



February 16, 2021

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

Via Electronic Submission at regs.comments@federalreserve.gov

**Re: Community Reinvestment Act — Advanced Notice of Proposed Rulemaking
[Docket No. R-1723 and RIN 7100-AF94]**

Ms. Misback:

Discover Bank (“Discover”) appreciates the opportunity to provide feedback on the Advanced Notice of Proposed Rulemaking (“ANPR”)¹ regarding changes to the Community Reinvestment Act (“CRA”)² issued by the Board of Governors of the Federal Reserve System (“Board”). Discover is committed to carrying out the objectives of the CRA and recognizes the meaningful impacts CRA activities and contributions can have on communities. Through our dedication to community reinvestment, we have received multiple “Outstanding” ratings for our CRA performance covering over a decade of activity.

Although the Board does not serve as Discover’s primary federal regulator,³ we are compelled to comment to offer our insights on the importance of maintaining the Strategic Plan option⁴ in its current form, which allows banks to have a meaningful impact on the communities they serve. We also would like to address the Board’s questions regarding Assessment Areas and provide our unique perspective on certain other aspects of the ANPR, drawing from our experiences over the years in CRA examinations as a Limited Purpose Bank, a Large Institution, and under our Strategic Plan. Additional feedback is contained in the Appendix, which includes the comment letter we submitted to the Federal Deposit Insurance Corporation (“FDIC”) and Office of the Comptroller of the Currency (“OCC”) in response to their January 2020 CRA Notice of Proposed Rulemaking (“Proposal”)⁵ as well as a comment letter submitted in response to this ANPR by digitally-based depository institutions that are not tied to traditional branch networks. Also, at a fundamental level, we agree with and emphasize comments that have been provided

¹ See Board of Governors of the Federal Reserve System Community Reinvestment Act Regulations, 85 Fed. Reg. 66410 (Oct. 19, 2020) (Advanced Notice of Proposed Rulemaking).

² 12 U.S.C. § 2901, *et seq.*

³ Discover is a Delaware chartered non-member bank and as such, we are subject to supervision by the Federal Deposit Insurance Corporation.

⁴ See 12 CFR § 228.27.

⁵ See Community Reinvestment Act Regulations, 85 Fed. Reg. 1204 (Jan. 9, 2020) (Proposed Rule).



separately by trade associations, such as the American Bankers Association, Consumer Bankers Association, and Bank Policy Institute, to preserve and strengthen the current Strategic Plan evaluation option. Throughout our comments, we ask the Board to:

1. Preserve the Strategic Plan option, allowing banks to work with the community in identifying measurable goals and to define Assessment Areas (“AAs”) in a manner that delivers utmost benefit to the community and promotes regulatory and public engagement;
2. Refrain from requiring banks to designate deposit-based or lending-based AAs, and instead focus AA reform efforts on better aligning the facility-based AA framework with modern banking products and practices; and
3. Create a regulatory process that allows a bank to request and receive a timely pre-approval as to CRA credit eligibility and that identifies activities eligible for CRA credit.

We also encourage the Board to coordinate with the FDIC and OCC (collectively, the “federal banking agencies”) in any future CRA rulemaking or guidance. Consistency among the CRA frameworks promulgated by the federal banking agencies benefits not only the institutions subject to the CRA but also the communities we each serve.

Discover is Committed to our Communities and the Spirit of the CRA

Discover is one of the leading direct banks in the United States and, as such, offers a unique perspective on the CRA regulatory framework. As a direct bank, Discover provides financial services to consumers nationwide primarily through the internet, mail, and telephone. We also operate a main office in a predominately rural community in Delaware; this location is our only consumer-facing facility. Our financial services are predominantly offered to consumers and include credit cards, personal loans, student loans, home equity loans, and deposit accounts. At Discover, we believe financial institutions have an obligation to help make their communities better. With this strong community-focused foundation, Discover places a high priority on community engagement, corporate giving, community development, and of course, our CRA activities. Discover has maintained our “Outstanding” rating for CRA performance since 2007 and has done so under a Strategic Plan since 2013.

I. The current Strategic Plan framework provides superior community benefit, while promoting regulatory and public engagement

Adopting a Strategic Plan has enabled Discover, and other institutions, to achieve the important objectives of the CRA and to have an enormous positive, direct impact in the communities we serve. The Strategic Plan option also provides more objectivity and certainty in examinations, facilitates the timeliness of Performance Evaluations (“PEs”), and most importantly, provides an efficient and effective means for compliance by recognizing the challenges faced by

various banks, each with a unique business model. The benefits afforded to institutions and communities alike under the existing framework include but are not limited to:

- **Objectivity:** Strategic Plans in their current form provide for objective CRA evaluation using metrics tailored to banks' unique business models, size and capabilities, past performance, and needs of the communities served. We appreciate the Board's inquiry about potential metrics-based approaches to evaluating Strategic Plan performance. However, the necessary objectivity and quantifiable metrics are developed in collaboration with our regulators and the community as we work together under the current framework to develop our Strategic Plan's measurable goals.
- **Certainty:** Strategic Plans facilitate certainty by affording banks an opportunity to explicitly identify the geographical areas to be served and the community needs to be addressed, with input from community leaders and the appropriate federal banking agency. The certainty already provided by the Strategic Plan framework could be enhanced, however, by the federal banking agencies' development of an illustrative list of activities eligible for CRA credit as well as a pre-approval process for new initiatives, as discussed in Section II.A below.
- **Timeliness:** Prior to examinations, Strategic Plan banks and their respective regulators agree on goals against which CRA performance should be measured, which in our case has ensured timely PEs. This is not always the case across the industry. Receiving PEs in a timely manner is critical to make any necessary changes to CRA activities early in the next examination cycle and better meet the needs of the communities served. With the Strategic Plan process, input received from the public and from the federal banking agencies can be considered by banks in a manner that streamlines future Strategic Plan development and filing.
- **Unique business models:** Each Strategic Plan is agreed to between the individual bank and its primary federal regulator, which means that each plan will appropriately account for differences in business models, geographies, and most importantly, community needs through public comment and engagement on important components of Strategic Plan development.
- **Public input in development:** Each Strategic Plan is developed with input from the communities served and, as required by the applicable regulations and to the benefit of all involved, subject to a public comment period.

Regarding the Board's specific inquiries in the ANPR with respect to the Strategic Plan framework, we would like to provide the following comments:

A. Updating the public input process for Strategic Plans

We appreciate the Board's focus on updating the public input process for Strategic Plans through the option of making banks publish their Strategic Plans on the public-facing website of the Board or bank. While this may result in Strategic Plan proposals reaching a broader audience, we caution that it might not be as effective in ensuring that the targeted local population we currently reach through newspaper publication is effectively notified. Eliminating the newspaper publication requirement may disenfranchise low- and moderate-income ("LMI"), rural, and other areas without ready access to broadband services, including the rural communities within our AA. We encourage the Board to make consideration of these communities a priority when developing changes to the mechanisms for public input as the Board progresses through the rulemaking process.

The Board also solicited feedback on whether it should codify existing guidance in the Interagency Q&As stating that banks are not required to enter into community benefit agreements as a condition of developing a Strategic Plan.⁶ We believe communications between a bank and members of its local community provide a valuable method for the institution to assess how best to address the credit needs of the community. In fact, if developed with the appropriate degree of community engagement, a Strategic Plan itself could be representative of the same substance that might be found in a community benefit agreement. However, we value the Board's consideration of codifying this aspect of the Interagency Q&As, which would help to clarify that the agencies are the final arbiters of banks' CRA performance. The ultimate goal of a Strategic Plan bank's CRA activity is to prioritize the unique and local needs of the communities they serve in a manner that is consistent with safe and sound operations, and the Board can help the bank reach that goal by ensuring that separate, private agreements on CRA performance do not bind the institution to any particular course of conduct.

