA related issues focus more on the activities outside AAs of branchless and other nontraditional banks whose customers and depositors are not primarily located in their AA in which their main office is located, as well as for traditional banks that cannot meet their CRA goals in their primary AA due to heated CRA competition. It must be remembered that these newer kinds of bank models, such as digitally-based and branchless banks lending and raising deposits nationally, did not exist when the CRA law was written and it was not designed to properly evaluate the CRA activity of these newer kinds of business models. However, the 1995 regulations did acknowledge the nationwide aspects of some newer business models by implementing a tailored evaluation – the Community Development Test – for limited purpose and wholesale banks, which provides for CRA consideration anywhere outside of the assessment area if the bank "has adequately addressed the needs in its assessment area(s)" (12 CFR 228.25(e)(2)).

The ANPR presents novel issues in two contexts noted in the ANPR. One is developing meaningful programs in "hot spots" and "deserts" outside a bank's primary AA. The other is how to evaluate a branchless bank that lends and raises deposits nationally.

Before turning to specific issues, we want to urge regulators to adopt a rule that avoids the arbitrary designation of additional assessment areas. The optimal rule would direct banks to define communities they intend to serve. Those communities may have geographical boundaries or they may consist of specific LMI groups that could be served on a nationwide basis. That might involve facilitating low income tax credit housing developments or other programs targeted at LMI people in multiple places. That is the only practical way to target most of the CRA "deserts" described in the ANPR. Our members support efforts to identify those deserts and help direct resources to help those people and communities.

This is of particular importance to digitally-based banks, branchless banks and other nontraditional banks, many of which are based in Utah. Virtually all of the branchless banks based in Utah are located in Salt Lake County or Summit County (immediately east of Salt Lake County and home to Park City and other resorts) and serve customers from coast to coast, resulting in a small percentage of their loans in their primary AA. Evaluating community development activity, or even retail lending activity only in their primary AA may severely understate the CRA impact of the whole bank. In some cases the reason the bank business model even exists is to provide limited core products and services that are abundantly available to LMI people or communities (credit cards or new car loans are examples).

As noted above, in 1995 the regulators implemented the Community Development Test because they recognized that wholesale and limited purpose banks must rely on community development loans and investments to meet CRA obligations as they do not offer traditional retail loans evaluated under the CRA. The opportunities in Salt Lake City and adjacent urban and suburban areas to make such loans and investments have, at times, been inadequate to meet CRA goals of all the individual banks (including community banks) using the Salt Lake, Ogden and Provo MSAs as their AA. In those instances, the regulators have given credit for community development loans and investments throughout the country, assuming local assessment areas needs are adequately addressed. For large non- limited purpose or wholesale banks needing to reach beyond local AA to address community development activity the regulators have included activity in areas adjacent to a bank's primary AA if the bank has "been responsive to community development needs and opportunities in its assessment area(s)" (Interagency Questions & Answers Regarding Community Reinvestment ("Interagency Q&A") at §___. 12(h) – 6). The problem there is that the areas adjacent to Salt Lake City and surrounding MSAs are largely unpopulated. 82% of the people in Utah live within 60 miles of downtown Salt Lake City and many banks designate that entire area their primary AA. A large portion of the rest reside in St. George, a heavily banked largely retirement and golf community in the southwestern corner of the state. To reach areas with significant populations who might be helped outside this area requires traveling to urban areas in adjacent *states,* and thus far regulators have not given credit uniformly for programs that far distant from a Utah bank's primary AA.

The Federal Reserve's inquiry (Question 10) in the ANPR seeks input as to whether a nationwide assessment area would be a solution for "internet" banks that lend nationally. Our members believe that a tailored framework for banks with a national footprint would provide banks the option to respond to community needs wherever they arise nationwide. An alternative approach, such as requiring these banks to invest in areas with concentrations of deposits or loans, would dilute the impact of these CRA programs and would exacerbate hot spots that are already well-served.

