American Bankers Association

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Krista Shonk
VP & Sr. Counsel
Fair and Responsible Banking
Regulatory Compliance & Policy
202.663.5014
kshonk@aba.com

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Via Electronic Submission

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

Docket No. R-1723; RIN 7100-AF94

Re: Community Reinvestment Act Regulations

Ladies and Gentlemen:

The American Bankers Association[1] is pleased to comment on the Advance Notice of Proposed Rulemaking[2] (ANPR) issued by the Board of Governors of the Federal Reserve System (Federal Reserve) that would modernize the regulations that implement the Community Reinvestment Act of 1977 (CRA).[3]

Banks care deeply about the vibrancy and vitality of their communities, and they support the goals of the CRA statute. In fact, banks provide more than $100 billion in capital *each year* to low- and moderate-income (LMI) communities.[4] Banks also supply financial products and services that provide important economic opportunities for individuals, families, and small business owners.

Unfortunately, outdated implementing regulations undermine the CRA's objectives. For several years, there has been broad, bipartisan agreement among policymakers, bankers, and consumer and community advocates that the CRA regulatory framework needs to be updated to reflect how technology has transformed the delivery of financial products and services. There is also wide recognition that CRA can do more to enhance economic opportunity for underserved consumers and communities. And, there is consensus that the banking agencies need to

[1] The American Bankers Association is the voice of the nation's $21.2 trillion banking industry, which is composed of small, regional, and large banks that together employ more than 2 million people, safeguard $17 trillion in deposits, and extend nearly $11 trillion in loans. Learn more at www.aba.com.
[2] 85 Fed. Reg. 66410 (October 19, 2020).
[3] Pub. L. No. 95-128, 91 Stat. 1147 (1977) (codified at 12 U.S.C. §§ 2901-2908 (2012)).
[4] Federal Reserve Bank of Dallas, *Closing the Digital Divide, A Framework for Meeting CRA Obligations* (December 2016) p. 2.

ensure that CRA expectations are transparent and that examiners interpret and apply CRA regulations consistently.

The convergence of these factors provides an unprecedented opportunity to improve the CRA framework. Doing so will be challenging; the needs of communities vary widely, bank business models are not monolithic, and technology has forever changed consumer preferences for accessing financial products and services. These are complex issues that will require fresh thinking by all CRA stakeholders. Yet, we remain optimistic that it is possible to improve the effectiveness and administration of the CRA in a manner that will enable banks to more effectively support the communities and consumers they serve.

To that end, we offer the following comments, observations, and recommendations, which reflect the perspective of the full range of bank business models, asset sizes, and geographic locations.

I. Summary of the Comment

We strongly support the Federal Reserve's efforts to update the regulations that implement the CRA. The Federal Reserve's ANPR is an important step forward, and we are grateful for the Federal Reserve's considerable research, analysis, and outreach to date. We especially appreciate public statements by individual members of the Board of Governors noting that the ANPR seeks to lay the foundation on which the banking agencies can build a shared, modernized CRA framework that has broad support. We urge the Federal Reserve to work with leadership and staff of the Federal Deposit Insurance Corporation (FDIC) and the Office of the Comptroller of the Currency (OCC) to craft a modernized regulatory framework that can be adopted by all three agencies. Failure to act in coordination would yield undesirable results—including perpetuating confusion and inconsistency—which would be contrary to the objectives of the modernization effort.

Our comments address the following concepts and objectives we believe should inform CRA modernization:

- **Durability**. A modernized CRA regulatory framework must be long-lasting. Modernized regulations that are clear and calibrated appropriately will avoid the need for subsequent amendments, adjustments, and clarifications. Multiple iterations would be costly and counterproductive.

- **Diversity of the Banking System**. A one-size-fits-all approach to CRA would not be practical, sustainable, or desirable. Tailoring should continue to be part of the CRA regulatory framework and should take into account bank business models, areas of specialization, and community characteristics. Accordingly, we recommend that a revised CRA rule continue to reflect the diversity of the banking system, including by (1) permitting Small *and* Intermediate Small Banks to be examined according to existing standards; (2) adjusting the Small Bank and Intermediate Small Bank thresholds to $600 million and $2.5

billion, respectively; (3) continuing to permit wholesale and limited purpose banks to be examined according to a community development test; (4) taking into account the evolution of digitally-focused banks; and (5) making improvements to the strategic plan process to make the option more accessible for all banks.

- **Scope of Improvements**. A modernized regulatory framework should aim to refine existing CRA regulations with the goal of improving transparency, consistency, and overall effectiveness. A complete regulatory re-write is unnecessary.

- **Assessment Areas**. CRA cannot be truly modernized without addressing the digital revolution and reframing how and where banks are evaluated for CRA compliance. A revised framework should also facilitate and incentivize the flow of CRA capital to underserved communities outside of a bank's assessment areas.

- **Quantitative vs. Qualitative Factors**. Quantitative performance metrics would provide much-needed transparency and certainty to the CRA evaluation process and assignment of ratings. However, to have a full understanding of a bank's CRA performance, regulators must also take qualitative factors into account. Updated CRA regulations should provide transparent standards for drawing ratings conclusions, including how examiners make judgments, the data that they use to inform those judgments, and the weight of other factors that examiners consider in determining a bank's CRA rating.

- **Complexity**. In an effort to develop transparent performance standards, regulators should work to develop a framework that is clear, understandable, and not overly complicated. Overly granular data analysis runs the risk of being overly burdensome without improving community outcomes or the examination process.

- **Data Burden**. Quantitative performance measures will likely result in new data reporting requirements. However, a revised framework should not result in massive new data collection and reporting requirements simply for the sake of adopting a metrics-based approach. Rather, any new burdens must be offset by corresponding improvements to and efficiencies in the administration of bank CRA programs and regulatory examination.