B. Increased flexibility on AAs and evaluation method for Strategic Plans

Business models (including products and services offered) vary among banks, and each individual community is unique. With this in mind, we appreciate the Board's consideration of certain updates that would strengthen the Strategic Plan framework, but caution against any measures that would diminish the flexibility necessary for reaching Strategic Plan goals and objectives. The existing CRA framework allows banks to work with communities and regulators to identify and respond to the needs of the community, and the Board should preserve this feature in any future rulemaking by declining to impose rigid metrics across different institutions with different business models and with unique community needs to serve. Using metrics to evaluate Strategic Plan performance in AAs, regardless of the degree of flexibility afforded to banks in defining their AAs, would be a disservice to the goals of CRA and would undermine the good work currently being done in communities. Our concern is that strict, mandatory metrics would shift the focus of Strategic Plan banks from creating and implementing innovative and meaningful projects in the community, to searches for less meaningful investments that fulfill the uniform metrics. The ANPR suggests that the use of metrics to evaluate a bank's performance in its AAs could be offered as an option to banks operating under a Strategic Plan rather than being imposed

⁶ See Interagency Q&A § __.29(b)-(2).



as a requirement. We find great utility in executing our CRA strategy in pursuit of meeting and exceeding measurable goals proposed to the community and approved by our respective federal banking agency, and we recommend that the Board refrain from eliminating the concept of pre-determined measurable goals as an evaluation mechanism from any future Strategic Plan framework.

Through our Strategic Plan, we have established innovative programs that have had considerable impact on the communities we serve. We are concerned that instituting strict metrics would disincentivize these types of innovative approaches. For example, we took a leadership role in developing the low-income Stepping Stones Community Federal Credit Union by assisting its nonprofit sponsor organization craft the credit union's business plan and obtain its charter. We also helped in launching the Bank on Wheels program to enable Stepping Stones to open deposit accounts in community settings and immediately provide consumers with ATM cards to demonstrate the commitment of the organization and immediacy of opportunity to the program participant. Associated with that program is the "Don't Pay to Get Paid" initiative that enables consumers who live, work, worship, or study in Wilmington, Delaware to obtain a federally insured deposit account and conduct ATM transactions at no cost. Additionally, Discover developed a loan product in partnership with a Community Development Financial Institution ("CDFI") to finance immigration legal services for legal resident aliens to pursue citizenship. Through an additional investment in the same CDFI, Discover is also helping formerly incarcerated citizens get back on their feet with a micro reentry loan (\$25 to \$250) to buy basic necessities such as work boots, a bicycle for transportation, and reinstatement fees for their drivers' licenses. It is questionable whether Discover would have the capacity to engage deeply with the LMI community to identify and collaboratively develop innovative solutions if cookie cutter, generic metrics were in place instead of the ability under the Strategic Plan, to partner with local entities to develop and serve unique needs in our communities.

The ANPR also discusses potential changes to the AA delineation framework, both in the context of Strategic Plan evaluations and other CRA examinations. We strongly oppose the imposition of deposit-based or lending-based AAs, as any such framework would have the potential to "water down" localized CRA investments and force banks to make investments in locations where they lack familiarity or experience, which may give rise to safety and soundness concerns and limit innovation. Requiring banks to adopt deposit- or lending-based AAs would create issues similar to those discussed above regarding mandatory, rigid metrics: Banks are likely to shift from engaging in meaningful community involvement to instead take on "check the box" type investments.

The facility-based AA framework, on the other hand, allows Discover and banks across the country to become pillars of our respective communities and ensures the community where we have put down roots through our main office continues to receive the support and attention it needs and deserves. In the spirit of modernization, however, the Board has an opportunity to bring the facility-based AA framework up to date by removing deposit-taking ATMs from the types of physical locations banks must take into account when setting their facility-based AAs. By updating this aspect of the facility-based AA framework, the Board would be recognizing the ever-evolving nature of deposit taking activities—with the rise of peer-to-peer payments and remote deposit

capture, for example, the relevance of deposit-taking ATMs to a bank's physical footprint is on the decline.

If, in the interest of flexibility, the Board ultimately adopts a framework for AA delineation that differs from what exists today, we encourage the Board to refrain from making deposit- or lending-based AAs *mandatory* and instead give an institution the *option* to adopt more expansive AAs should the bank have the capacity and resources necessary to take on CRA activities in a broader geography based on its specific business model.

C. Flexibility in setting plan goals

The Board is to be commended for considering whether to revise its Strategic Plan provision to codify the flexibility in setting Strategic Plan goals that it has allowed in practice over the years. Similar to our positions on AAs and evaluations, we are supportive of attempts by the federal banking agencies to ensure their respective Strategic Plan provisions provide banks with the flexibility and optionality necessary to meet the specific and unique needs of the communities we serve. By officially permitting a bank to craft Strategic Plan goals that place emphasis on categories of activities that are most responsive to the particular characteristics and credit needs of the bank's AA(s), the Board's framework would be aligned with the purpose and intent of the CRA: Directing banks to demonstrate they are meeting the convenience and needs of the communities they serve.

D. Options for streamlining the Strategic Plan approval process: Development of an electronic template

We appreciate the Board asking for input on streamlining the Strategic Plan process to garner additional participation from banks. We welcome the participation by banks of all sizes and business models, as we believe the Strategic Plan can be a helpful tool in serving communities by expanding eligibility and coordination. While the creation of an online template seems like a helpful update, we are aware of concerns from other institutions that inflexible forms could have the unintended consequence of discouraging engagement if the form does not fit the bank's plan or the community's needs. In a future rulemaking or guidance, we encourage the Board to work closely with banks to gain full understanding of the potential benefits and drawbacks of developing an electronic template. We also caution against requiring banks to strictly adhere to any such template in developing a Strategic Plan and instead suggest the Board introduce the template as a guide, available for use a bank's option.

II. Banks and communities would benefit from additional certainty about eligible activities

We appreciate the willingness of each of the federal banking agencies to review and provide guidance on CRA-eligible activity as the banking environment evolves.⁷ In the rapidly changing banking environment and with the creation of new opportunities to meet the credit and

⁷ For example, in 2016, the agencies issued joint amendments to the Interagency Q&As addressing alternative systems for delivering retail banking systems. 81 Fed. Reg. 48506 (July 25, 2016).

community development needs of communities, it is often unclear whether a potential investment, loan, or service will be eligible for CRA credit. More transparency, clarity, and certainty on the types of activities eligible for CRA credit would help to reduce the compliance burden on banks and, instead, allow banks to focus on meeting community needs. Additionally, while examiners have been helpful in assessing an activity's CRA eligibility, clearer public and formal guidance would further promote transparency and consistency.

A. Create an example list of eligible activities, and establish a pre-approval process

Through our Strategic Plan, we have supported many impactful and innovative programs, some of which we outlined above. As we strive to stay ahead as an industry leader while also delivering maximum benefits to the community through our CRA activities, we would be supportive of the development of a regulatory process that promotes transparency and certainty as to whether existing and proposed activities would qualify for CRA credit. In our experience, quick feedback from the FDIC has been instrumental in executing community development investments. For example, Discover asked for and received feedback related to a state historic tax credit investment in a state-identified economic development district. The quick response from the FDIC was critical to ensure that we were able to commit to the investment in time for the developer to obtain the bridge financing necessary to begin the project. The tax credits accounted for a significant portion of the total development cost and the inability to secure bridge financing while waiting for a firm purchase commitment for the tax credits would have significantly impacted the developer's ability to proceed. Accordingly, under any future rulemaking, we ask the Board to promote an open dialogue and timely feedback between the regulator and the bank to better understand what activities qualify for CRA credit.