It also overlooks the importance of connections to a market that enable a bank to assess the needs of a particular area in order to develop effective programs. CRA programs do not develop spontaneously out of thin air. The crucial role of performance context is difficult or not possible to develop in the most effective way if a bank's only connection to a particular area was that some of its customers and depositors in a nationwide market reside there.

In contrast, banks may have opportunities to serve specific LMI groups across the nation with specialized products and services. For example, investments in low income housing tax credit developments should qualify for CRA credit anywhere. If a digitally-based or branchless bank is lending and obtaining deposits nationwide, why should it not receive CRA credit for LIHTC investments regardless of the location of each development? The only difference is that the needs assessment would focus on the need for that product across the nation rather than those needs in a certain geography. In terms of innovation and updating the rules, this highlights how branchless banking and electronic delivery of products and services, which did not exist when the CRA law was enacted, require new standards and requirements for CRA programs to operate efficiently and be well integrated into each bank's business model.

Good CRA programs begin by understanding the needs and opportunities in any community. In Utah the senior executives of almost all banks serve on boards and provide other kinds of support to community development organizations. The banks' CRA officers network extensively with those organizations to understand their specific needs and collaborate in developing programs to serve those needs. The importance of these contacts and networks cannot be overemphasized in providing the most impactful CRA programs in a community. In today's financial services markets, this kind of connection should be allowed on a product or group level if that would result in the most beneficial CRA program a bank can develop. A digitally-based or branchless bank, or any bank for that matter, might become highly specialized in LIHTC investments and may be able to significantly innovate and expand those programs but would need nationwide coverage to achieve the maximum potential. On the other hand, that type of innovation and program expansion might not be possible or worth pursuing if the qualifying investments are limited to one geographic area.

Given the ANPR's stated goals of alleviating CRA "hot spots" and "deserts," broad consideration of a bank's activities can help protect all banks moving forward with modernized business models, which are all increasingly focused on online and digital activity. To encourage effective and responsive CRA behavior, UBA recommends the Federal Reserve evaluate all banks by identifying the community served by the bank, which is often unique and not geographically based, even for the more traditional branch-based banks. This framework would provide flexibility to match the business model of the bank to its community, and then to evaluate CRA impact within that community. If that is a community from coast to coast, evaluating CRA activity at the whole bank level while also evaluating CRA activity in the local assessment area, will result in a fairer evaluation of community impact. In fact, this would be true of CRA activity by all banks. Comments submitted to this ANPR, as well as thoughts advanced in the ANPR, offer such suggestions for internet or digitally-based banks, as well as limited purpose, wholesale, and strategic plan banks, promoting flexibility tailored to the bank in question.

It is crucial a modernized CRA framework is not used to limit the wide range of bank business models or to favor one bank business model over another to ensure banking continues to respond to customer demand for decades to come, especially as all banks are evolving.

*The UBA cannot support deposit-based assessment areas because that will invariably create assessment areas where economic activities are most concentrated in high population centers such as New York and Los Angeles.* That problem equally applies if an AA were based on where most loan customers reside. That will only make "hot spots" hotter and in practice block programs in deserts which, by definition, have the least amount of economic activity. Using the quantity of deposits or loans to define AAs in a bank serving a national market means a CRA desert is the last place a bank will be able to implement programs that will receive CRA credit.

Additionally, most of our members have no other link to those hot spots. They typically have no people on the ground to develop the CRA networks and do the kind of needs assessments critical to good CRA community development programs. Would a bank be required to hire people who reside in that area only to assist in developing CRA programs? How much of the bank's resources will be spent assessing needs instead of implementing programs?

By definition, a hot spot is an area that has a disproportionately large number of banks competing for the same limited number of community development loans and investments in a geography that may not have sufficiently developed infrastructure (or, in the case of Salt Lake, the population base) to absorb the vast dollar amounts the banks need to deploy. . Hot spots already draw many retail banks including the nation's largest banks. If a branchless Utah based bank could find meaningful community development loans and investments in New York or Los Angeles it would likely be a miniscule part of all CRA programs which would go largely unnoticed in those communities. We believe that cuts against the spirit of CRA to help ensure that banks provide, *and are seen to be providing*, equal access to financial services in communities the bank serves, including nationwide.