I. Durable Regulations

It is critical that a modernized CRA regulatory framework be long-lasting. As noted above, revising the CRA framework is a herculean task, and one which history shows, is achieved only every few decades. CRA regulations that have broad support will avoid the risk of being unwound by Congress or future regulators.

Similarly, modernized regulations that are well thought out will avoid the need for subsequent amendments, adjustments, and clarifications. Multiple, successive changes—by current policymakers or future ones—would be costly, counterproductive, and would result in less certainty and predictability than exists today. We recommend the following steps to create an updated regulatory structure that stands the test of time.

A. Testing, Analytics, and Examples

We appreciate the Federal Reserve's thoughtful, deliberative, and analytical approach to CRA modernization. In particular, we appreciate the extensive analysis that the Federal Reserve conducted prior to issuing the ANPR and request that any subsequent Notice of Proposed Rulemaking (NPR) be similarly data tested and that the results and conclusions of this analysis be explained.

Likewise, we request that a proposed rule provide examples of how a revised framework would apply to banks with different business models and asset sizes. This will help banks to understand how the NPR would work in practice, conduct a richer evaluation of the proposed regulatory revisions, and provide constructive feedback on the proposal, thereby reducing the risk of unintended consequences and the need for follow-up amendments.

B. Interagency Final Rule

The development of long-lasting regulations also requires the participation and adoption of a final rule by all three banking agencies. The importance of joint final rules cannot be overstated.

First, every day, banks regulated by different agencies partner on CRA lending and investments, and consistent rules would go a long way toward continuing and enhancing this important activity. Inconsistent rules would be a barrier to these relationships and the much-needed capital infusions they provide to communities.

Second, a coordinated rulemaking will facilitate regulators' evaluation of bank applications to engage in certain activities. The agencies take CRA ratings into consideration when evaluating a bank's application to open new branches, relocate the main office or a branch, execute a merger, and make acquisitions. These important undertakings help banks to grow, achieve economies of scale, and develop innovative products, services, and technology that customers demand. However, differing CRA regulatory frameworks could unnecessarily delay or impede merger and acquisition activity, particularly in situations involving banks subject to different CRA frameworks.

Third, multiple practical questions and challenges have arisen due to the inability of the banking agencies to agree on a common CRA rule in 2020. For example, it is unclear how diverging regulatory frameworks will apply to bank holding companies with a national bank charter where the holding company is regulated by the Federal Reserve and subject to the Federal Reserve's CRA regulations, while the national bank is regulated by the OCC and subject to the OCC's CRA regulations. Without interagency regulations, would these banks have to maintain *two* CRA programs in order to pass each agency's performance evaluation? Likewise, subjecting state savings associations to the OCC's June 2020 rules has generated considerable confusion for these institutions and may result in a situation where the FDIC could have to examine state savings associations based on the OCC's rules—if the agencies cannot agree to a unified rule.[5]

We are optimistic that banks, regulators, consumer and community advocates, and other interested parties will be able to agree on updated CRA regulations. Failure to act in coordination would yield undesirable results that would be contrary to the objectives of the modernization effort and would undermine the longevity of any final rule.

II. Tailored Regulation

Tailored regulation works well and should continue to be part of the CRA regulatory framework. Current CRA regulations recognize that a one-size-fits all approach to CRA is undesirable. The regulations apply different tests based on a bank's asset size and permit wholesale and limited purpose banks to be evaluated under the community development test. Banks also have the option to develop a regulator-approved strategic plan for addressing their responsibilities with respect to CRA.

The diversity of bank business models comprising the U.S. banking system is greater today than it was in 2005—the last time the agencies substantially revised the CRA regulations. Therefore, it is more important than ever that a modernized framework continue to avoid a one-size-fits-all approach.

As a starting point, we offer the following suggestions pertaining to small banks, wholesale and limited purpose banks, digitally-focused banks, and strategic plans.

A. Small Bank Threshold

As discussed throughout this letter, our members are concerned about the potential cost and complexity associated with the framework outlined in the ANPR. We are especially mindful of the extent to which these burdens would impact community banks, many of which have only one or two employees devoted to CRA. In some cases, CRA is one of several responsibilities for these employees. Accordingly, we offer the following recommendations for minimizing the regulatory burden on these institutions.

First, regulators should permit Small and Intermediate Small Banks to be evaluated based on existing performance standards. Under the current CRA regulations, a Small Bank (defined as a bank with less than $330 million in assets) is evaluated under a streamlined method that focuses on the bank's lending performance. An Intermediate Small Bank (defined as a bank

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[5] The Dodd-Frank Wall Street Reform and Consumer Protection Act transferred to the OCC CRA rule writing authority for both federal and state savings associations, in addition to national banks. As a result, all savings associations became subject to the OCC's CRA rules effective July 21, 2011. At the time, this change had no practical impact on affected institutions for CRA purposes because the federal banking agencies had adopted CRA rules and Q&A's on an interagency basis. However, once the OCC departed from the interagency CRA framework, state savings associations became subject to new CRA rules. P.L. 111-203, 124 Stat. 1376, 1522 (2010).

with at least $330 million and less than $1.322 billion in assets) is evaluated under the Small Bank lending test as well as a community development test that evaluates community development lending, qualified investments, and the community development services the institution provides.

The ANPR appears to recognize that some level of differentiation is desirable, as the Federal Reserve seeks input on whether to set the asset threshold differentiating between small and large banks at either $750 million or $1 billion. However, the ANPR's accommodations for community banks are insufficient and would create enormous regulatory burden for institutions with assets between $1.322 billion and the suggested cutoff. These banks are examined under the Intermediate Small Bank test today, yet they suddenly would be subject to the Large Bank test due to regulatory change, not because of asset growth.

