February 16, 2021

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 Docket No. R-1723 and RIN 7100-AF94

To Whom It May Concern:

On behalf of the members of the Opportunity Zone ("OZ") Working Group, we appreciate the opportunity to comment on the Advance Notice of Proposed Rulemaking (ANPR) regarding the Community Reinvestment Act (CRA) published by the Federal Reserve Board of Governors (Board). Our group includes more than 600 professionals that are primarily investors, syndicators, lenders, community development entities (CDEs), community development financial institutions (CDFIs), for-profit and nonprofit developers, consultants, law firms, and other community development professionals who work together to suggest consensus solutions to technical OZ incentive issues and provide recommendations to make the OZ incentive more efficient in delivering benefits to low-income communities. In particular, our group contains banks and representatives of banks that have made OZ investments that were eligible for CRA consideration. In fact, we wrote to the OCC on October 15, 2019 to urge the bank regulators to clarify how OZ investments could qualify for CRA consideration under existing CRA regulations and we include that letter as an attachment to this comment letter.

Although a relatively new incentive, OZs have already attracted private capital into areas in need of investment, which have also been targets of CRA activity. Among the needy areas nominated by governors, 294 contain Native American lands (which are historically underfunded) and 23.3 percent of the zones are in rural areas. The poverty rate of OZs nationwide (27.7 percent) is much higher than the U.S. rate (14.1 percent). The median family income in the United States is $73,965 per year, whereas OZs nationwide have a median family income of $47,316 per year. The share of minorities in OZs are much higher than the U.S. share (56.5 percent to 38.9percent). As the regulations were finalized earlier this year, the data on investments are still being collected. However, so far, Novogradac has documented more than $15 billion has been raised to serve these low-income communities. That_is very likely an underestimate of the total amount raised.

The CRA shares many of the same purposes as OZs, such as bringing private capital to low-income communities for community and economic development. As the Office of the Comptroller of the Currency (OCC) did in its June 2020 CRA regulations, we urge the Board to include OZ investments as a qualifying activity for purposes of the CRA. The combination of the CRA and OZs incentives would be optimized by ensuring that the CRA regulations support bank involvement in OZs. The CRA and OZs have a large overlap in their targeted geographies and populations. The CRA provides an incentive to banks to provide community development lending and investment to low- and moderate-income (LMI) individuals and areas. The OZ definition of low-income communities is similar to, and in most cases overlaps with, the LMI definition.

While not all banks regularly have capital gains to invest, some banks on occasion do realize capital gains under current authority. Furthermore, even if banks do not have capital gains to invest in qualified opportunity funds (QOFs), they are often integral partners in financing opportunity zone loans and investments. In order to incentivize the most impactful OZ investments, we believe the Board should ensure that the CRA serves as a robust incentive to investment in OZs. Furthermore, our comments and suggestions, if incorporated into your ANPR, will facilitate more bank investment in OZs, provide an incentive to banks for the OZ investments with the greatest community development impact, and allow for greater flexibility of the OZ incentive to qualify for CRA.

Please see the following for a summary of our main CRA regulatory reform recommendations as well as responses to selected ANPR questions below.

SUMMARY OF MAIN RECOMMENDATIONS

Our main CRA regulatory reform recommendations are focused on how OZ investments should generally qualify under CRA examinations, the Community Development Test (and in particular the Community Development Financing Subtest) and on reforming assessment areas for purposes of CRA examinations, especially with regard to determining where and how equity investments are counted.

First, as noted above, we urge the Board to include OZs in the forthcoming proposed regulations as an example of areas with the greatest need for economic development, investment, and financing needs that may be underserved by the current regulations. This recognition is warranted considering OZs are either (1) a qualified low-income community (LIC), using the same criteria as eligibility under the New Markets Tax Credit (OZ as per section 45D of the Internal Revenue Code - census tracts that have an individual poverty rate of at least 20 percent and median family income up to 80 percent of the area median) or (2) a census tract that was contiguous with a LIC if the median family income of the tract does not exceed 125 percent of that contiguous LIC.