To that end, Discover supports the ANPR's discussion of publication by the Board of an illustrative list of qualifying activities as well as the potential development of a formal option for stakeholders to receive feedback in advance on CRA credit eligibility for specific activities, investments, or projects. By encouraging banks to request feedback or opinions on whether specific unique activities qualify for CRA credit in advance of making an investment or establishing a new service, banks would be better positioned to support the communities they serve. If established, a process like this would provide much needed transparency, clarity, and certainty when making often-sizable community development loans and investments.

Benefits similar to those discussed above would arise should the Board ultimately decide to publish and update a list of qualifying activities. In publishing any such list, we encourage the Board to clearly state that the list is not intended to be exhaustive and to provide updates to the list on a regular basis (no less than annually), reflecting the types of activities that received preapproval during the formal process during the prior period. The list should be developed in coordination with the other federal banking agencies, ideally as a jointly issued publication, like the Interagency Q&As. By publishing an illustrative, non-exhaustive list in parallel with adopting a regulatory process for pre-approval that would incentivize creative initiatives, it is less likely that the list itself would dissuade institutions from undertaking innovative activities solely because of their absence from the list.

The Board should work closely with the other federal banking agencies in developing a list of eligible activities and in designing and executing a plan for a pre-approval process. As noted above, consistency among CRA frameworks is of paramount importance, and the agencies should strive to be similarly aligned on any related guidance, processes, and procedures.

i. Clarity on eligibility for specific types of investments would be beneficial.

In any future efforts to develop an illustrative list and an effective pre-approval process, we recommend the Board, in coordination with the other federal banking agencies, provide clarity regarding the CRA credit eligibility for the following types of investments and activities:

- ***Financial education and literacy.*** We recommend that the federal banking agencies clarify that all financial education and financial literacy programs are CRA eligible regardless of whether provided in the context of school savings programs or offered exclusively to LMI. Currently, the Interagency Q&As provide only that “developing or teaching financial education or literacy curricula for [LMI] individuals” as an example of a community development service. We believe financial education and financial literacy programs offered to other community-based groups, which includes but is not limited to LMI individuals, serve a community development purpose.
- ***Schools that serve LMI children and families.*** We recommend that the federal banking agencies revise the standard under which community development services and other activities provided to students or their families qualify as community development services targeted to LMI individuals. Currently, activities can qualify as community development services if provided to students or families “from a school at which the majority of students qualify for free or reduced-price meals under the U.S. Department of Agriculture’s National School Lunch Program.”⁸ Due to changing requirements for demonstrating eligibility for the National School Lunch Program, certain schools that primarily serve LMI children or that are in LMI areas may not appear to be LMI using the existing standard. The federal banking agencies, for example, could use 40% of low-income students as a measure of CRA eligibility, which would be consistent with the universal meal service option (the Community Eligibility Provision) of the National School Lunch Program and Title I, Part A (Title I) of the Elementary and Secondary Education Act and amended by the Every Student Succeeds Act.⁹

⁸ Interagency Q&A §__12(g)(2)—1.

⁹ This funding is provided for under Title I of the Elementary and Secondary Education Act of 1965, as amended. Title I funding is given to schools where at least 35% of the children in the school attendance area come from low-income families or to schools where 35% of the student population is low-income. To determine the percentage of low-income families, school districts may select a poverty measure from among the following data sources: (1) the number of children ages 5–17 in poverty counted in the most recent census; (2) the number of children eligible for free and reduced price lunches under the National School Lunch Program; (3) the number of children in families receiving Temporary Assistance for Needy Families; (4) the number of children eligible to receive Medicaid assistance; or (5) a composite of these data sources. The district must use the same measure to rank all its school attendance areas.

- **Disaster relief.** During our last exam period, Discover's affordable housing investment fund assisted with the development of 84 new affordable apartment housing units in Puerto Rico as it was recovering from Hurricane Maria. We believe this type of investment is critical to rebuild communities after pandemics, natural disasters, and other hardships, and we hope the federal banking agencies will support these activities in future CRA rulemakings and associated guidance.

Moreover, due to the COVID-19 crisis, the need for disaster relief has skyrocketed. We greatly appreciated the federal banking agencies' "Joint Statement on CRA Consideration for Activities in Response to the COVID-19" and we encourage additional measures to promote community investments. We recommend that the federal banking agencies provide clarity that disaster relief activity in federally-designated disaster areas is CRA-eligible even if it occurs outside of a bank's AA or broader statewide or regional area. Today, while banks can receive credit for disaster relief activity for designated disaster areas within their AAs, eligibility for relief outside of AAs varies and largely depends on agency guidance and rulings published after the fact.¹⁰ This is especially problematic during the ongoing COVID-19 crisis where the disaster area is not localized, as in the case of a hurricane, but instead spans the entire country.

Conclusion

Based on our CRA experience, Discover supports preserving the ability of banks to demonstrate CRA compliance by entering into a Strategic Plan in cooperation with their communities and their regulators. Discover has successfully addressed community needs and has demonstrated "Outstanding" CRA performance since 2013 through a Strategic Plan. We do not believe that a substantial overhaul of the CRA regulatory framework is needed. Rather, we support a modernization of the CRA regulatory framework through the targeted revisions discussed above.

We appreciate the chance to comment on the ANPR and welcome the opportunity to work with the Board and the other federal banking agencies in their respective and collective CRA modernization efforts. If you have any questions or would like to further discuss our comments, please contact me at jamesroszkowski@discover.com.

Sincerely,



James Roszkowski
President

¹⁰ See, e.g., Interagency Statement on CRA Consideration for Community Development Activities in the U.S. Virgin Islands and Puerto Rico Following Hurricane Maria (Jan. 25, 2018).



April 8, 2020

Via Electronic Submission

Robert E. Feldman
Executive Secretary
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Re: Community Reinvestment Act Joint Notice of Proposed Rulemaking [Docket No. OCC-2018-0008; FDIC RIN 3064-AF22]

Ladies and Gentlemen:

Discover Bank (“Discover”) appreciates the opportunity to provide feedback on the Notice of Proposed Rulemaking (“Proposal”)¹ regarding changes to the Community Reinvestment Act (“CRA”)² issued by the Office of the Comptroller of the Currency (“OCC”) and the Federal Deposit Insurance Corporation (“FDIC”) (collectively “the Agencies”). Discover is committed to not only carrying out the objectives of the CRA through achieving an Outstanding Rating, but more importantly, to the spirit of the CRA and the meaningful impacts CRA contributions can have on communities. Through our dedication to community reinvestment, we have received multiple “Outstanding” ratings for our CRA performance covering over a decade of activity.

We welcome the Agencies’ efforts to seek positive ways to improve upon the CRA framework. We also believe that several of the Agencies’ objectives are achieved through the current CRA framework, and specifically, the Strategic Plan option. Our institution has developed a CRA program that includes many of the elements of the Proposal, by means of our community and regulator supported Strategic Plan. The Strategic Plan and its process for approval has made complying with the regulatory framework more objective, transparent, consistent, and easy to understand. The current CRA regulatory framework that includes the Strategic Plan option has been effective in fulfilling the objectives and spirit of CRA and has promoted successful bank investment in the communities they serve. While we appreciate the focus on modernization, targeted revisions, instead of a complete overhaul of the CRA

¹ See Community Reinvestment Act Regulations, 85 Fed. Reg. 1204 (Jan 9, 2020) (Proposed Rule).

² 12 U.S.C. § 2901.



regulatory framework, could more effectively advance the spirit of the CRA. Specifically, we ask the agencies to:

- I. Preserve the Strategic Plan option in its current form, allowing banks to work with the community to identify bank specific goals and Assessment Areas (“AAs”) in order to maintain the utmost community benefit, and promote regulatory and public engagement;
- II. Create a regulatory process that allows for a bank to request and receive a timely CRA preapproval and clarify that certain activities qualify for CRA credit;
- III. Promote consumer benefits and enhanced banking availability by fostering more deposit opportunities; and
- IV. Preserve the existing performance context concept in the development of the Strategic Plan option in its current form.