For example, Intermediate Small Banks are not required to collect and report CRA loan data for small business, small farm, and community development loans. Yet, under the ANPR, hundreds of Intermediate Small Banks would be subject to the same new data collection, maintenance, and reporting requirements as the largest banks in the country.[6]

Surprisingly, the Federal Reserve does not explain its rationale for suggesting the $750 million or $1 billion threshold, nor does it offer policy reasons as to why banks that are classified as Intermediate Small Banks today should be subject to same performance evaluation and data requirements as the nation's largest banks. To address this disproportionate regulatory burden, we suggest that the Federal Reserve preserve the Intermediate Small Bank category and permit *both* Small Banks and Intermediate Small Banks elect to be examined under the performance standards that exist today.

In addition, we recommend an increase in the Small Bank and Intermediate Small Bank thresholds to $600 million and $2.5 billion, respectively. The existing Small Bank and Intermediate Small Bank thresholds have worked well for many institutions. However, regulators should update these thresholds. The definitions for Small Bank and Intermediate Small Bank were established in 2005 and are adjusted annually for inflation based on changes to the Consumer Price Index. While we appreciate these annual adjustments, the Consumer Price Index does not take into account the major changes, including consolidation, that have occurred in the banking industry over the past 15 years. For example, at the end of 2005, there were 7,655 banks consolidated by holding company. The median asset size was $124.5 million, while the average asset size was $1.42 billion. As of Q3 2020, there were 4,375 banks consolidated by holding company with median assets of $284.5 million and average assets of $4.5 billion.

[6] Industry-wide, there were 442 banks whose assets were between $750 million and $1.322 billion in Q3 2020. Of these institutions, 262 are primarily regulated by the FDIC, 103 are primarily regulated by the OCC, and 77 are primarily regulated by the Federal Reserve. Furthermore, there are 206 banks with assets between $1 billion and $1.322 billion. Of these banks, 126 are regulated by the FDIC, 43 are regulated by the OCC, and 37 are regulated by the Federal Reserve.

We recommend that the Small Bank and Intermediate Small Bank thresholds be adjusted to reflect these changes. When the thresholds were established in 2005, 70.8% of banks qualified for the Small Bank test and 21.8% qualified for the Intermediate Small Bank test. Applying those same percentages to the distribution of bank asset sizes today, eligibility for the Small Bank test should be capped at $600 million and the Intermediate Small Bank should be capped at $2.5 billion.[7]

B. Wholesale and Limited Purpose Banks

A customized approach to measuring CRA performance should also extend to wholesale and limited purpose banks. The ANPR reflects the Federal Reserve's conclusion that it would not be appropriate to apply the Retail Test to wholesale and limited purpose banks. We strongly agree that these institutions should continue to be examined according to a community development test as is the case under the existing CRA regulations.

Wholesale banks and limited purpose banks have been granted distinct CRA treatment for the last 25 years because their business models are specialized and can differ markedly from banks with a retail focus. Wholesale banks typically provide specialized services to sophisticated clients such as pension funds, governments, institutional investors, and mutual funds. They also serve as custodians that are responsible for safeguarding the financial assets of their clients. Designation as a wholesale bank means that the bank *cannot* be in the business of extending home mortgage, small business, small farm, or consumer loans to retail customers. However, it is common for wholesale banks to engage in limited retail lending to their wealth management clients on an accommodation basis.

Limited purpose banks also require distinct CRA treatment. For designation as a limited purpose bank, an institution can offer only a narrow product line (such as credit card or motor vehicle loans) to a regional or broader market. For example, certain limited purpose banks channel their banking services through partnerships with other corporations. The customer base of these institutions reflects the attributes of their partners' customer base; these banks are not marketing to specific neighborhoods, counties, or metropolitan statistical areas to generate customers of their own. Subjecting these banks to the Retail Test would create bank obligations to serve customers in a manner that they do not fully control.

In sum, the wholesale and limited purpose designations—and their corresponding CRA obligations—are appropriately tailored for banks that are not involved in traditional retail activities, and those designations should not change.

C. Digitally-Focused Banks

Today, branch traffic is decreasing as customers utilize direct deposit, remote deposit capture, peer-to-peer transactions, and online/mobile banking to conduct deposit-related transactions.

[7] This data is based on consolidated assets by holding company.

Customers also use specialized mobile applications to assist with household and small business cash management. Online lending platforms enable customers to submit loan applications and to obtain approvals without ever setting foot in a branch. The emergence and growth of the financial services technology sector—particularly in the lending and payments arena—further illustrates consumer appetite for digital financial products and services.

Technology has also changed how customers shop for financial products. Today, many customers select a financial services provider based on deposit or loan rate and the convenience of technology-driven service. A bank's physical location is often not a factor. As a result, it is no longer appropriate for regulators to examine branchless banks in the same manner as banks with extensive branch networks. Rather, regulators should provide flexibility regarding the geographic areas in which these institutions receive CRA credit for qualifying activities. One alternative would be to provide branchless banks the option of being evaluated on the geography of their CRA activities more broadly. This approach, discussed more fully in Section III. below, is consistent with CRA's statutory mandate that banks should serve the "the communities in which they are chartered to do business."

D. Strategic Plan Option

Current CRA regulations permit banks to be evaluated under a strategic plan, which must be developed with public input and receive regulatory approval. Strategic plans enable banks to customize their CRA activities to better reflect their communities, product offerings, business strategy, and expertise. We are pleased that the Federal Reserve would retain the strategic plan option.

In addition to preserving strategic plans, regulators should take care not to discourage (directly or indirectly) banks from pursuing a strategic plan. In some cases, regulators have implied that community banks should not submit strategic plans because this option was intended for larger or non-traditional institutions. However, a bank—and its community—could benefit from the certainty and flexibility of design that strategic plans provide. Therefore, we recommend that regulators make improvements to the strategic plan approval process to make the option *more* accessible. Below are our recommendations for improving the strategic plan framework.