We are pleased to see that under the OCC CRA regulations, an activity that would qualify for CRA credit is a community development (CD) activity that provides financing for or supports qualified opportunity funds (QOFs) that benefit LMI OZs. Furthermore, under the proposal, the expansion of qualifying CD activities would include adding a criterion for QOFs, as defined in 26 U.S.C. 1400Z2(d)(1), that benefit qualified OZs in LMI tracts, as defined in 26 U.S.C. 1400Z-1(a). We agree that adding this criterion would help to incentivize banks to meet the needs of LMI individuals and tracts located in OZs.

Adding specific examples in the CRA regulations of OZ activities that banks would receive positive CRA consideration is also very helpful considering OZs are a relatively new tax incentive created by the law commonly known as the Tax Cuts and Jobs Act signed into law on Dec. 22, 2017. One activity is an investment in a QOF, established to finance construction of a new manufacturing facility in an OZ that is also an LMI census tract. Additional activities include: an investment in a QOF, established to finance renovation of a vacant building into a cultural arts facility, including loft space for artists and a community theater, in an OZ that is also an LMI census tract; and, an investment in a QOF, established to finance the rehabilitation of an acute care hospital facility, including the purchase of new medical equipment, in an OZ that is also an LMI census tract. While these examples are by no means exhaustive of the types of OZ-qualifying activities that should be considered under proposed §§ 25.04 and 345.04, they do provide tacit recognition of the importance of OZs in any discussion of modernizing the CRA regulations.

In an effort to provide even more clarity around when OZ investments might qualify, we recommend the Board establish a safe harbor set of criteria that would provide banks with the presumption that if an OZ investment meets one or more of the safe harbor criteria, such investment would be a qualified community development investment under CRA. Such a policy is important so that banks would know in advance prior to making an OZ investment not explicitly described in the illustrative list that it would qualify. Having to wait for an updated list, or any other process that would render a judgment on whether an OZ investment qualifies after it was made would seriously undermine the value of the CRA incentive. We recommend the safe harbor criteria establish positive CRA consideration and should be given to the extent the OZ investment:

1. Is combined with low-income housing tax credit (LIHTC) or OZ investments. These investment vehicles have a proven track record of being highly responsive to LMI needs, are difficult to obtain from other sources, and require banks to allocate higher levels of capital to support them;
2. Is combined with historic tax credit (HTC) for properties located in LMI census tracts or in areas of economic distress as defined by the OZ statute (section 45D(e) of the Internal Revenue Code), which have historically been areas targeted for positive CRA consideration. Similar to LIHTC and OZ as noted above, the HTC has a proven track record of positive community development, especially in LMI census tracts or areas of economic distress;
3. Finances housing that is subject to a land use restriction agreement or similar deed restriction that includes at least 20 percent of its units affordable to LMI households;
4. Finances rental housing in LMI census tracts or areas of economic distress targeted to LMI households, as well as middle-income households in markets where there exists a demonstrated lack of supply;
5. Finances single family housing (one to four units) intended for homeownership affordable to LMI households, as well as middle-income households in markets where there exists a demonstrated lack of supply;
6. Revitalizes or stabilizes a community including federally or state declared disaster areas;
7. Is in a LMI census tract or area of economic distress that is currently the focus of mutually reinforcing state, local or private development initiatives to attract private investment and foster startup activity;
8. Is an investment in an area that has recently experienced significant layoffs dues to business closures or relocations;
9. Revitalizes a blighted property in an LMI census tract or area of economic distress;
10. Finances essential infrastructure, community facilities or services primarily benefitting LMI households; or
11. Provides significant investment in a new business located in LMI census tract, areas of economic distress or employing LMI individuals;

We believe investments that support permanent job creation, retention, and/or improvement through workforce development and/or job or career training programs that target unemployed or low- or moderate-income persons is important, promotes economic development and are measurable. For example, an investment in a OZ to fund a full-service hotel that will create a significant number of jobs, the majority of which are accessible to LMIs can be obtained through projected outcome data from the project sponsor or using economic impact modeling software to estimate the number of construction jobs.

The ANPR suggests that the Board would maintain a publicly available non-exhaustive, illustrative list of examples of qualifying activities that meet the criteria in the rule, as well as examples of activities that the agencies have determined, in response to specific inquiries, do not qualify. The ANPR should also establish a process for a bank to submit a form through the agency's website to seek agency confirmation that an activity is a qualifying activity in advance of financial closing.