Should the final rule not provide for the creation of a local and impactful Strategic Plan option with bank specific goals and objectives based upon community input, the following changes to the Proposal seek to mitigate any negative consequences to communities:

- I. Clarify how the Agencies will assign one overall rating that is clear and transparent;
- II. Explain income calculations for credit card and student lending;
- III. Eliminate the “Deposit Based” AA metric;
- IV. Support innovative CRA approaches and reassess the Proposal’s diminished incentive for CRA donations and service activities;
- V. Minimize the proposed onerous recordkeeping requirements; and
- VI. Allow for multiplied CRA credit for investing in State Housing Finance Agency first time homebuyer mortgage programs and Small Business Administration (“SBA”) guaranteed small business lending.

Discover is Committed to our Communities and the Spirit of the CRA.

At Discover, we believe that companies have a responsibility not only to build their businesses, but also have an obligation to help make their communities better. With this strong community-focused foundation, Discover places a high priority on community engagement, corporate giving, community development, and of course, our CRA activities. Discover has maintained “Outstanding” for CRA performance since 2007 and has done so under a Strategic Plan since 2013.

Discover is one of the leading direct banks in the United States and, as such, is able to offer a unique perspective on the CRA regulatory framework. As a direct bank, Discover provides financial services to consumers nationwide primarily through the internet, mail, and telephone. Our financial services are predominantly offered to consumers and include credit cards, personal loans, student loans, home equity loans, and deposit accounts. Although we have over \$100 billion in assets, Discover maintains only one branch office in Greenwood, Delaware, a predominantly rural region of the state. Over the years, Discover has been evaluated for CRA compliance as a Limited Purpose Bank, a Large Institution, and under a Strategic Plan, and therefore offers a unique perspective on many aspects of the current CRA regulatory framework.



I. Preserve the Strategic Plan option in its current form, allowing banks to work with the community to identify bank specific goals and statewide or regional based AAs in order to maintain the utmost community benefit to the communities we serve, and promote regulatory and public engagement.

Discover has utilized the Strategic Plan option since 2013 and, by working with our regulators and communities, we have been able to make robust financial impacts in the communities we serve. Adopting a Strategic Plan has enabled us, and other institutions, to achieve the important objectives of CRA by providing more objectivity and certainty in examinations, facilitating the timeliness of receiving our Performance Evaluations (“PEs”), and effectively meeting the credit needs of communities. Strategic Plans accomplish these objectives, while also accounting for different business models.

- i. **Objectivity:** Strategic Plans in their current form provide for objective CRA evaluation through the use of metrics tailored to banks’ unique business models and communities served. The Proposal includes new metric-based approaches and AAs, which seemingly seek to obtain the same objectivity and certainty we already possess. However, the various tests and AAs are not tailored to banks’ unique business models and could potentially create confusion and disinvestment, instead of achieving the stated goal of clarity, about how one overall rating would be achieved. In addition, depending upon how the final rule is applied, there is a material probability of disinvestment in certain activities and ultimately lesser impact in communities.
- ii. **Certainty:** By consulting with the FDIC before we make investments, we receive more certainty regarding the investments that will receive credit. Strategic Plans facilitate certainty by affording banks an opportunity to explicitly identify the geographical areas to be served and activities to receive credit, with the input from the examining agency.
- iii. **Timeliness:** Since we have agreed on metrics for evaluating CRA performance prior to examinations, our PEs have been timely, which is not always the case across the industry. Receiving PEs in a timely manner is critical to make any necessary changes to CRA activities early in the next exam cycle and better meet the needs of the communities.
- iv. **Unique business models:** Each plan is agreed to between the bank and the examining regulator, which means that each plan will appropriately account for different business models, geographies, and most importantly, community needs.

Moreover, the Strategic Plan is developed with input from the communities and is open for public comment. This feedback has helped us to shape our strategy and has enabled us to better assist the unique needs of the communities we serve. Since many of the goals sought by the Proposal, such as clarity and transparency, are already well served by the current Strategic Plan process, we ask the Agencies to maintain the Strategic Plan in its current form.



II. Create a regulatory process that allows for a bank to request and receive a timely CRA preapproval and clarify that certain activities qualify for CRA credit.

We appreciate the Agencies' continued willingness to review and provide guidance on CRA-eligible activity as the banking environment evolves.³ More transparency, clarity, and certainty on the types of activities eligible for CRA credit would help to reduce the compliance burden on banks and, instead, allow banks to focus on meeting community needs. In the rapidly changing banking environment and with the creation of new opportunities to meet the credit and community development needs of communities, it is often unclear whether a potential investment, loan, or service will be eligible for CRA credit. Additionally, while examiners have been helpful in assessing an activity's CRA eligibility, clearer public and formal guidance would further promote transparency and consistency.

Through our Strategic Plan, we have established innovative programs that have had considerable impacts on the communities we serve. For example, we took a leadership role in developing the low-income Stepping Stones Community Federal Credit Union and launched the Bank on Wheels program to enable the credit union to open deposit accounts in community settings and immediately provide to consumers their ATM card to access their money. Associated with that program is the "Don't Pay to Get Paid" initiative that enables consumers who live, work, worship, or study in Wilmington, DE to obtain a federally insured deposit account and conduct ATM transactions without a cost. Additionally, Discover developed a loan product in partnership with a Community Development Financial Institution ("CDFI") to finance immigration legal services for legal residents to pursue citizenship. Through an additional investment in the same CDFI, Discover is also helping formerly incarcerated citizens get back on their feet with a micro reentry loan (\$25 to \$250) to buy basic necessities such as work boots, a bicycle for transportation, and reinstatement fees for their drivers' licenses.

To advance similar impactful programs, Discover supports the section of the Proposal that would encourage banks to request feedback and/or opinions on whether specific unique activities qualify for CRA credit in advance of making an investment or establishing a new service. If established, this new process would provide much needed transparency, clarity, and certainty when making often-sizable community development loans and investments. Additionally, we support the Proposal's approach to publishing and updating a list of qualifying activities, and agree that doing so would provide additional transparency and guidance.

a. We support the Agencies' illustrative list proposal, but with an expedited timeframe.

We applaud the Agencies for proposing the illustrative list of activities that count for CRA credit. This is especially helpful for institutions considering innovative CRA activities, and can serve to promote clarity and consistency for all institutions. However, we ask the Agencies to shorten the time for an agency to determine if the activity qualifies. The proposed six months for agency determination is much too long to successfully execute deals and investments in

³ For example, in 2016, the agencies issued joint amendments to the Interagency Q&As addressing alternative systems for delivering retail banking systems. 81 FR 48506 (July 25, 2016).



practice. From a practical deal perspective, a more realistic timeframe for approval would be 60 days. By waiting six months, a bank would be forced to forgo uncertain investments as the bank could not potentially meet their goals for a given year. This long timeframe and potential relinquishing of investments seems juxtaposed to the Agencies' intention of encouraging new and innovative types of investments.

In our experience, quick feedback from the FDIC has been instrumental in executing community development investments. For example, Discover asked for and received feedback related to a state historic tax credit investment in a state-identified economic development district. The quick response from the FDIC was critical to ensure that we were able to commit to the investment in time for the developer to obtain the bridge financing necessary to begin the project. The tax credits accounted for a significant portion of the total development cost and the inability to secure bridge financing while waiting for a firm purchase commitment for the tax credits would have significantly impacted the developer's ability to proceed. Accordingly, under any final rule, we ask the Agencies to promote an open dialogue and timely feedback between the regulator and the bank to better understand what activities qualify for CRA credit.

b. We ask the Agencies to provide clarity on specific types of investments.