1. Drafting a Strategic Plan

Regulators could encourage use of the strategic plan option by helping banks understand how to draft a strategic plan. The Federal Reserve has not provided guidance regarding how to develop a strategic plan, nor has it described its expectations for how banks should set measurable goals. This approach does not facilitate the development of strategic plans that will receive regulatory approval. We appreciate the guidance contained in OCC Bulletin 2019-39 and request that the Federal Reserve incorporate this information into its CRA modernization effort.

The Federal Reserve is considering developing an electronic template with illustrative instructions to make it more straightforward for banks to engage in the strategic plan request and approval process. This type of template may be helpful in streamlining the regulatory approval process, particularly for institutions that are new to the strategic plan approval process. However, use of the template should not be mandatory. Proposed plans should not be required to follow a particular outline or format, nor should a bank receive more favorable treatment in the Federal Reserve's review of a proposed plan solely because the bank elected to use the Federal Reserve's template.

2. Flexibility in Setting Plan Goals

Existing CRA regulations articulate general expectations that a strategic plan address the lending, investment, and services performance categories, emphasizing lending but with flexibility to choose a different emphasis if it is responsive to the particular characteristics and credit needs of the bank's assessment area(s). In practice, the Federal Reserve has exercised flexibility regarding the goals that banks may choose based on business strategy, expertise, capacity, constraints, public involvement, and its evaluation of whether the goals are responsive to assessment area characteristics and credit needs. The ANPR inquires whether the Federal Reserve should codify this flexibility in goal setting that it has allowed in practice. We strongly agree with this suggested approach.

Any future rulemaking should maximize strategic plan flexibility by allowing banks to establish CRA performance goals that are fully customized to their institution and community. Restricting strategic plan applicants to only "turning the dials" on the Retail Lending and Community Development Tests would not be consistent with the spirit of the strategic plan option and would limit its effectiveness.

3. Increased Flexibility on Assessment Areas

Currently, strategic plan banks are required to delineate assessment areas in the same manner as traditional banks. The Federal Reserve is contemplating whether to allow a bank choosing the strategic plan approach to delineate assessment area(s) in addition to its facility-based assessment area(s) that would encompass areas in which the bank has a significant proportion of its business and that align with the bank's capacity and constraints, product offerings, and business strategy.

In lieu of articulating new or additional methods for designating assessment areas, we suggest that once a strategic plan bank has identified its goals and objectives needed to meet the needs of its assessment area, it should be able to make additional CRA loans and investments nationwide in other geographies expressly identified in the strategic plan and in alignment with the needs of the community being served. Under this approach, a strategic plan would clearly describe what it means for the bank to adequately serve its assessment area. The plan could also include a bank-wide target that extends beyond the facility-based assessment area. Banks that adequately meet assessment area needs could, but would not be required to, deploy CRA loans and investments to areas of need beyond the facility-based assessment area without creating affirmative obligations in other specified locations beyond those set forth in the strategic plan. This approach is compatible with our recommendations for non-strategic plan banks in that it would eliminate regulatory red tape and enable and encourage banks to more equitably disburse CRA dollars beyond population centers and to underserved communities.

4. Public Input Process

The Federal Reserve is considering whether to update the strategic plan notification requirements to require a bank to post a strategic plan to its website, the Federal Reserve's website, or both, in place of the current newspaper publication requirement. Relatedly, the Federal Reserve inquires how banks should demonstrate that they have had meaningful engagement with their community in developing their strategic plan as well as during the execution of the plan.

Although digital channels are frequently the primary mechanism by which the public accesses information, posting the information on either the bank or Federal Reserve's website would make it readily accessible to commenters that are not part of the communities that the bank serves. We caution against creating a situation in which a bank receives hundreds or thousands of comments from individuals or groups located outside of its community with the expectation that the bank engage in discussions with those commenters. For example, a bank that operates in the Midwest should not be required to hold discussions with individuals or groups located in the Northeast. Updated CRA regulations should be very clear that a bank is not required to respond to comments that originate from outside of its community.

Updated regulations should also clarify the role that public comments will play in the approval of a strategic plan. We also recommend that the final rule articulate what topics are in scope and how they would be weighted. Regulators must ensure that strategic plans do not become a de facto community benefits agreement.

III. Assessment Areas

The manner in which modernized CRA regulations implement the statute's concept of "community" will have significant implications for banks and communities. We appreciate the Federal Reserve's recognition of the need to update the assessment area concept to take digital lending and deposit channels into account, while retaining a focus on the communities in which bank branches are located.

In enacting the CRA, Congress established that banks must demonstrate that their deposit facilities serve the convenience and credit needs of the communities in which they are chartered to do business. Because the CRA statute does not define "community," regulators created assessment areas to define the geographic locations that serve as the basis for a bank's CRA evaluation. Current CRA regulations require that a bank's assessment area include the institution's main office, its branches, and its deposit-taking ATMs, as well as surrounding geographies in which the institution has originated or purchased a substantial portion of its loans. This definition was developed when banking was based largely on physical branch locations as the primary means of delivering products and services.

Aligning the assessment area concept with the digital transformation underway is perhaps the most challenging aspect of CRA modernization. While banks recognize the need to update the assessment area framework, they are also aware that changes to this aspect of the CRA regulation could disadvantage certain business models. A deposit-based or lending-based approach could result in the creation of many new assessment areas for internet or hybrid banks, which would substantially increase the CRA management burden for these institutions. On the other hand, evaluating the CRA performance of digital banks on a nationwide basis (rather than on geographically focused assessment areas) could be viewed as competitively disadvantaging branch-heavy banks that may be required to manage many—possibly dozens or even a hundred—assessment areas.