In addition to updating the illustrative list on an ongoing basis, the ANPR suggest that the list would also be revised through a public notice and comment process, to add activities that meet the criteria and to remove activities that no longer meet the criteria. While we are supportive of the agencies updating the list both on an ongoing basis to coincide with publishing the list of requested items in the Federal Register for public comment and feedback, and updating the list following this process once every three months through publication on the agency's websites, it should not be considered a substitute for establishing a safe harbor set of criteria as explained above.

Community Development Test

The OZ incentive was designed by Congress to foster long-term patient equity investments in low-income communities, and as mentioned previously, banks should be able to play an important role in helping to finance the most impactful OZ investments in LMI areas.

We believe a more equitable method to measuring CRA performance should be grounded in the current "large bank" three-test evaluation regime, where the relative merits of lending, investing and services are judged on their own and not pit against each other. Retaining an Investment Test or establishing a Community Development Financing Investment Subtest in the CRA regulations would ensure that banks continue to have a focused incentive to meet the needs of LMI communities from all three critically important perspectives. Our review of the public comment letters in response to the OCC's proposed CRA regulations and its preceding ANPR do not point to criticisms of the *design* of *a* three-test evaluation. Rather, the issues appear to be primarily systemic in nature, including the lack of concrete definitions for key concepts in the original statute as well as the difficulty of setting objective benchmarks that could equally apply to banks with different asset levels and business models, and in diverse communities with distinct investment needs. Furthermore, we understand that banks' use of mortgage backed securities to satisfy the Investment Test caused some concern and should be addressed. Such a concern about mortgage backed securities should NOT be the reason for eliminating the Investment Test in its entirety.

With respect to OZ investments, as noted above, eliminating the Investment Test or not establishing a Community Development Financing Investment Subtest, and evaluating all of a bank's CRA community development investments and loans in one test would enable banks to shift towards an increased (and potentially exclusive) reliance on debt products, reducing and perhaps eliminating equity investments such as those in OZs. Such equity investments must be committed for an extended period of time (7 years in the case of OZs), and such long-term commitments were designed to be, and surely are, more transformative for the communities that CRA is intended to support than traditional debt products, with far-ranging impacts for LMI residents as well as the surrounding neighborhoods.

We encourage the Board to continue to support the CRA's current role in incentivizing these types of investments, thereby avoiding the potentially unintended consequence of incentivizing banks to limit (or eliminate) their OZ investments that otherwise may best meet the needs of their LMI communities.

Please see our response to Question 42 for further details on this point.

Assessment Area Reform

The ANPR suggests the need to expand CRA exams to assess bank lending in areas beyond bank branches to recognize the evolution of modern banking and the fact that many banks receive large portions of their deposits from outside their facilities-based assessment areas where their branch network has a physical presence. Furthermore, we know that banks often lend in areas outside their facilities-based assessment areas.

In addressing assessment area reform, if an institution with a traditional facility based bank branch network has demonstrated that it has been responsive to needs in its assessment area in its prior CRA examination (e.g., a "satisfactory" or greater CRA rating), we suggest such institution could receive additional credit for a proportional amount of CRA-eligible activity that's undertaken outside the bank's assessment area, but located in the same or neighboring state, and that targets particularly highly distressed areas or targeted populations (see further discussion of this below). This approach would better incentivize banks to address local needs in traditionally underserved areas. Essentially, focusing on the demographic, economic, and financial condition of an area would be a better measure of local needs than basing the analysis merely on where a bank accepts deposits outside its facilities-based assessment areas. See below for a list of areas identified by Congress and the Administration as in need of greater investment:

1. ECONOMICALLY DISTRISSED COMMUNITIES - Census tracts with poverty rates greater than 30 percent; OR Census tracts with, if located within a non-Metropolitan Area, have a median family income that does not exceed 60 percent of statewide median family income, or, if located within a Metropolitan Area, have a median family income that does not exceed 60 percent of the greater of the statewide median family income or the Metropolitan Area median family income; OR Census tracts with unemployment rates at least 1.5 times the national average.

2. NON-METROPOLITAN COUNTIES - Qualifying census tracts that are located in counties not contained within a Metropolitan Statistical Area (MSA), as defined in OMB Bulletin No. 15–01 (Update of Statistical Area Definitions and Guidance on Their Uses) and applied to the 2010 census tracts.