Additionally, we recommend providing clarity regarding the CRA eligibility for the following types of investments:

- ***Financial education and literacy.*** We recommend that the Agencies clarify that all financial education and financial literacy programs are CRA eligible regardless of whether provided in the context of school savings programs or offered exclusively to low- and moderate-income individuals ("LMI"). Currently, the Interagency Q&As provide only that "developing or teaching financial education or literacy curricula for [LMI] individuals" as an example of a community development service.⁴ We believe financial education and financial literacy programs offered to other community-based groups, which includes but is not limited to LMI individuals, serve a community development purpose.
- ***Schools that serve LMI children and families.*** We recommend that the Agencies revise the standard for when community development services and other activities provided to students or their families qualify as community development services targeted to LMI individuals. Currently, services would qualify as community development services if the students or families are "from a school at which the majority of students qualify for free⁵ or reduced-price meals under the U.S. Department of Agriculture's National School Lunch Program."⁶ Due to changing requirements for demonstrating eligibility for the National School Lunch Program, certain schools that primarily serve LMI children or that are located in LMI areas may not appear to be LMI using the existing standard. The Agencies, for example, could use 40% of low-income students as a measure of CRA

⁴ Interagency Q&A § __.12(i)—3.

⁵ Financial Institution Letter "Joint Statement on CRA Consideration for Activities in Response to the COVID-19" FIL-19-2020.

⁶ Interagency Q&A § __.12(g)(2)—1.

eligibility which is consistent with the universal meal service option (the Community Eligibility Provision) of the National School Lunch Program and Title I, Part A (Title I) of the Elementary and Secondary Education Act and amended by the Every Student Succeeds Act.⁷

- ***Disaster relief.*** During our last exam period, Discover’s affordable housing investment fund assisted with the development of 84 new affordable apartment housing units in Puerto Rico as it was recovering from Hurricane Maria. We believe these types of investments are critical to rebuild communities after pandemics, natural disasters, and other hardships, and we hope the Agencies will support these activities in the final rule.

Moreover, due to the COVID-19 crisis, the need for disaster relief has skyrocketed. We greatly appreciated the Agencies’ “Joint Statement on CRA Consideration for Activities in Response to the COVID-19” and we encourage additional measures to promote community investments. We recommend that the Agencies provide clarity that disaster relief activity in federally-designated disaster areas is CRA-eligible even if it occurs outside of a bank’s AA or broader statewide or regional area. Today, while banks can get credit for disaster relief activity for designated disaster areas within their AAs, eligibility for relief outside of AAs varies and largely depends on agency guidance and rulings published after the fact.⁸ This is especially problematic during the COVID-19 crisis where the disaster area is not regional, like in the case of a hurricane, and instead, spans across the entire country.

III. Promote consumer benefits and enhanced banking availability by fostering more deposit opportunities.

We appreciate the Agencies’ focus on modernization and innovation. As an initial matter, we support what we interpret to be the Agencies’ position under the Proposal that non-exclusive ATM and retailer relationships do not, by themselves, require delineation of an AA. While banks may have depositors and ATMs located throughout the country, they may not have personnel and other resources deployed throughout all areas to identify and solve the specific needs of the community in which ATMs or other non-exclusive deposit-taking relationships are located. Additionally, ATMs and mobile devices, by contrast, do not require regulatory approval to install or cease operation like branches do. Accordingly, as viewed in the Proposal, the proposed approach of not requiring AA delineation for non-exclusive relationships would foster more

⁷ This funding is provided for under Title I of the Elementary and Secondary Education Act of 1965, as amended. Title I funding is given to schools where at least 35% of the children in the school attendance area come from low-income families or to schools where 35% of the student population is low-income. To determine the percentage of low-income families, school districts may select a poverty measure from among the following data sources: (1) the number of children ages 5–17 in poverty counted in the most recent census; (2) the number of children eligible for free and reduced price lunches under the National School Lunch Program; (3) the number of children in families receiving Temporary Assistance for Needy Families; (4) the number of children eligible to receive Medicaid assistance; or (5) a composite of these data sources. The district must use the same measure to rank all its school attendance areas.

⁸ See, e.g., Interagency Statement on CRA Consideration for Community Development Activities in the U.S. Virgin Islands and Puerto Rico Following Hurricane Maria (January 25, 2018).



prevalent deposit capacity throughout the country and keep pace with the innovative banking marketplace.

IV. Preserve the existing performance context concept in the development of the Strategic Plan option in its current form.

The current performance context concept is critical to supporting the current structure of the Strategic Plan option, and ensuring appropriate consideration of the unique characteristics (*e.g.*, business model) of each bank being evaluated. Therefore, we recommend that any final rule retain the performance context concept as part of evaluating banks' CRA performance. While we recognize the benefits of measuring a bank's CRA performance using objective metrics, we do not believe a one-size-fits-all metric is appropriate for evaluating CRA performance. On the contrary, a one-size-fits-all approach risks creating a purely formulaic approach to CRA activities and could have unintended consequences of disadvantaging certain bank business models, ignoring differences among communities and geographies, or neglecting the specific development needs of other communities. Moreover, we ask the Agencies to encourage flexibility for performance context regardless of how it is documented. The Proposal suggests using an online form, however, we ask that any online form be sufficiently flexible to allow for true performance context that would enable the bank to thoroughly describe community needs and any challenges it faces to meet those needs.

Should the Agencies move Forward without Implementing the Suggestions Above, We Ask that Any Final Rule Incorporate the Suggested Changes Below.

We again stress the importance of maintaining the Strategic Plan option in its current form and refrain from imposing new metrics and AAs in the context of a Strategic Plan. The current Strategic Plan framework meets the goals of the Proposal since we work closely with our communities and regulators when developing the Strategic Plan. Deviation from this approach could create disincentives to invest in communities. While we maintain that status quo is preferred, we would also like to raise some specific issues pertaining to the Proposal that should be improved in any final rule.

I. Clarify how the Agencies will assign one overall rating that is clear and transparent.

There is much confusion regarding how an ultimate rating would be achieved under the multiple new tests and increased AAs contemplated in the Proposal. We appreciate the Agencies' goal of clarity and consistency, however, we are concerned the complexity of new tests and AAs will create greater confusion about how an institution will obtain an Outstanding or Satisfactory rating, particularly with respect to the bank-level rating. As previously mentioned, we are committed to CRA and have diligently worked to obtain an Outstanding rating for over the last decade. We will continue to strive for an Outstanding rating and ask the Agencies to help us understand how to meet this valuable objective.



II. Explain income calculations for credit card and student lending.

We ask the Agencies to maintain the current optional status for consumer loans for purposes of CRA-eligible activity. Maintaining the optionality allows banks to focus on robustly serving communities through community development, and issuing home and small business loans, if that is the bank's business model. By mandating consumer loans, banks are forced to divert resources from communities to create massive, new data collection and reporting structures. Originally, CRA was centered on combating atrocious mortgage redlining, and helping LMI consumers grow financially. Including consumer loans, such as credit cards, auto loans, and student loans, not only fails to serve that purpose, but may also confuse the data. While consumer loans meet a specific need, they are not the type of asset building credit that the CRA regulation seeks to promote and incentivize.

Regardless if consumer loans are optional or mandatory, we request the Agencies provide much needed clarity on how consumer loans are considered for CRA credit. We ask the Agencies to confirm there is no additional verification requirement to update customer information after loans—particularly open-end loans—are originated. While banks typically collect income and addresses at origination or account opening, the frequency of updating such information varies across financial institutions. For example, if a consumer received a credit card from Discover years ago and has not proactively updated her account information, we will likely still have the information provided at origination, which could materially represent a vastly different economic status of a borrower today. We believe collecting and reporting consumer credit would create a significant burden on banks by needing to continually update reporting and reassessing qualifying activity based on income and address information, especially if obtained subsequent to origination or account opening. The annual cost of completing these activities would be significant and would be better served as an investment in the community.

Additionally, it is unclear whether the entire line of credit or the utilization of the line would be considered for consumer credit. We encourage the Agencies to consider the entire credit line given to the consumer because the CRA is focused on credit issued to LMI borrowers, and the entire credit line represents the consumer's access to credit, even if it is not fully utilized.