Another important consideration is the extent to which updated assessment area requirements would impact banks that have an established branch network but are growing based on banking relationships generated via digital channels. For example, we have heard from members whose physical locations are limited to a handful of states on the East Coast, but could be required to add assessment areas in Texas and California—where they have no or a very limited physical presence and where it would be difficult to stand up a full CRA program. The potential for these situations illustrates the need for regulators to ensure that updates to the assessment area construct will be practical and manageable for all banks.

These are difficult issues with no easy solutions. We offer the following guiding principles as the Federal Reserve contemplates how and where bank CRA performance should be evaluated:

- Physical Location. Brick and mortar branches will continue to play an important role in the delivery of financial products and services, and CRA examinations should continue to evaluate a bank's CRA activities to an appropriate extent in relation to its physical location.

- Branch Preference. While branches are important, CRA modernization must reconsider whether the regulatory preference for physical branch presence that exists today is appropriate. Not only is the bias toward branches outdated, it has also created situations where banks have been pressured into opening costly branches in locations where the market is saturated with financial institutions or where operating a branch makes little sense.

- Forward-Looking. While branches play a role in the delivery of financial products and services and will remain a channel for serving customers' banking needs, that role will continue to shrink and be replaced by technological alternatives. Today, branchless banks engage with their customers exclusively online, and hybrid banks have a few branches but take deposits and make loans in several states or nationwide. Many consumers are shopping less based on a bank's physical location and are placing a higher value on loan and deposit interest rates and the convenience of technology-driven service. As a practical matter, *all* banks are migrating to the digital channels that consumers demand. True CRA modernization must reflect these changes.

- Longevity. This is only the second time in CRA's 44-year history that regulators are contemplating substantial revisions to the regulatory framework. The rate of change within the industry, most notably the digital transformation, will only increase in the years ahead. Updates to how and where banks are evaluated on their CRA performance must be compatible with the digital age and be sufficiently flexible to address other disruptions that cannot be predicted at this time.

- Arbitrary Thresholds. An updated view of assessment areas should take bank business models into account. This may necessitate distinguishing between internet, hybrid, and branch-focused banks to some extent. Regulators should develop an elastic, tailored approach that avoids arbitrary thresholds for purposes of defining different categories of banks for CRA assessment area purposes.

- Collection of Deposits. While we do not advocate deposit-based assessment areas for all banks, it would be appropriate for an updated CRA regulation to maintain some nexus between a bank's CRA obligation and its collection of deposits. That said, rigid adherence to a deposit-based CRA construct is not practical in the modern era. Digitally-focused and branchless banks simply are not analogous to brick and mortar bank branches for which existing assessment area regulations were designed. Furthermore, over the years, new funding mechanisms have evolved that allow banks to generate deposits without marketing to specific customers or communities, which further lessen the geographic ties on which CRA has historically been based. As discussed in Section V.A.2. of this letter, brokered deposits, sweep deposits, reciprocal deposits, listed deposits, health savings accounts, and prepaid cards are typically gathered outside the branch network via national markets and therefore have limited correlation with bank lending activities in specific communities. CRA modernization should take these developments into account when defining the meaning of "community" and a bank's obligation to it.

- Activities Outside of the Assessment Area. While banks should not be *required* to engage in CRA activities outside of their designated assessment areas, updated CRA regulations should strive to alleviate the persistent and increasing issue of inequitable concentration of CRA loans and investments in population centers and CRA "hot spots" by recognizing efforts by banks to provide funding in areas that have a demonstrated need that are located outside of the bank's assessment area.

- Practicality. CRA must remain manageable for banks. For example, any new approach that creates multiple new assessment areas would pose a significant challenge to most CRA programs—for banks of all sizes. Moreover, in updating the assessment area construct, regulators should take great care not to dilute a bank's overall CRA impact in communities by creating numerous new assessment areas.

- Holistic View. Regulators should analyze revisions to the assessment area concept in conjunction with the creation of the Federal Reserve's suggested Retail Test and Community Development Test (and the Community Development Financing metric, in particular). Each of these potential reforms is important and would entail significant change in the way that banks administer and are evaluated on their CRA programs. Regulators should evaluate the combined impact that these reforms would have on banks and communities.

A. Potential Models

We explore the above principles in greater detail below and discuss the pros and cons of two models the Federal Reserve could consider in reevaluating where and how bank CRA performance should be evaluated. We request that the Federal Reserve data test these ideas to determine impact and workability prior to issuing a NPR for further public comment.

1. The Adaptive Approach

The Adaptive Approach could serve as a way to reframe the evaluation of a bank's CRA performance in the digital age without creating immediate change or increased burden for most banks. A key objective of this approach is to tailor the CRA evaluation to a bank's business model without establishing additional bright line thresholds for purposes of defining different categories of banks and delineating assessment areas based on a bank's classification. As described in more detail below, this model would involve different methods for evaluating a bank's retail lending and community development activities. The retail lending analysis would not apply to wholesale or limited purpose banks. In addition, banks could utilize a strategic plan.

Retail Test. Regulators could evaluate a bank's retail lending activities according to the following structure:

- Banks would designate facility-based assessment areas largely in accordance with the criteria that exists today (subject to certain modifications), and examiners could evaluate CRA performance in those areas based on the framework outlined in Federal Reserve's ANPR. Regulators would weight a bank's assessment area rating in proportion to the percentage of the bank's loans or deposits in the assessment area (based on the bank's total deposits or number of loans).

- To address the proliferation of online lending, regulators would separately evaluate the retail loans of banks with a significant percentage of out-of-assessment area lending.
    - Under this approach, a bank would be subject to the Retail Test for non-assessment area loans only if a bank's retail lending exceeds a specified percentage of a bank's retail loans. A bank making the majority of its retail loans within its assessment area would *not* be subject to the Retail Lending Subtest for non-assessment area lending.