3. HOPE VI/CHOICE NEIGHBORHOODS INITIATIVE REDEVELOPMENT - Areas encompassed by a HOPE VI or Choice Neighborhoods Initiative redevelopment plan.

4. FEDERAL NATIVE AREAS - Federally Designated Indian Reservations, Off Reservation Trust Lands or Alaskan Native Village Statistical Areas, or Hawaiian Home Lands.

5. ARC/DRA AREAS - Areas designated as distressed by the Appalachian Regional Commission or Delta Regional Authority.

6. COLONIAS AREAS – low-income communities on the U.S.-Mexico border as designated by the U.S. Department of Housing and Urban Development.

7. FEDERAL/STATE/LOCAL ZONES - Federally designated Opportunity Zones, Enterprise Zones, Promise Zones, Base Realignment and Closure areas, State Enterprise zone programs, or other similar state/local programs targeted towards particularly economically distressed communities.

8. FEMA DISASTER AREAS - Counties for which the Federal Emergency Management Agency (FEMA) has: issued a "major disaster declaration" and made a determination that such County is eligible for both "individual and public assistance"; provided that the initial investment will be made within 36 months of the disaster declaration.

To further the Board's stated intention to tailor the CRA rules for banks with nontraditional business models, such as wholesale and limited purpose banks and digital banks that primarily serve customers outside a traditional bank network, we also recommend an assessment area framework that reflects these banks' distinct business models and nationwide reach. With respect to wholesale and limited purpose banks, we urge the Board to retain the existing policy that allows banks with these designations to get

CRA credit for any community development activities nationwide after they have adequately addressed the needs of their facilities-based assessment areas. We recommend a similar policy for digital banks, which also have a nationwide reach and operate without a network of traditional brick-and-mortar branches.

RESPONSES TO SELECT ANPR QUESTIONS

ANPR Section II. CRA Background

Question 2. In considering how the CRA's history and purpose relate to the nation's current challenges, what modifications and approaches would strengthen CRA regulatory implementation in addressing ongoing systemic inequity in credit access for minority individuals and communities?

In addition to better addressing the credit needs of minority individuals and communities, it is important to also provide greater private capital investment in these communities. People of color are located disproportionately in low-income communities, especially highly distressed ones, and the COVID-19 crisis is further exacerbating this disparity.

The OZ is an important tool to provide private capital in low-income communities, especially for those where people of color are the majority. Much of this imbalance is due to persistently high rates of poverty among people of color, which have resulted in part from the practice of redlining, which the CRA was designed to counteract.

Considering the disproportionate need for community development investment among low-income communities where people of color are the majority and the CRA's statutory purpose, we urge the Board to ensure that any changes to CRA will expand the incentive to engage in community development activities that provide private capital investment, in which the OZ plays a key role.

ANPR Section III. Assessment Areas

Question 4. How should the Board provide more clarity that a small bank would not be required to expand the delineation of assessment area(s) in parts of counties where it does not have a physical presence and where it either engages in a de minimis amount of lending or there is substantial competition from other institutions, except in limited circumstances?

Establish minimum threshold requirements based on where the small bank has actually marketed and provided credit and where it could reasonably be expected to have marketed and provided credit for purposes of delineating assessment area(s) in parts of counties where it does not have a physical presence.

<u>Question 5</u>. Should facility-based assessment area delineation requirements be tailored based on bank size, with large banks being required to delineate facility-based assessment areas as, at least, one or more contiguous counties and smaller banks being able to delineate smaller political subdivisions, such as portions of cities or townships, as long as they consist of whole census tracts?

Yes, size should be the determining factor with large banks being required to delineate facility-based assessment areas as, at least, one or more contiguous counties that can be reduced when, based on a data-driven analysis, the area is determined to be too large to serve or is inhibited by geographic barriers. Small banks should continue to be allowed to define facility-based assessment areas that include partial counties or portions of smaller political subdivisions, including portions of cities or townships, as long as they are composed of at least whole census tracts.

<u>Question 7</u>. Should banks have the option of delineating assessment areas around deposit taking ATMs or should this remain a requirement?

A minimum threshold should be established and remain a requirement if the bank's ATM deposits meet or exceed that threshold.