Finally, regarding loans with unverified household income or co-signors, the Proposal is unclear as to whether a bank would be required to incorporate data from the primary borrower, total reported household income, cosigner income, or other factors for CRA credit calculation purposes. We ask that the uncertainty be resolved if the final rule captures consumer loans, such as credit cards and student loans.

III. Eliminate the "Deposit Based" AA metric.

Under the Proposal, banks that receive 50 percent of deposits outside the facility based AAs will have new deposit based AAs in areas where the bank receives five percent or more of its total deposits. The creation of deposit based AAs for branchless organizations will not help solve CRA deserts nor will it fulfill the plain text or spirit of the CRA statute. The market share



of deposits continues to be dominated by the six largest branch/facility based banks with over 40% market share nationally.⁹ While digital branchless banks make up a much smaller fraction of the market share, these new AAs would dilute current CRA investments and shift resources to areas where CRA investment is not expected by our consumers. Generally, consumers of the branchless banks are financial savvy individuals who are making a conscious choice to take their funds “out” of the community to seek a higher return on investment. Changing AA requirements for the banks with limited deposit market share will unfortunately spread out the needed investment and limit the impact in the areas banks currently serve.

Moreover, we are concerned this proposed approach would inflame “hot spots” and perpetuate deserts, instead of achieving the intended goal of flexibility. Naturally, a larger concentration of deposits will be due to a larger concentration of the population, which means larger cities. While we agree with the Agencies’ goals in creating additional AAs, we believe this proposed solution will only add to already heated CRA markets, instead of creating new AAs that serve underserved areas. For example, our new deposit based AAs under the Proposal would be some of the most concentrated and areas where there is ample bank activity, including New York City, Los Angeles, Chicago, Texas, and Florida.

By finalizing this section as proposed, overheated CRA “hot spots” will only get worse and investments will get more expensive and competitive, without better serving communities or alleviating CRA deserts. In fact, the proposed approach could result in reallocating resources from a rural AA to a new deposit based AA, and create additional competition in over heated markets for limited CRA qualifying activities. For years, we have maintained a program that has measureable impact in our AA and makes a real difference in the communities. We are concerned that the increased AAs in populous areas could dilute our overall impact, while not creating a real, tangible benefit for consumers in the new areas where banking services are already available.

IV. Support innovative CRA approaches and reassess the Proposal’s diminished incentive for CRA donations and service activities.

Discover appreciates the Agencies’ continued recognition of the importance of innovative and complex CRA activity. We think it is important that the Agencies continue to encourage innovative and creative approaches to meet credit and community development needs, particularly in a rapidly changing banking environment. Accordingly, Discover cautions against any changes to the CRA regulatory framework that would create qualitative parity between simple CRA activities and innovative, complex CRA activities. Rather, we recommend that the Agencies continue to give additional consideration to the innovativeness and complexity of CRA activity in responding to the credit and community development needs of the communities a bank serves.

⁹ June 30, 2019 Call Report Data.



We have been a leader in our AA region with innovative CRA programs, and from our practical experience, the dollar amount of CRA activity alone is not always indicative of the true community impact. We are concerned the proposed metrics for CRA donations and service activities would, in practice, run counter to the Agencies' intent. Our innovative, impactful investments are discussed in further detail above on pages 4 through 6. As these programs exhibit, we believe the best investments in the community establish long-term programs, build equity, and provide technical assistance to local organizations. We are also concerned the proposed metric of measuring hours for qualifying services would not promote this meaningful type of investment and, over a large organization, would be costly and challenging to capture employees' service hours. Grants are the lifeblood of many of our community based organizations and not providing significant additional credit for philanthropic activities could limit the potential equity needed to develop impactful programs. Adding a material multiplier to grant activity could materially change the value and benefits of such activities.

V. Minimize proposed onerous recordkeeping requirements.

The Proposal includes massive new data collection and recordkeeping requirements that would impose extensive new costs and burden on financial institutions. We are concerned about the proposed requirements, especially if consumer loans are required to be included for CRA evaluation. If consumer loans are required to be reported, banks would have to create extensive new systems and data fields to capture new data, maintain existing data in a readily available format, and would likely need to develop an ongoing data collection requirements, especially with credit line increase requests, income fluctuations, and physical address changes. We are concerned that the system development and maintenance, employee training, and continuous reporting would take important resources away from the core mission of the CRA and from the singular focus on serving the communities.

Under the Proposal, physical location of all bank depositors is mandated to be collected, measured quarterly, and reported annually. While banks have the physical address, most (if not all) banks do not have a system to pull all addresses together to assess and report the information in an aggregated form. Additionally, the collection of amounts of CRA qualifying activities in each category would have to be assessed each month. Most banks document origination amounts, however, they do not generally track LMI loans to specific amounts on the Call Report. Also, the CRA data of each product line with at least 15 percent of a bank's total bank level retail loan origination would be challenging to aggregate and report annually.

Moreover, it is unclear in the Proposal which data would be released publicly and we ask for clarity in the final rule. We also ask the Agencies to limit public disclosure, especially for banks with limited product lines. Especially if CRA AAs are expanded to overheated markets, public disclosure of the information could further exacerbate competition in the already competitive and expensive areas. We are concerned this public disclosure may result in unintended consequences of driving banks to make investments to meet CRA requirements that are not safe and sound.



VI. Provide equal multiplier for investment in Housing Finance Agency Mortgage Activities and SBA Lending Programs.

CRA was developed with the main purpose of ensuring access to credit for LMI consumers and small businesses located both within and outside low income communities. If a LMI consumer or a small business deposits their hard earned resources into a bank, it is the banks' affirmative obligation to lend to the credit worthy LMI consumers and small businesses in that area. Federal programs and guarantees for home mortgages and small business loans were developed to ensure banks have a safe and sound means to provide credit to enable a LMI household or small business improve their future economic opportunity and thus improve the community as a whole. State Housing Finance Agencies ("HFAs") and non-bank, non-CDFI SBA lenders ("SBA lenders") work to ensure consumers have access to these vitally important federally guaranteed programs. The HFAs and SBA lenders continually seek to leverage the available resources at the state and federal levels to create new borrowers and thus do not "trade" securities or participate in multiple purchases or "recycling" of CRA credit. Providing a new home mortgage or small business loan is the cornerstone of CRA and, therefore, activities under these programs should receive equal or greater credit in relation to other CRA eligible activities and not be discounted by any means.

Conclusion

Based on our CRA experience, we contend the current CRA regulatory framework has been effective in fulfilling the spirit of CRA and rightly recognizing banks' different characteristics and business models. Accordingly, Discover does not believe that a substantial overhaul of the CRA regulatory framework is needed. Rather, we believe that the CRA regulatory framework can be modernized through the targeted revisions we discussed above.

We appreciate the chance to comment on the Proposal and welcome the opportunity to work with the Agencies as they finalize a rule. If you have any questions or would like to further discuss our comments, please contact me at 302-323-7688.

Sincerely,

A handwritten signature in black ink, appearing to read "James Roszkowski", written over a horizontal line.

James Roszkowski
President



BARCLAYS



February 16, 2021

Via Electronic Mail

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

Re: *Community Reinvestment Act: Advance notice of proposed rulemaking; request for comment* (Docket No. R-1723, RIN 7100-AF94)

Ladies and Gentlemen:

We are a group of digitally based depository institutions that are not tied to traditional branch networks¹ and we appreciate the opportunity to respond to the Advance Notice of Proposed Rulemaking² (“ANPR”) issued by the Board of Governors of the Federal Reserve System (“Board”) to amend the Community Reinvestment Act (“CRA”) regulatory framework. We feel strongly that any CRA modernization should account for the current variety of banking and financial services business models, which will continue to evolve to better serve our customers, including those in low- and moderate-income (“LMI”) communities. While we appreciate the Board’s focus on modernization, we believe targeted revisions—instead of a complete overhaul of the CRA regulatory framework—will more effectively advance the spirit and impact of the CRA. Our recommended targeted revisions are as follows:

1. Adopt performance tests and standards specifically for digitally based banks, while avoiding lending-based or deposit-based assessment area delineation frameworks;

¹ While some of our business models are becoming less unusual in the banking industry today, our reference to “nontraditional,” “non-branch-centric,” or “branchless” banks throughout this letter is intended to capture business models that are not primarily based on traditional, staffed “brick-and-mortar” retail branch locations that offer customers physical access to a facility to conduct banking activities, including deposit-taking and disbursing loans. Capital One is joining these comments on behalf of its limited purpose charter, Capital One Bank, N.A.