We believe it makes more sense to give credit for CRA activities in areas and ways that provide the greatest benefit to the people and communities including in ways that help those people and communities understand the role the banks play in providing those benefits. The following are some ways we recommend that would best achieve these goals:

*Allow CRA credit for community development activities* *anywhere* *outside the AA as long as the bank has "adequately addressed" the needs in its assessment areas.*

Allowing CRA credit for community development activities anywhere in the country, including in areas where a bank or its affiliates have a physical presence, would help expand the benefit of CRA loans, investments, and services across the nation. This is especially important for banks that do not meet the definition of "limited purpose" or "wholesale," and are thus currently geographically restricted in their community development activities. Current regulations restrict the ability for retail banks (i.e., non-limited purpose or non-wholesale banks) to get CRA credit to only geographies inside a "broader statewide or regional area," which term is not interpreted and applied in a consistent manner with all regulators. In addition to our branchless retail banks, several of our community banks would also like to participate in expanded community development activities, but are also restrained by the current "broader statewide or regional area" geographic limit. These anomalies can be easily remedied by allowing *any* type of bank to receive credit for community development activity *anywhere* outside its assessment area(s) if the bank has "adequately addressed" the needs in the assessment area(s).

*Broadening the definition of "adjacent" to include regions beyond MSAs.* The regulators have proactively developed ways in which branchless banks could conduct CRA programs when opportunities for community development loans and investments in their primary AA were insufficient to meet their goals. But because of the requirement that an AA be "adjacent" to their main office, the regulators have limited secondary markets to those adjacent to the primary AA. But in western states like Utah, areas outside of the cities are sparsely populated and opportunities for community development are limited. For example, Utah is one of the largest states in terms of geographic area but 82% of its population lives in a 100 mile long urban corridor called the "Wasatch Front" that runs north and south of Salt Lake City in the valleys on the west side of the Wasatch Mountains. That is the primary assessment area for most Utah based banks. An interesting factoid is that Utah has the largest percentage of its population residing in urban areas in the nation. In the rest of the state there are only a few small towns spread many miles apart. In some places drivers encounter signs on interstate freeways saying there are no services for the next 100 miles. The small towns and Native American reservations in the state provide some community development opportunities but may still not be enough to meet the CRA goals of many banks based in the Wasatch Front.

A Utah bank would be able to reach areas with more CRA opportunities if it could extend its programs to areas in adjacent states. States such as Idaho have many of the same economic and demographic characteristics as Utah but unlike Utah Idaho has experienced a substantial loss of small and community banks. Wyoming likewise has lost many of its community banks while facing serious economic challenges relating to the decline of energy industries. Utah, in contrast, has experienced substantial growth in its banking industry and could add significantly to CRA programs in adjacent states with common characteristics in both urban and rural areas.

*Develop a method to designate CRA deserts and give credit for loans and investments in those areas.* Assisting LMI communities is the very heart of CRA and obviously nothing could be more impactful than providing assistance to a CRA desert. We note that both the OCC and FRB ANPRs mention CRA deserts but offer no proposals to designate deserts or qualify loans and investments made in those areas if they are not part of an existing AA. This could be easily remedied by providing a means for the regulators or local officials such as a state's governor to designate a desert for that purpose. That could be done on a national or regional basis.

The impact of this type of designation could be enhanced if any loan or investment in a desert qualified for CRA purposes. For example, one of the biggest economic development problems in some urban areas is the absence of almost all retail businesses except those catering to deeply impoverished people. Residents of Detroit often have to drive several miles into the suburbs to shop for groceries, find a dry cleaner, buy clothing and so forth. Combined with high crime due largely to poverty, these conditions create a vicious cycle that drives most working people to live in the suburbs. It is the most severe form of redlining, but it is caused by a lack of loan and investment opportunities, not intentionally refusing to do business in those areas. Simply put, there is no business to do.