<u>ANPR Section VII: Community Development Test: Evaluation of Community Development and Financing and Community Development Services Performance</u>

<u>Question 42</u>. Should the Board combine community development loans and investments under one subtest? Would the proposed approach provide incentives for stronger and more effective community development financing?

As mentioned in our general recommendations above, the separate Investment Test under the Board's current CRA regulations has been critical in motivating banks to put in place the expertise and resources to participate in the OZ equity market at the volume they are currently maintaining. For that reason, we urge the Board to retain the separate Investment Test or establish a Community Development Financing Investment Subtest, which would ensure emerging banks retain the incentive to develop sophisticated community investment strategies.

Specifically, we are concerned that combining loans and investments into one test could reduce the direct incentive to make OZ investments. Under the proposed methodology, banks would weigh the benefits of investment against debt in determining which CRA-qualifying activities to pursue. In general, debt financing takes place over a shorter duration and is lower risk, less complex and more liquid than tax credit investments, making it a more desirable alternative. Furthermore, banks are generally required to reserve more capital for equity investment as compared to loans. Moreover, it is more expensive to originate and asset manage equity investments as compared to loans. As a result, the Board's proposed methodology is likely to initiate a substitution effect of loans over other types of CRA activities that are less impactful on capital charges. With less incentive to make OZ investments, community development investment could ultimately decrease.

If a separate Investment Test is not retained or a Community Development Investment Subtest not established, strong parameters should be put in place to counteract the potential negative impact on OZ investment volume. We suggest the following strategies, which could be used individually or together:

- Separately track community development equity investments from community development loans. The Board, using historic CRA performance data across all institutions, could establish a benchmark level of investment activity (as a percentage of a bank's total community development activity) that would be taken into consideration during the performance context review. For example, a bank which devotes a larger portion of its community development activity toward investments than its peer institutions could be eligible for an increase in its overall Community Development Financing Subtest score, particularly if the bank is between two possible ratings. Alternatively, a high investment benchmark could be considered as a factor for an outstanding rating. To the extent possible, the potential effect of the investment benchmark on the bank's rating should be quantifiable and predetermined.
- Review a bank's institutional investment track record against its assessment period performance. If a bank's volume of CRA eligible investments, particularly OZ investments, have declined significantly from one period to the next (taking into account cyclical patterns and the safety and soundness of the institution), then an examiner should be able to request an explanation for the variance. Explanations could include safety and soundness, Part 24 or other regulatory constraints, or lack of available investments. Reviewing banks' institutional investment track record against assessment period performance would ensure that changes to CRA regulations do not have the unintended consequence of decreasing community development investment, particularly OZ investment, especially in the early years of newly implemented regulations.

- Clarify that OZ investments will receive a high impact scores under the performance context review. As discussed in response to Question 47, the three-point scale may not be nuanced enough to adequately differentiate and reward the most impactful community development activities. We suggest expanding this scale (e.g., to five points), and providing a unique assignment at the top of the scale for investment activities, particularly OZ investments. In our response to Question 46, we also suggest further integrating impact scores into the community development evaluation.

In short, in the absence of a separate Investment Test or Community Development Financing Investment Subtest, we believe it will be critical to provide special treatment for investments in general, and specifically for OZ investments. In addition to our recommendations above, we strongly suggest that any final CRA regulations are first closely analyzed to ensure they will not have a negative impact on OZ investment.

Question 45. Should the Board use local and national benchmarks in evaluating large bank community development financing performance to account for differences in community development needs and opportunities across assessment areas and over time?

We appreciate that benchmarks could provide some additional context for evaluators analyzing community development efforts. However, without correcting for CRA "hot-spots" and "deserts," it stands to reason that local benchmarks could have the effect of exacerbating current distortions in the market, depending on how benchmarks are utilized – an assessment area already receiving a relatively high level of community development activities against deposits would have a high benchmark, motivating banks to focus on that area to_meet the benchmark, and an assessment area receiving a low level of community_development activities against_deposits would have a low benchmark, allowing minimal investment or lending to meet the standard. As is already explained in the ANPR, they "could result in performance standards that are very low in some assessment areas and very high in others," rendering the benchmarks less meaningful.