    - Regulators would evaluate significant out of assessment area lending at the bank level using the same geographic and borrower distribution tests applied to branch-based assessment areas. In exploring this idea further, the Federal Reserve should conduct additional analysis to determine whether it would be appropriate to base such comparator tests on national benchmarks or whether to tailor such benchmarks to reflect each bank's actual mix of markets served.
    - Under this approach, evaluations of significant non-assessment area retail lending would be incorporated into the bank-level CRA rating.

- As a practical matter, branchless banks would be evaluated almost exclusively at the bank-level, although a revised framework could continue to require these institutions to designate an assessment area around their main office.

<u>Community Development Financing Test</u>.

- In accordance with the ANPR, a bank's community development financing performance would be based on its assessment area deposits. Even though an internet bank may have limited assessment areas, this framework would not change its community development requirement at the bank level.

- All banks would receive a bank-level rating under a Community Development Financing Test. This rating would be based on the ratio of bank-wide community development lending and investment as compared to the bank's total deposits. The metric would take into account all community development activities regardless of location within the United States.

- Wholesale and limited purpose banks would continue to be evaluated under the framework that applies to those institutions today. In addition, banks could utilize a strategic plan.

Based on the guiding principles above, there are pros and cons to the Adaptive Approach. On one hand, this model would tailor CRA assessment areas to a bank's business model without requiring regulators to establish new, bright-line thresholds to define separate categories of banks and determine the assessment criteria applicable to them. Moreover, the elasticity of this framework would accommodate changes in a bank's business as it increases its digital focus over time. We also note that tailoring CRA regulation based on business model is consistent with existing CRA regulation, which for decades has recognized the unique business models of wholesale and limited purpose banks and permits such institutions 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.

The Adaptive Approach has other benefits as well, including providing a consistent methodology for evaluating out of assessment area retail lending activity by hybrid and branchless banks. And, while not a panacea, the Adaptive Approach would help to relieve inequitable concentration of CRA activities and market distortions in CRA "hot spots," thereby providing competitive relief to banks of all types operating in those areas.

It is also possible that regulators could design assessment area weightings to provide connectivity between the locations from which a bank takes deposits and the locations where it makes loans, although it is unclear how this could be accomplished for branchless banks other than by basing community development financing performance on bank-level deposits.

However, this approach is not without drawbacks. It may provide a competitive advantage to some branchless or branch-lite banks that would have fewer assessment areas to manage relative to branch-heavy banks (a competitive issue that exists today). In addition, the Adaptive Approach does not address how the community development service test should be applied to branchless and hybrid banks. As discussed further in section V.B. of this letter, the service test presents significant challenges in areas where a bank does not have a physical presence.

Most notably, however, the Adaptive Approach could create new CRA burdens for some hybrid banks that would be required to designate additional assessment areas. Therefore, appropriately setting the threshold for what constitutes significant out-of-assessment area activity will be critical.

Along these lines, we have significant concerns about the Federal Reserve's preliminary analysis of lending-based assessment areas. The Federal Reserve examined 2017 data for mortgages and loans to small businesses and small farms to determine the number of banks that conduct a substantial majority (set at 75%) of their lending outside of their assessment areas. The Federal Reserve determined that "additional assessment areas would be required for *only* 33 banks across all three lending categories" and that *"this approach may not meet the Board's policy objectives for defining additional assessment areas"* (emphasis added).

The Federal Reserve expressed similar sentiment when describing its analysis of banks with concentrations of mortgage lending outside of their assessment areas, using illustrative thresholds of 100 and 250 mortgages within a county as a trigger to delineate additional assessment areas. "This analysis revealed that of 3,160 banks analyzed, *only* 167 banks would be required to delineate at least one additional assessment area using a threshold of 100 mortgages loans and *only* 65 banks would be required to delineate at least one additional assessment area using a threshold of 250 mortgage loans." The Federal Reserve went on to note that these numbers could increase over time as banks expand their reliance on mobile and online platforms.

ABA fundamentally disagrees with the implied premise that a key objective of CRA modernization should be to require an unspecified number or percentage of banks to add additional CRA assessment areas. The goal of updating the assessment area construct should not be to simply add assessment areas and the full suite of CRA obligations (lending, investments, and services) in those locations. Rather, the assessment area concept must be revised to address the maturation of digital banking and those banks whose business models no longer fit into the geographic-focused assessment framework. For digitally-focused banks, loan production is not driven by the physical address of borrowers. Therefore, CRA must focus on how banks can enhance economic opportunities for underserved individuals and areas more broadly. Hyper-focus on expanding the number of assessment areas is not compatible with the need to provide digitally-focused banks with the flexibility to address needs nationwide.

2. Deposit-Based Assessment Areas

To address concerns that the existing CRA regulations place too much emphasis on a bank's physical locations, the Federal Reserve requests comment on whether deposit-based or lending-based assessment areas might serve as a workable alternative. Under these options, deposit volumes, lending volumes, or both, would be used to delineate additional assessment areas for banks with considerable loans or deposits outside of their branch-based assessment areas.

ABA has significant concerns with the concept of deposit-based assessment areas, as discussed in our April 8, 2020 comment letter responding to the CRA NPR issued by the Office of the Comptroller of the Currency.

- First, deposit-based assessment areas would focus CRA activities in population centers that are typically already well-served by banks, thereby reinforcing—not reducing—the CRA hot spot problem. They would add significant CRA obligations in these areas without any regard for levels of community need or whether there are a sufficient number of viable community development opportunities.

- Second, the data collection and maintenance that would be required by deposit-based assessment areas would impose substantial data costs on all banks.