² 85 Fed. Reg. 66410 (Oct. 19, 2020).

2. Continue tailored evaluation for wholesale and limited purpose banks, but compare such banks to true peers (other wholesale or limited purpose banks); and
3. Preserve and strengthen the current strategic plan evaluation framework by providing strategic plan banks with optionality to define assessment areas to include geographies outside of their branch-based areas or receive credit for CRA activity outside of their assessment areas when the plan's goals support such consideration.

Although we expect that we share many common concerns with branch-based banks, we appreciate the opportunity to share our perspective as a coalition of digitally based banks. We rely primarily on digital channels rather than physical branches to serve our respective consumer and business customer bases, which (for some of us) extend from coast-to-coast. We therefore hope our collective experience executing non-branch business models within a CRA framework designed primarily for branch-based banks can help assist the Board in making improvements to the CRA framework.

The range of diverse business models in the industry today—including large corporate institutional banks, banks with significant sweep deposit programs primarily linked to affiliated brokerage accounts, issuers of credit cards, lenders of auto loans to consumers and small businesses nationwide, and various combinations of these—illustrates why tailoring is necessary and appropriate for our CRA programs to continue to make impactful loans and investments and to engage in community development (“CD”) activities, all while operating in a safe and sound manner.

As we have seen during the COVID-19 pandemic, financial transactions have become increasingly digital to meet consumer demand. We believe the concerns shared in this letter will become more common among existing branch-based banks as the industry evolves toward digital banking. To that end, a durable final rule should account for possible future banking industry changes and should be jointly adopted by the Board, the Federal Deposit Insurance Corporation (“FDIC”) and the Office of the Comptroller of the Currency (“OCC”). Our letter is focused on providing feedback that is responsive to the questions posed in the ANPR and sets forth recommendations that would have positive impacts on the communities and consumers that are served by banks with business models and delivery channels like those of the undersigned institutions. In our view, the principles reflected in these recommendations are equally applicable irrespective of any given bank's primary federal regulator and would, if adopted, serve to advance the spirit and purpose of the CRA.

DISCUSSION

I. Adopt performance standards and tests tailored to digitally based banks

A. Create a “digitally based bank” designation for qualifying institutions

The Board has stressed the importance of determining an approach to “address the issue of how to define a bank's local communities, which impacts where banks' CRA performance is evaluated and is critical for ensuring that the CRA fulfills its purpose of encouraging banks to meet the credit needs of their local communities.”³ A critical component of any CRA modernization effort is to create an evaluation framework for retail banks that predominantly deliver products and services digitally nationwide. To that end, we support the ANPR's suggestion to designate any institution that gathers 80 percent or more of its deposits from geographies outside of its traditional branch network as a “digitally based bank” (referred to in the ANPR as an “Internet bank”).

³ ANPR, at 66410.

While the CRA performance of digitally based banks is currently evaluated based on qualifying activities conducted within their branch-based assessments areas (i.e., focusing on main office and branch locations), the business of banking for digitally based banks is not tied to any particular geography or local community. Digitally based banks operate nationally and have a customer base that is not localized to any particular geographic area and, as a result, such institutions' CRA performance should be evaluated in a manner that accounts for our unique business models. In much the same way that the Board's existing retail test is not suitable or appropriate to apply to wholesale and limited purpose banks with their very different business models, digitally based banks are sufficiently distinct from branch-based retail banks to merit an independent, tailored evaluation framework.

B. Adopt a holistic, whole-bank evaluation framework consistent with the digital banking business model

For digitally based banks, deposit markets and lending markets alike have considerable cross-country reach and are not tied to physical branch or main office locations. As long as such banks' CRA efforts are rationally designed to satisfy the credit and community development needs that are the focus of the CRA—providing credit and investment capital in LMI neighborhoods, for LMI individuals and families, and for community development—it is unnecessary to require such efforts to be focused only in certain geographies based on deposit concentrations.

The CRA itself does not stipulate any requirements regarding CRA assessment areas. Instead, the CRA (1) requires a bank to demonstrate that its deposit facilities meet the convenience and needs of the communities in which it is chartered to do business; (2) states that the convenience and needs of communities include credit as well as deposit services; and (3) requires the Board, the FDIC, and the OCC to “assess the institution’s record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of such institution.”⁴ The CRA also specifically permits a bank that caters predominantly to military personnel to delineate its entire deposit customer base as its community for evaluation purposes without regard to geographic proximity, and some banks have adopted this approach.⁵ An evaluation of a bank’s CRA activity that permits certain banks to adopt an assessment area that reaches beyond just its facilities or branches, for the purpose of reflecting the unique nature of those banks’ business models, therefore has precedent in the statutory language itself to provide flexibility for varying bank business models.

Accordingly, we encourage the Board to adopt an evaluation framework tailored to digitally based banks. Overall, we support retaining the Board’s existing focus on branch-based assessment areas, including for digitally based banks, which should be evaluated with respect to branch-based assessment areas around their main office and any physical branches that they have, as required by current regulation. However, because a digitally based bank’s “entire community” may reflect broad regional geographies or even a national community, digitally based banks with a majority of deposits and lending outside of their branch-based assessment areas should be evaluated on a holistic, whole bank basis. For example, under a whole bank evaluation, retail lending borrower and geographic distributions would be compared to national benchmarks — such as the percentage of LMI households nationwide — and, where data is available, the national aggregate of peer performance. Additionally, a digitally based bank should have use of performance context to the extent it does not meet such national benchmarks.

⁴ 12 U.S.C. § 2903(a)(1).

⁵ 12 U.S.C. § 2902(4).

The Board should adopt a CD test for digitally based banks that mirrors the current CD test for wholesale and limited purpose banks.⁶ For decades, this approach has been effective in allowing banks with unique business models to address the needs of both the local communities where they have physical locations and other areas around the country that are in need of investment and support. Many of us have wholesale or limited purpose bank designations and have found that the structure of the Board's current CD evaluation is both fair and flexible. If a digitally based bank has adequately addressed the CD needs of its branch-based assessment areas (i.e., the geographies including and surrounding its main office and any of its physical branch locations), it should be able to receive consideration for any additional CD activity outside its assessment area. Adopting this framework would ensure a digitally based bank meets the needs of its local community and has the flexibility to assist LMI communities outside its branch-based assessment area given the bank's capacity to do so based upon the size and scope of the institution.

C. Refrain from adopting a lending-based or deposit-based assessment area delineation framework

The ANPR asks whether the Board should delineate deposit- or lending-based assessment areas for digitally based banks. We strongly discourage the Board from doing so, because requiring institutions (digitally based banks or otherwise) to delineate deposit- or lending-based assessment areas would only intensify CRA activity in areas that are already well-served ("CRA hot spots") while areas of need ("CRA deserts") receive little to no relief. As the Board recognizes in the ANPR based on stakeholder feedback and its own analysis of data, the largest sources of deposits geographically are concentrated in a relatively small number of major metropolitan areas where there is already significant competition for CRA-related investments and loans among numerous banks.⁷ The addition of deposit-based assessment areas will exacerbate these disparities.