We suggest first utilizing local benchmarks to help address CRA hot-spots and deserts, incentivizing banks to increase activities in underserved communities, and then to institute national and regional benchmarks. Regional benchmarks may be necessary if the two national metrics (metro and non-metro) do not capture enough nuance to be used as a meaningful comparator for the majority of communities.

To address CRA hot-spots and deserts, we suggest allowing banks with traditional facility based bank branch networks to receive credit, at the assessment area level, for OZ investments made anywhere within a state in which a bank has one or more assessment areas, especially for underserved areas of such a state. While we appreciate that the ANPR proposes that a bank will receive credit at the state level for any community development loans or investments in the state, we believe that it would provide more certainty to a bank if it were clear that such investments would be treated as serving the assessment area(s) in that state. If a bank has more than one assessment area within the state or multi-state metropolitan statistical area, the credit could be allocated evenly to each assessment area. This treatment would ensure underserved communities not within local assessment areas are still able to benefit from the incentive that the CRA provides, more evenly distributing OZ investments geographically and helping to limit OZ pricing distortions.

Question 46. How should thresholds for the community development financing metric be calibrated to local conditions? What additional analysis should the Board conduct to set thresholds for the community development financing metric using the local and national benchmarks? How should those thresholds be used in determining conclusions for the Community Development Financing Subtest?

In light of initial data limitations, it would be prudent to initially treat the thresholds as a general guideline to help evaluate a bank's community development investment metric rather than creating a presumption of "satisfactory." This approach would provide banks with more certainty regarding performance expectations relative to the current approach, which does not have any consistent quantitative thresholds. Additional analysis should be conducted that includes information on community development investment activities conducted statewide to supplement information provided by the bank at the time of an examination, including the amount of investments, the location or areas benefited by these activities and information describing the community development purpose.

Question 47. Should the Board use impact scores for qualitative considerations in the Community Development Financing Subtest? What supplementary metrics would help examiners evaluate the impact and responsiveness of community development financing activities?

We support the Board's decision to avoid using multipliers in the community development evaluation methodology, as they could lead to a bank decreasing its overall investment activity. We also support the Board's proposal to include supplementary metrics to detail banks' investment, loans, and contributions, which would provide additional transparency. As we explain in our response to Question 42, mitigating features should also be established to prevent a substitution effect of loans over investment, should the separate investment test be eliminated.

We support the use of Impact Scores to incentivize high-impact activities but are concerned that a three-point scale may not provide enough gradations to adequately capture differences in impact and community responsiveness. We suggest a gradation of five points where the highest scores are reserved for investments, and the top score is reserved for only the highest-impact investments, necessarily including OZ investments. To provide additional clarity for banks, the Board should develop a list of pre-approved activities and their corresponding impact scores.

We also request additional information regarding how impact scores would be used. It appears from the ANPR that the primary purpose would be determining the assessment area rating for the Community Development Test when two ratings are possible. We believe the scores should be more deeply integrated into the primary evaluation, to better incentivize responsive and impactful activities. For example, the Board could develop a high-impact community development benchmark at the state or institution level that would incentivize banks to demonstrate that a certain percentage of its community development activities are scored at the highest level of impact. Incentives_could equate to additional points or tie to the achievement of an outstanding rating at either the state or institution level.

Impact scores and supplementary metrics will help quantify the otherwise subjective notion of "impact." While we agree that subjective evaluation is important to fully discern a bank's responsiveness to communities, the efficacy of any subjective, qualitative rating determined by evaluators will hinge on the evaluators' understanding of community development financing. Community development is complex, and we appreciate the Board's effort to provide evaluators with additional information about a bank's activities and local and national conditions. However, we urge the Board to also consider what training may be necessary to ensure evaluators have the requisite background to make appropriate subjective evaluations regarding community development activities and impact.

ANPR Section VIII. Community Development Test Qualifying Activities and Geographies

Question 52. Should the Board include for CRA consideration subsidized affordable housing, unsubsidized affordable housing, and housing with explicit pledges or other mechanisms to retain affordability in the definition of affordable housing? How should unsubsidized affordable housing be defined?

We appreciate the Board's goal to ensure strong incentives for banks to provide community development loans and investments for the creation and preservation of affordable housing, and we support the definition of subsidized affordable housing included within the ANPR.