- Third, we also note that over the years, new funding mechanisms have evolved that allow banks to generate deposits without marketing to specific customers or communities, which further lessen the geographic ties on which CRA has historically been based. CRA modernization should take these developments into account when defining the meaning of "community" and a bank's obligation to it.

- Finally, there are currently deposit data gaps that make it difficult to understand how this option would affect banks with different business models and asset sizes and which communities this approach would impact.

On the other hand, a deposit-based assessment would align with the CRA statute's goal of ensuring that banks do not take deposits from a community without also making loans there.

Reframing how regulators evaluate CRA performance in "communities where a bank is chartered to do business" has substantial implications for banks of all business models. Changes to the assessment area concept could have a major impact on bank business strategy and deployment of delivery channels. As such, it is critical that banks, regulators, and other CRA stakeholders thoroughly understand the significance and magnitude of any such revisions.

To that end, we strongly urge regulators to thoroughly data test potential alternatives and include the results of that testing into a future NPR requesting public comment on a revised CRA framework.

B. Other Assessment Area Issues

While updating the assessment area concept to reflect the digital transformation is a key aspect of CRA modernization, there are several additional assessment area issues that we urge the Federal Reserve to address.

1. Minimum Geography

For Large Banks, the ANPR would require that a facility-based assessment area be no smaller than a county. By contrast, the Federal Reserve is considering whether to permit Small Banks to define facility-based assessment areas as including 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.

We strongly support this approach for Small Banks and urge the Federal Reserve to extend this same treatment to Intermediate Small Banks (see discussion of Intermediate Small Banks in Section II.A., above). Requiring Small and Intermediate Small Banks to designate entire counties as assessment areas is not practical and would curtail the ability of these banks to adjust their assessment areas based on the area that they can reasonably serve. Some counties are quite large and can encompass significant geographic areas that would create CRA expectations that would be unreasonable for a community bank to meet. In addition, a community bank with one bank branch located near the county line cannot be expected to serve that entire county.

2. Loan Production Offices

The Federal Reserve is exploring whether facility-based assessment areas should be expanded to include loan production offices (LPOs). Banks use LPOs in many different ways. CRA regulations should take these vastly different strategies into account and provide a bank the *option* of delineating assessment areas in geographies where it has LPOs. Doing so should not be mandatory.

Some banks utilize LPOs as back-office operation centers, while other banks use these facilities to meet with customers. Some LPOs deal exclusively with residential mortgages, while others focus solely on serving corporate clients in the area. Furthermore, some banks have LPOs that are entirely disconnected from their branch network, while other banks have LPOs near or located within their existing assessment areas. Most LPOs usually involve single products and do not offer a full range of banking services.

Our members are very troubled by the prospect that the existence of an LPO could trigger the full range of CRA requirements, including community development lending, investments, and services. Community development involves a completely different type of lending than is done out of an LPO, which is of particular concern for LPOs that are located far away from the bank's CRA infrastructure. (For example, one of our members has branches concentrated in the Mid-Atlantic region, but has an LPO in Phoenix). These concerns are compounded by the potential that the presence of an LPO far removed from a bank's branches might require the bank to delineate the entire county where the LPO is located and comply with the full panoply of CRA regulations relative to that county.

On the other hand, delineating assessment areas around LPOs may make sense for some institutions, depending on a bank's business model and the LPO's location relative to the bank's assessment area.

In sum, we strongly recommend that regulators not take a one-size-fits-all approach to LPOs and that the presence of an LPO not trigger the full range of CRA requirements, recognizing, however, it may be appropriate in certain circumstances to allow a bank to receive credit for qualifying activity in a community in which it has an LPO.

3. Deposit-Taking ATMs

The Federal Reserve also inquires whether banks should have the option of delineating assessment areas around deposit-taking ATMs or whether doing so should remain a requirement. We agree that drawing assessment areas to include deposit-taking ATMs should be optional, not a requirement. Deployment of these machines is not an account generating strategy. Rather, they are largely an accommodation to provide customers with access to cash. Also, technological developments, including remote deposit capture, have decreased the popularity of ATMs as a deposit-taking channel.

4. Assessment Area Delineation

A bank's size, strategy, and business model are relevant considerations as a bank determines the appropriate geography of its CRA program. Today, examiners consider a bank's delineation of its assessment area during a CRA examination and evaluate whether the assessment area complies with the regulation's criteria. However, over the years, some examiners have disregarded banks' assessment areas and have imposed their own judgment regarding the area that they assert the bank should serve. Relatedly, some of our members report that examiners may have different viewpoints from one exam to the next (or one examiner to the next) regarding the adequacy of a bank's assessment area designation. An updated CRA framework should provide sufficient clarity so as to avoid inconsistencies in this regard.

5. Metropolitan Statistical Areas

Finally, we note that on January 19, 2020, the Office of Management and Budget (OMB) requested comments on a proposal to change the definition of Metropolitan Statistical Area (MSA).[8] Currently, an MSA is defined as an urban area with a population of 50,000 or more. OMB is proposing to increase the minimum urban area population to qualify for an MSA to 100,000. Under a revised definition, many existing MSAs would no longer qualify as MSAs. In addition, standards for determining the procedures for delineating and updating the statistical areas as new data becomes available are being developed. Comments on the proposal are due by March 19, 2021. We are reviewing the OMB's proposal, but wanted to bring it to the Federal Reserve's attention, as changes to the definitions of MSAs could have significant CRA-related implications since MSAs play a significant role in defining assessment areas.

IV. Evaluation of Retail Lending and Retail Services Performance

The ANPR invites comment on how to evaluate a bank's delivery of retail products and services. In particular, the Federal Reserve is considering a Retail Lending Test that would consist of two components: (1) a Retail Lending Subtest; and (2) a Retail Services Subtest.