The primary objection to designating the nation as an assessment area is the practical impossibility of assessing needs to the extent currently expected in a bank's primary AA. It is also the case that the most diligent CRA programs at all banks cannot address all the LMI needs in the nation, so the regulation would have to be very clear that it is the evaluation of activities, especially under the retail lending test, that would be considered on a national basis. If a bank providing specialized products and services in a national market has met all of its CRA obligations in its primary AA, why should it not receive credit for otherwise CRA qualified programs providing benefits to LMI people anywhere in the nation? The other links to AAs described above are intended to facilitate the development of programs. If a program doesn't need that kind of linkage to deliver benefits, we believe it should receive full credit in an examination for products that clearly or demonstrably benefit LMI groups nationwide without the necessity of doing a broader needs assessment of the nation.

Again, we believe a primary goal of the CRA rule should be to enable banks to act on opportunities to provide needed products and services to LMI people or communities. As Fed Governor Lael Brainard said recently: "First and foremost, the CRA should focus on addressing credit disparities and financial inclusion in low- and moderate-income and minority communities to fulfill its core purpose."[1] Why should any loan or investment program not receive CRA credit if it achieves that goal simply because it does not affect an area designated as an AA? Those opportunities do not necessarily depend on first conducting an in depth needs assessment of a particular geographic area. It might be the result of a needs assessment of a particular LMI group or community spread across the nation. These programs should be evaluated on the basis of the benefits they provide to the intended targets of the CRA law.

For that reason, it makes sense to qualify any CD loan or investment in such an area as CRA qualified. Financing a new store operated by an established grocery chain would not normally qualify for CRA purposes but such a store would help draw residents into that neighborhood and begin a cycle of renewal. Nothing could be more in the spirit of CRA. We strongly encourage consideration of such a program to address the needs of the CRA deserts.

***Consumer Loans***

[1] Speech given before the Chicago Community Trust, December 1, 2020.

Our members believe that the retail lending test should remain focused on home mortgages and small business/farm loans, and they uniformly oppose the mandatory inclusion of consumer loans in the retail lending test. Regarding **Questions 35 and 36**, our members believe that the reporting and evaluation of consumer loans should continue to be at the bank's option, or, at the very least, continue to provide that only those product lines that constitute a "substantial majority" of a bank's business would be subject to the Retail Lending Subtest, and clarify that the "substantial majority" standard only captures a product line the dollar value of which exceeds 75 percent of a bank's total assets.

***Deposit Products***

Our members do not believe that the retail lending test should be expanded to evaluate a bank's deposit products, especially in light of the clear wording of the CRA statute that focuses on banks helping to meet *credit* needs. In regards to **Question 29**, our member banks do not feel that they would be able to document that their deposit products are used by LMI customers because the banks do not routinely collect income data when a person opens a deposit account, and feel that such a requirement could be counterproductive and actually cause LMI people to feel very uncomfortable and wonder why their income information is required when all they want to do is deposit money into the bank.

***Data gathering***

Our members uniformly concur in the proposal in the ANPR to limit data gathering to existing data. We objected to the new data gathering requirements in the OCC rule because our members say it will be very expensive and time consuming and in some cases they question whether the data required is available or reliable. Some said it would be a "major IT project" for them with cost estimates ranging from tens of thousands to millions of dollars, while the benefit would be negligible or academic.

Two examples highlight these concerns.

One is requiring data gathering about consumer loans similar to HMDA for mortgages. This would entail gathering massive amounts of data from millions of accounts. And for what purpose? Some banks have CRA programs that are not otherwise linked to their core consumer loan programs. One bank primarily finances a make of luxury cars. Another provides loans and deposits to customers that maintain brokerage accounts at an affiliate. The data from those banks would show very few loans to LMI people or in LMI areas in their core programs. Nevertheless, those banks may receive an outstanding CRA rating for their separate community development loan, investment and service programs. There can be no justification for requiring that kind of analysis of loans that are not otherwise relevant to any CRA evaluation.