We believe the definition of unsubsidized affordable rental housing should include parameters to help ensure that it serves LMI individuals. In agreement with the National Association of Affordable Housing Lenders, rental housing not subject to tenant income restrictions should be considered as affordable housing if most of the property's rents are affordable when the financing is committed and the property meets *one* of the following three additional standards:

1. The property is located in a LMI neighborhood (i.e., census tract),
2. Most renters in the neighborhood are LMI and most rents in the neighborhood are affordable to renters earning at or below 80% AMI, or
3. The owner agrees to maintain affordability to LMI renters for the life of the financing.[1]

Question 55. Should the Board change how it currently provides pro rata consideration for unsubsidized and subsidized affordable housing? Should standards be different for subsidized versus unsubsidized affordable housing?

We suggest allowing full credit for any property in which 20 percent of units are set aside for low-income households at or below 60 percent of area median income if the property also receives funding from a federal, state, or local government affordable housing policy or program. For unsubsidized affordable rental housing, we suggest pro-rata credit for properties in which 20 to 50 percent of units are affordable to low-income households, and full credit for properties in which over 50 percent of homes are affordable to low-income households.

Question 68. Will the approach of considering activities in "eligible states and territories" and "eligible regions" provide greater certainty and clarity regarding the consideration of activities outside of assessment areas, while maintaining an emphasis on activities within assessment areas via the community development financing metric?

We recommend that, in the next stage of rulemaking, the Board provide additional guidance on methodologies for providing banks credit for investing in OZ funds in which only a portion of the activities will necessarily lie within the banks' designated assessment areas (e.g., multi-state, regional or national funds).

Question 69. Should the Board expand the geographic areas for community development activities to include designated areas of need? Should activities within designated areas of

[1] For more information, see the full proposal from the National Association of Affordable Housing Lenders here: http://naahl.org/wp-content/uploads/2017/12/Unsubsidized-affordable-rental-housing-under-CRA-v3.pdf

need that are also in a bank's assessment area(s) or eligible states and territories be considered particularly responsive?

Yes, the Board should expand the geographic areas for community development activities to include designated areas of need. We particularly support including rural areas, tribal areas, and areas where the local benchmark for the community development financing metric is below an established threshold, and suggest that two additions be made: distressed and underserved nonmetropolitan middle-income geographies, and Presidentially Declared Disaster Areas.

We also recommend that the designated areas of need retain their designation long enough to plan for multi-year projects, a Congress designated OZs for 10 years. For example, any designated areas of need identified at the start of a bank's assessment period should receive credit even if the designation has changed by the end of the assessment period. The bank should also receive credit in any new designated areas of need that may be determined during its assessment period.

Question 71. Would an illustrative, but non-exhaustive, list of CRA eligible activities provide greater clarity on activities that count for CRA purposes? How should such a list be developed and published, and how frequently should it be amended?

We support the development of an illustrative, non-exhaustive list of activities that meet the requirements for CRA in an effort to provide banks with as much clarity and certainty as possible. Such a list should initially be developed through publication in the Federal Register to solicit public comment and feedback and thereafter be updated following this process once every three months utilizing the Federal Reserve's Investment Connection platform. Banks should also have the ability to request additional guidance on transactions which may not fit cleanly within the definition of an eligible activity. We urge the OZ be included on the list of eligible activities considering its demonstrated ability to further the goals of CRA.

Question 72. Should a pre-approval process for community development activities focus on specific proposed transactions, or on more general categories of eligible activities? If more specific, what information should be provided about the transactions?

A pre-approval process should be adopted for community development activities focused on specific proposed transactions that fall outside of the proposed non-exhaustive list of eligible activities or activities that have otherwise been undertaken in the past for which there should be conditional approval. To ensure large, catalytic impact projects are not delayed due to a pre-approval process, we recommend requested information be reviewed within a 30-60-day timeframe for rendering such decisions.

Question 78. Would eliminating limited-scope assessment area examinations and using the assessment area weighted average approach provide greater transparency and give a more complete evaluation of a bank's CRA performance?