Further, a depositor's location (especially for nationwide and multi-national corporations) may not represent where the economic activity occurred that generated the deposits. If banks were required to adopt deposit-based assessment areas, a few large corporate depositors could easily skew a bank's deposit "geography," both by almost single-handedly giving rise to one or more deposit-based assessment areas and by creating a sufficiently large retail deposit "denominator" in a limited area that would make it difficult if not impossible for the bank to meet certain required CRA thresholds. At a minimum, such geographic dominance would crowd out other banks that needed to demonstrate CRA activity, all without any consideration of whether the geography ultimately encompassed by this deposit-based assessment area even had a need for additional CRA activity or whether there are a sufficient number of viable opportunities for safe and sound lending and investment.

Given that a digitally based bank's business is open to depositors nationwide, subjecting a digitally based bank to a deposit-based assessment area requirement would likely require it to redirect finite resources from CRA deserts to CRA hot spots. Similarly, a digitally based bank lends to customers nationwide, but would need to focus on more crowded markets if it were subject to lending-based assessment areas. These markets would likely track nationwide population density and would require banks to direct significant resources to these geographies regardless of how competitive these markets already are or whether there is sufficient capacity in the public and non-profit sectors to absorb significant amounts of new investment.

Under the approach adopted by the OCC in its current CRA regulations, banks have the option of drawing deposit-based assessment areas at any level up to the state level in order to mitigate the negative

⁶ See 12 CFR § 228.25 (defining the CD test for wholesale and limited purpose banks).

⁷ ANPR, at 66417-66418.

consequences of lacking a physical presence in a given geography. However, such statewide assessment areas still do not satisfactorily solve the principal concern of intensifying investments in CRA hot spots, while CRA deserts remain underserved. While a bank may have some additional flexibility outside of its immediate assessment areas, it would remain limited to specific statewide geographies. The effect is to heighten competition within the states where a bank already has a banking presence, rather than permit it to move anywhere it perceives there is a need after it has sufficiently addressed the need in its own assessment areas. Banks that do have a presence in those other states may not have capacity to increase their activity to meet the need. In light of the Board's stated interest in increasing the reach of CD investing and lending, such a regulatory framework is needlessly confining.

Finally, lending-based assessment areas would be somewhat inconsistent with the statutory language of the CRA, which focuses on the credit needs of the local communities in which an institution is chartered⁸ and requires the federal banking agencies to prepare written evaluations of a bank's CRA performance based on each metropolitan area in which the "institution maintains one or more domestic branch offices."⁹

II. Continue tailored CRA evaluations for wholesale and limited purpose banks.

The ANPR emphasizes that one of the Board's primary objectives in revising its CRA regulations is to more effectively tailor supervision to a bank's size and business model. An existing example of such tailoring is the separate evaluation framework for wholesale and limited purpose banks based on their CD investments, lending and services. The Board should continue to recognize wholesale and limited purpose bank designations for banks whose business models are not predominately focused on providing retail banking services, and should continue to evaluate the CRA performance of such institutions under a CD test and not retail tests. This approach will continue to encourage community lending and investing by all banks, regardless of whether they raise retail deposits.

With respect to performance benchmarks within the Board's proposed CD tests, wholesale and limited purpose banks should be compared against other wholesale or limited purpose banks. Such true peer comparison would provide a more accurate evaluation of a wholesale or limited purpose bank's CRA activities than one that uses the performance of banks with retail-oriented business models

III. Preserve and strengthen the strategic plan framework.

Several of the undersigned have been successfully operating under approved strategic plans for many years. A strategic plan and its approval process promotes objectivity, transparency, and consistency and may allow a bank that elects to be evaluated based on strategic plan performance to focus on meeting defined community needs in predetermined, targeted areas. The strategic plan framework provides banks with the opportunity to set specific goals to invest in and support communities in a more thoughtful and strategic manner that accounts for a bank's size, business model, and product offerings while still being consistent with safety and soundness considerations.

The current CRA regulatory framework, which permits banks to pursue the strategic plan option, is effective in fulfilling the objectives and spirit of CRA, and promotes successful bank engagement tailored to provide impact in the communities they seek to serve. Strategic plans can facilitate certainty by affording banks an opportunity to explicitly identify the geographical areas to be served, to set concrete goals and objectives to be achieved and, ultimately, to be evaluated over a multi-year period. Moreover, under the

⁸ 12 U.S.C. §§ 2901(a)(1) and (2).

⁹ 12 U.S.C. § 2906(b)(1)(B).

existing framework, each strategic plan is subject to a public comment period, which incentivizes banks to develop their goals and objectives through collaboration with, and input from, the regulators and communities to be served. This process of public engagement helps banks shape their respective strategies and facilitates maximum impact within the identified communities.

As the Board seeks to modernize its overall CRA framework, it should continue to allow banks to adopt and execute strategic plans. A strategic plan is an extremely beneficial tool for communities, banks, and regulators alike. These plans help to identify and meet community needs while also providing for effective and meaningful regulatory oversight. We support the Board's recognition of the opportunity to provide increased flexibility on assessment area delineation within the strategic plan framework¹⁰ and we recommend that the Board codify a related concept within its CRA reforms.

Specifically, the Board should provide that a bank may, at its option, in light of the capacity of the organization, voluntarily elect to delineate its assessment areas for purposes of a strategic plan to include areas outside of its main office and branch network (i.e., geographies beyond those captured by the bank's branch-based assessment area). Allowing a bank to voluntarily expand its assessment area, and thereby allocate additional resources, would conform to the existing framework's requirement that assessment areas take into account a bank's size and financial condition,¹¹ and would assist an institution to better align its investment, loan, and service goals with its geographical reach without lessening the impact of such goals on LMI communities currently served. In exercising this option, a strategic plan bank would be able to evaluate the capacity of its organization to take on additional CRA activities beyond its branch-based assessment area. We would not support a requirement that strategic plan filers adopt expanded assessment areas beyond their facility-based assessment areas. Codifying any such requirement has the potential to erode the existing impact to communities currently being served under already established strategic plans.

Providing optionality would permit a bank that, in the absence of a strategic plan, may conduct significant activity outside of its branch-based assessment area to include such areas in its CRA evaluation. As such, this approach would be consistent with the spirit of the existing approach for wholesale and limited purpose banks. Alternatively, the Board could opt to permit a bank that has the appropriate size and scope and meets the needs of its branch-based assessment area to include, at the bank's option, activities conducted nationwide, consistent with our view that a digitally based bank's community may consist of the entire nation. It also would permit banks operating under a strategic plan to conduct activity where there is the most need and opportunity for the greatest impact.

Performance context has always been a critical component of strategic plans, and it should remain so. Current CRA regulations provide that the Board "considers whether to approve a proposed strategic plan in the context of" the enumerated factors that comprise "performance context": demographic data, information about lending, investment, and service opportunities in the bank's assessment area, the bank's product offerings and business strategy, a bank's institutional capacity and constraints, the bank's past performance and the performance of similarly situated lenders, the bank's public file, and any other information deemed relevant by the Board.¹² We encourage the Board to retain and even emphasize this provision as an integral part of the strategic plan development and approval process, with banks having the obligation to demonstrate that a proposed strategic plan (including assessment areas and measurable goals) is appropriate in light of a bank's particular performance context.

¹⁰ ANPR, at 66453.

¹¹ See 12 CFR § 228.41(e)(3).

¹² See 12 CFR § 228.21(b).

CONCLUSION

We encourage the Board to focus its efforts on tailoring and flexibility, especially for digitally based banks like ours. The approaches set forth in this letter will allow us to more effectively achieve our shared CRA goals to further meet the credit and financial needs of our communities in a safe and sound manner.

Sincerely,

Ally Bank
American Express National Bank
Barclays Bank Delaware
Capital One Bank, N.A.
Discover Bank
Goldman Sachs Bank USA
Charles Schwab Bank, SSB
Synchrony Bank