The other example is requiring additional data gathering for depositors. Banks do not collect this information now unless, in perhaps some limited instances, the bank intends to characterize certain deposits as part of a CRA program. Again this raises the competition issue. Many depositors will resist providing personal information such as income, employment and other items not otherwise needed to open an account. Those people have other places they can open deposits, such as credit unions, money market funds and brokerages. If deposit accounts are not part of a CRA program, extensive data collection should not be mandated by the CRA rule.

Individual banks vary widely in the digital products and services they currently contract for. For example, many banks have found that merely upgrading the process for opening new deposit accounts can take months, and in some cases years, and represent a major new expense for the bank. The cost to add new functions to collect depositor income and other data could materially impact the operating costs of smaller banks especially. The seemingly inexorable growth in operations costs is one of the main reasons smaller banks are consolidating or seeking to be acquired across the nation. The impact is evident in the dramatic decline in total numbers of banks in the U.S. over the past several years. Regulators need to make this a key factor in all rulemaking to avoid ultimately having just a few large banks capable of making the large capital investments needed to stay in business.

Typical comments from our banks about the OCC rule emphasize the cost of compliance and are pertinent to added data collection obligations in this rule as well. Here are some of the comments we received:

"The economic impact of the proposed OCC CRA Modernization rule if implemented as presented is significant for a community bank our size. . . . Currently our bank has one FTE assigned for all CRA data collecting, reporting and monitoring; keep in mind that CRA is not the only function this employee is responsible for. The CRA officer's time is shared with other assigned responsibilities which splits time by 50 percent or greater. The new CRA proposed rule is not improving the existing program . . .

"We do not have a hard figure calculation for the cost of the implementation, our best estimate is the cost for CRA modernization to be implemented will cost the bank $100k plus annually in the following areas: 2 additional employees, systems – IT, reporting, monitoring, validating and training."

Other community banks sent these comments: "It seems that it's simply just an expense to the bank with no added benefit to the community we serve. We don't currently have the resources or programs that would be required to meet these new proposed changes." "What benefit does the bank or customer get from this expenditure? The bank gets no benefit and the customer will bear the burden with higher loan fees or lower interest on deposits."

The idea of adding data gathering costs that provide no benefit to LMI individuals or communities is a particular sore point because it is another example of costs loaded on banks that other financial services providers don't have to pay. Our members encourage regulators to carefully consider how these costs would affect a bank's ability to compete against non-banks offering similar products and services and how added expense erodes both a bank's ability to compete and the resources of its CRA programs.

Our members respectfully suggest that data gathering and reporting should be required only to the extent necessary to validate that a bank's products and services qualify for CRA purposes.

### *Qualifying Loans and Investments*

Our members also encourage a detailed review of what qualifies as a CRA loan or investment. We believe greater flexibility is needed and that a list that is illustrative but not exhaustive would be helpful. We also believe that the Board should be explicit in its regulations that a state member bank has the legal authority to make any investment that qualifies as a "qualified investment" under the Board's CRA regulations.[2] We also have specific concerns about the ANPR discussion and potential restrictions relating to the size of small businesses eligible for CRA credit.

*Economic Development.* Our members feel strongly that the Board should not eliminate any activities that currently count as "promoting economic development by financing small businesses," especially in light of the terrible damages suffered by hundreds of thousands of small businesses in our country and resulting loss of millions of jobs. In fact, our members believe that the Board should expand this category rather than eliminate credit for any activity that currently gets CRA credit as "promoting economic development by financing small businesses." Our members state that this prong of the definition of "community development" plays an important role in their CRA programs, especially for loans but also for investments. This prong requires an activity to meet a "size" test and also a "purpose" test, and our members have the following recommendations:

*The "size" test*: the current size for a small business is either (1) "the size eligibility standards of the SBA's SBDC or SBIC programs" or (2) "$1 million or less in annual gross revenues." The ANPR suggests that CRA should focus economic activities on *smaller* businesses and farms, and that for the size test another option would be to qualify economic development activity "using only a gross annual revenue threshold," which could end up severely restricting the number of small businesses a bank could finance and still receive CRA credit. Many currently eligible activities would no longer qualify, as the ANPR acknowledges, including a bank's loans to/investments in SBICs, which often lend to companies that have more than $1 million revenues but still meet the SBA's size standards. SBICs are an important of many bank's CRA programs and are often an efficient way (i.e., through an intermediary) for banks to engage in small business lending, investments, and job creation. The same issues arise with RBICs, which are an important conduit for funds to flow to rural communities, NMTC venture capital companies and NMTC-eligible CDEs, and many CDFIs (because not all of the small businesses they lend to are under $1 million in gross annual revenues).

Regarding **Question 57**, our members suggest that a better alternative would be for the Board to keep the current "size" test standards, and incent more loans to the *very* smallest businesses by expanding the list of activities that are "presumed to promote economic development" and thus do not have to document job creation (the list is in Interagency Q&A §___.12(g)(3) – 1) *by adding a category for small businesses with less than $[x]million in annual gross revenue.* Also, if the Board wants to reward and incent investments in the very smallest of businesses, it should absolutely keep the category of "financing intermediaries that lend to, invest in, or provide technical assistance to start-ups or recently formed small businesses or small

[2] Currently, state member banks can only make certain kinds of investments if they comply with Regulation H, the Board's Public Welfare ("PWI") regulation, but Regulation H is much more restrictive than the Board's CRA regulations. For example, CRA only requires that the "primary purpose" of an investment be community development, while Regulation H requires "solely," which is basically 100%. The Fed's current legal position is that an investment that does not meet the "solely" requirement must be approved by the full Board of Governors, which in some cases takes several years. From a policy perspective, if an investment is important enough for the Board to give CRA credit, then the it is also important enough for the Board to give state member banks explicit legal authority to make those CRA investments without the need for any prior approval.

farms," because those are most often the businesses that have little or no annual gross revenues.

One final comment is some skepticism about the validity of a size test in all circumstances. The whole point of CRA is to get vital financial services into LMI areas and to LMI people. Financing only small businesses may preclude support for larger businesses that can provide those products and services in situations where small businesses cannot or do not. Consider the example of inner-city Detroit. If a specialized loan program can incent a chain grocer to open a store in an area with no grocery stores it should qualify for CRA credit because it is helping promote economic development in a deeply impoverished and blighted area. We believe this should be considered in context and given credit if it significantly contributes to revitalizing such an area.

*Presumed activities.* Our members stress that It is critical for the Board to retain a list of the "presumed activities." The Board could make other expansions to the list of activities "presumed to promote economic development," such as investments in minority-owned or -led small businesses, and financing provided in conjunction with a federal, state, or local program (such as PPP), etc.

Turning to **Question 58** in the ANPR, our members believe that the Board should retain the current provision that "examiners will employ appropriate flexibility in reviewing any information provided by a financial institution that reasonably demonstrates that the 'purpose, mandate, or function of the activity meets the "purpose test." This is an important factor that many examiners don't understand. Banks could provide documents for the purpose test in the form of a list of each small business financed, the number or employees (and income breakdown, as appropriate), and other information pertaining to the "purpose" test (many banks typically gather this data on an annual basis). Several UBA member banks (including banks regulated by each of the three Agencies) have routinely been providing such documentation over a period of several years and have received CRA consideration for those investments. This practice could easily continue, perhaps with the Board providing a template for banks to use. The Board should also *continue* to emphasize (in either the regulation itself or interpretive guidance such as the Interagency Q&A) that examiners will employ flexibility to determine whether the information provided "reasonably demonstrates that the "purpose, mandate, or function of the activity meets the purpose test." More comprehensive examiner training on the "purpose" test might be helpful in that regard.