While the weighted average approach may provide greater transparency, it would not necessarily provide a more complete evaluation of a bank's CRA performance because of its focus on dollar amounts of deposits in a given geography. When the CRA was enacted in 1977, banks received deposits and made loans primarily through geographical branches. Today, deposits are much more fluid and can turnover on a seasonal basis in large volumes. It would be challenging and costly trying to keep track of deposits attributable to any given area outside a bank's branch-based assessment areas for the purposes of determining an appropriate weighted average. Alternatively, an approach that looks at the ratio of deposits to loans in any given assessment area would help to ensure that ratings accurately reflect performance in all markets, including those where lending volume is low relative to deposits. This approach would give full consideration to performance in each assessment area, proportional to a bank's lending level and capacity to lend.

Question 79. For a bank with multiple assessment areas in a state or multistate MSA, should the Board limit how high a rating can be for the state or multistate MSA if there is a pattern of persistently weaker performance in multiple assessment areas?

Yes, for a bank with multiple assessment areas in a state or multistate MSA, the Board should limit how high a rating can be for the state or multistate MSA if there is a pattern of persistently weaker performance in multiple assessment areas.

ANPR Section X: Ratings

Question 81. Should large bank ratings be simplified by eliminating the distinction between "high" and "low" satisfactory ratings in favor of a single "satisfactory" rating for all banks?

No, rigorous CRA reform should reveal more distinctions in performance, not less, so large bank ratings should not be simplified by eliminating the distinction between "high" and "low" satisfactory ratings in favor of a single "satisfactory" rating for all banks.

Question 82. Does the use of a standardized approach, such as the weighted average approach and matrices presented above, increase transparency in developing the Retail and Community Development Test assessment area conclusions? Should examiners have

discretion to adjust the weighting of the Retail and Community Development subtests in deriving assessment area conclusions?

Per our response to Question 78, while the weighted average approach may provide greater transparency, it would not necessarily provide a more complete evaluation of a bank's CRA performance. For that reason alone, examiners should have discretion to adjust the weighting of the Retail and Community Development subtests in deriving assessment area conclusions.

Question 84. Should the adjusted score approach be used to incorporate out-of-assessment area community development activities into state and institution ratings? What other options should the Board consider?

Yes, the adjusted score approach should be used to incorporate out-of-assessment area community development activities into state and institution ratings.

Question 85. Would the use of either the statewide community development financing metric or an impact score provide more transparency in the evaluation of activities outside of assessment areas? What options should the Board consider to consistently weight outside assessment area activities when deriving overall state or institution ratings for the Community Development Test?

The use of the statewide community development financing metric rather than an impact score would provide more transparency in the evaluation of activities outside of assessment areas.

Question 88. Should consideration for an outstanding rating prompted by an investment or other activity in MDIs, women-owned financial institutions, and low-income credit unions be contingent upon the bank at least falling within the "satisfactory" range of performance?

Yes, consideration for an outstanding rating prompted by an investment or other activity in MDIs, women-owned financial institutions, and low-income credit unions should be contingent upon the bank at least falling within the "satisfactory" range of performance.

Question 89. Would it be helpful to provide greater detail on the types and level of activities with MDIs, women-owned financial institutions, and low-income credit unions necessary to elevate a "satisfactory" rating to "outstanding"?

Yes, per our response to Question 71, a list should initially be developed through publication in the Federal Register to solicit public comment and feedback on the types and level of activities with MDIs, women-owned financial institutions, and low-income credit unions necessary to elevate a "satisfactory" rating to "outstanding".

Conclusion

The CRA has been a crucial incentive for banks to invest in community development investment, and with an appropriate revised regulatory framework, will continue to be an essential incentive to help address the nation's disparity in private investment between low-income communities and the rest of the nation. That disparity pre-dated the pandemic and has been exacerbated by it. We urge the Board to carefully consider the impact of any CRA regulatory reform that may limit or harm the incentive to invest in OZ and community development investment.

Finally, we urge all three federal banking agencies – the OCC, FDIC and the Board – to develop a final CRA rule that is issued on an interagency basis. This rule should not be finalized without interagency coordination. Some member banks have multiple charters and are examined by both the FDIC and the Board. Having two different methods of evaluation would create significant regulatory burden on these banks and result in confusion for community groups attempting to develop community projects using two different CRA qualification definitions, as well as reviewing Performance Evaluations.

We hope that you find these comments, considerations and recommendations helpful as you update the CRA regulations. Thank you in advance for your time and consideration. Please do not hesitate to contact us if you have any questions regarding our comments or if we can be of further assistance.

Yours very truly,

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