### ***Job Creation, Retention, and/or Improvement***

Our members appreciate the recognition of job creation, retention, and/or improvement in the ANPR. We believe job creation should be emphasized since no other single factor is likely to have more impact on LMI communities and people. Jobs create income, make it possible to support individuals and families, help stabilize communities, incent people to live in a responsible manner, and result in spending that supports local businesses. That in turn creates more jobs and stabilizes communities. We believe job creation, retention, and/or improvement should continue to be one of the primary goals of CRA and credit should be given to any program that can demonstrate job creation, retention, and/or improvement for LMI people, in LMI communities or areas designated for redevelopment or revitalization.

This is encouraged by all of our members, especially community banks, many of which utilize job creation as a criterion for qualifying a community development loan. Our member banks point to current programs they have to obtain borrower level data on the number of employees that qualify as LMI to attest to the important role that CRA programs play in the community. For some banks, that has been a core part of their CRA programs and examiners have given credit for such loans.

Typical comments include:

". . . economic development, i.e., showing job creation/job retention is important in qualifying a commercial loan for community development credit . . . the nature of these loans impacts in a positive way LMI individuals and an institution should receive CRA credit for them. It is important to show where the loan funds will be used. Generally, collateral will be located in an LMI census tract but you still need to show the potential financial impact on the community and what better way than show the number of jobs created and/or retained as a result of the loan."

A rural community bank sent this comment: "Currently the majority of our Community Development loans qualify under either . . . the job creation/job retention piece or because the current Q&A's state all SBA 504 loans qualified as Community Development loans."

Here is another comment from a community bank: "In my mind, one of the important reasons for having a CRA regulation . . . is to get bank funds out into the communities we/they serve so that it helps create and/or retain jobs for LMI people, regardless of the census tract. At our bank, we use a form that addresses how we handle job creation/job retention on new loans. Over the last three CRA examinations, the examiners have given our form great reviews as it shows value in how we qualify a business loan for CRA CD credit. We have the form signed by the borrower as an attestation that this loan will have this impact, i.e., jobs created or retained, as a result of this new loan. Our form identifies the total current jobs, the total number of current employees making under 80% AMI, the number of jobs to be created or retained as a result of this new loan and finally it addresses how many employees will be hired for jobs paying under 80% AMI for the census tracts where the funds are targeted. This form strikes to the core of community development loans, whether they be loans over $1,000,000 (current small business loan limit) or over $500,000 (current small farm loan limit). In fact, we collect employment information on all new commercial loans under these limits because we want to know the total impact that all of our loans have on the communities we serve regardless of census tract."

These comments show how job creation is a key part of CRA programs among most, if not all, community banks in Utah. All of these banks would have to terminate their current CRA programs and develop entirely new programs if job creation ceased to be a CRA criteria, as the OCC proposed. The benefits to LMI communities are clear and examiners have found these programs satisfactory or outstanding.

***Service hours***

Our members generally support the proposals in the ANPR to primarily value service hours on a qualitative basis. Service projects vary too much in impact and benefit to be fairly quantified in a standardized way. Our members also believe that quantifying service hours, as the OCC proposed, would effectively eliminate the value of service hours in the broader CRA context. The numbers are just not comparable to the size of loans and investments despite the value those services may bring to an LMI community. To get meaningful numbers based on quantifying the hourly value of service programs compared to loan and investment programs would require a scale of programs no bank could feasibly achieve.

### *Strategic plans*

The UBA strongly supports the preservation of the strategic plan option as a method of evaluation of CRA performance for banks. The UBA represents a significant number of banks currently operating under a strategic plan, or desiring to do so, due to their business strategies and/or size.

Our members agree that this method of evaluation, like many other elements of the CRA, needs to be updated to provide more flexibility and clarity**.** What was once introduced to provide flexibility for banks and to tailor plans to achieve CRA objectives has become inflexible and turned into a method often to standardize and use the same measurements of the small bank, ISB or large bank tests with predetermined goals.[3]

Our members recommend that the agencies consider these four areas in connection with the proposed rule covering strategic plans:

1. Simplify the provisions regarding "measurable" goals in CRA strategic plan, and allow the regulator to review and comment on proposed goals before formal submission of the plan;
2. Improve the 60-calendar day timeframe for strategic plan review and approval by regulatory agencies;
3. Improve guidance regarding minor vs. major amendments to the strategic plan during the term of the plan; and,
4. Implement an escalation and ombudsperson process for banks operating under the strategic plan process

A review of strategic plans approved by all three agencies over the last several years reveals that some agencies are standardizing the strategic plan option for banks, others have different interpretations of the CRA-qualified lending definition, and in some instances, the regulators have exercised overarching control in the establishment of goals by bank.

It would help to address the inconsistent treatment and speed of review and approval across agencies. Waiting more than 60 days to hear back from an agency on a strategic plan approval, and various cycle time delays from initial start to final approval, causes undue burden on our banks, and delays the community from benefiting from the good work of the financial institution as well. We recommend the agencies implement a maximum length of time for review and final approval**.** We would expect the agencies be prompt. With these new rules it will be critically important for some banks to operate with a strategic plan, and the timely review,

[3] FDIC Consumer Compliance Examination Manual, September 2015, CRA, Institutions with Strategic Plan. "A strategic plan enables the institution to tailor its CRA goals and objectives to address the needs of its community consistent with its business strategy, operational focus, and capacity and constraints" and "Generally, the plan should emphasize lending and lending-related activity. Nonetheless, a different emphasis may still be appropriate, provided that this emphasis is clearly explained and substantiated based on the characteristics and needs of the assessment area and the institution's financial capacity, product offerings and business focus."

collaboration and approval of a plan is imperative. Banks are busy executing their current plans and making best efforts to plan for the next plan period. Gaps in end dates from one plan to commencement of the next plan should be avoided at all costs.

Our members also recommend developing a policy that would allow the regulators to review and comment on a strategic plan before it is submitted in final form. That would avoid many issues and problems when a bank is unaware of regulators' concerns with a plan the bank believes is adequate.

Banks need clarity from regulators regarding interim plan modifications for approved plans. Occasionally after implementation of a plan, measurable goals may need to be adjusted based on economic conditions, changes in business strategy or market conditions. The current regulations provide for a plan amendment but due to the limited number of plans filed and almost near-zero amendments filed in the past, banks need better guidance on how to make minor adjustments potentially needing only regulator approval vs. major adjustments that may require undergoing the public comment process a second time.

We feel it's appropriate to develop an escalation and ombudsperson process for banks to utilize for strategic plans that are unnecessarily delayed or subjectively rejected. For example, agencies that raise an institution's goals simply because they feel the bank needs to "do more" than the prior year's goal, and is not considering the performance context, should not have the final word.

Some members also expressed concerns with what regulators expect when comments are submitted by third parties on a strategic plan. We recognize the importance of community engagement and recognition of the benefits CRA programs provide. Some commenters have legitimate concerns or suggestions and make good points. Our members look forward to discussing possible changes with those parties. Other commenters are serial objectors who have no connection to the communities being served and in some cases seek to derive an unrelated benefit regardless of the fairness and legitimacy of what they demand. This could be addressed in part by developing a process to review nonmaterial amendments to a strategic plan without requiring public comment. Whatever process is established should address these concerns and limit abuse.

We believe the strategic plan option is a critically important evaluation method for many banks with a nontraditional business model. It provides a bank with the opportunity to tailor its CRA objectives to the needs of the community and to its own capacities, business strategies, and expertise. The UBA member banks welcome further collaboration with the regulatory agencies on how this option can not only be preserved in the new rules, but enhanced to allow our nontraditional and very small banks to thrive in their efforts to improve the lives of those in our communities that need our help the most.

In conclusion, we again appreciate the opportunity to comment on these proposed amendments to the CRA implementing regulation and hope you find our recommendations and analysis helpful.

Very truly yours,

Howard Headlee
President & CEO