Formalizing regulatory practices for evaluating a bank's retail lending performance and assigning performance ratings is a key component of CRA modernization. Several elements of the contemplated Retail Lending Subtest appear to be based on practices used in CRA examinations today. Codifying those standards will increase the predictability and consistency that is lacking in CRA examination and supervision. We also appreciate that the Federal Reserve's vision for an updated Retail Test would preserve performance context and establish a clearer mechanism for taking non-branch distribution channels into account.

At the same time, we have some concerns with the Federal Reserve's contemplated approach. Most notably, both the Retail Lending Subtest and the Retail Services Subtest appear to increase the complexity of CRA regulation and supervision. It is critical that a modernized CRA framework be clear, understandable, and not overly complicated. We also caution regulators against revising the Retail Test in a manner that adds data reporting burden pertaining to consumer loans and usage of deposit products by LMI individuals. Revised regulations must not simply add burden; rather, new costs must be offset by corresponding improvements to and efficiencies in CRA administration and examination.

A. Retail Lending Subtest

The Federal Reserve suggests adopting a metrics-based Retail Lending Subtest to evaluate the retail lending performance for all large retail banks and small retail banks that opt into the new framework. Wholesale and limited purpose banks would be exempt from this test. We offer the following comments on the specific elements of the Retail Lending Subtest.

[8] 86 Fed. Reg. 5263 (January 19, 2020).

1. Step 1: Retail Lending Screen

In this step of the Retail Lending Subtest, examiners would compare a bank's retail lending relative to its capacity to lend in an assessment area. In each assessment area, examiners would measure the average annual dollar amount of a bank's originations and purchases of retail loans (numerator) relative to its deposits (denominator). This metric would be compared to a market benchmark that reflects the level of retail lending by other banks in the same assessment area, indicating the aggregate dollar amount of lending in which a typical bank might be expected to engage given its level of retail deposits.

A bank that passes the retail lending screen would be eligible for a presumption of "Satisfactory" based on its performance relative to the retail lending distribution metrics described below. A bank that does not pass the retail lending screen would be subject to a more comprehensive review by an examiner. The retail lending screen would be designed to ensure that a bank does not receive a presumption of Satisfactory in assessment areas where it has overall low levels of retail lending relative to deposits, as compared to other banks in the assessment area.

Importantly, this preliminary assessment would not be intended to provide an in-depth evaluation of a bank's retail lending for CRA purposes. Rather, it is designed to serve as an initial, high-level review that provides examiners with broad perspective regarding a bank's retail lending to LMI individuals and areas. The retail lending screen is appropriate and maintains continuity with existing practices whereby examiners review a bank's retail lending performance relative to aggregate activity in an assessment area. We also appreciate its potential to improve the efficiency of the exam process.

2. Step 2: Calculate Bank Metrics

If a bank passes the retail lending screen, examiners would then calculate the bank's retail lending distribution metrics for each major product line in an assessment area and compare those metrics to local benchmarks.[9] A bank that meets or exceeds the local metrics would receive a presumptive rating of Satisfactory in that assessment area (and could be eligible for a rating of Outstanding) for that product line. Examiners would consider this recommendation, in conjunction with performance context and qualitative information, to reach a final Retail Lending Subtest conclusion.

[9] The geographic distribution metric would calculate the total number of the bank's originated or purchased loans in LMI census tracts relative to the total number of the bank's originated or purchased loans in the assessment area overall. The borrower distribution metric would measure a bank's loans to LMI individuals or to small businesses or small farms within an assessment area relative to the total number of the bank's corresponding loans in that category in the assessment area overall. The Federal Reserve suggests using two different kinds of benchmarks for each distribution metric. First, a community benchmark would reflect the demographics of an assessment area, such as the number of owner-occupied units, the percentage of low-income families, or the percentage of small businesses or small farms. Second, a market benchmark would reflect the aggregate lending to targeted areas or targeted borrowers by all lenders operating in the same assessment area. Using these two kinds of benchmarks will help tailor the Retail Lending Subtest to the lending opportunities, needs, and overall lending taking place in an assessment area.

Streamlined Calculations. Today, examiners separately evaluate a bank's performance in each income category (low-, moderate-, middle-, and upper-); in each loan category within a product line (e.g., home purchase loans, home refinance loans); and for each year. The Federal Reserve's suggested framework would take a more streamlined approach by:

- Combining low-and moderate-income categories under a single metric calculation;
- Aggregating all categories of home mortgage loans together when evaluating home mortgage lending, all categories of small business loans together when evaluating small business lending, and all types of small farm loans together when evaluating small farm lending; and
- Combining all years of the evaluation period together under a single metric calculation.

Calculating the retail lending distribution metrics on a consolidated basis would allow examiners to focus on the overall picture of a bank's retail lending in major product lines and would provide a more balanced view of a bank's overall retail lending activity in an assessment area.

For example, many banks experience swings in lending volume between low-income borrowers and moderate-income borrowers and geographies. Often, volatility between these income categories is caused by new development or revitalization in specific census tracts or by changes in census tract designations, which are updated every five years. Combining these income categories for purposes of the Retail Lending Distribution Test will remove unnecessary granularity while providing examiners with an accurate view of a bank's lending to LMI individuals and areas in a given assessment area overall.

Similarly, it is appropriate to evaluate a bank's CRA lending over the course of the entire evaluation period rather than requiring banks to meet specified distribution targets each year. Consolidating the years of the evaluation period recognizes that loan demand and production fluctuate based on market conditions, such as recession or loss of key staff in markets where it is difficult to recruit qualified employees. Combining all years of the evaluation period under a single calculation would eliminate the "noise" that can exist in annual targets, thereby providing a holistic view of a bank's performance.

While we agree that it would be useful to combine all years of the evaluation period together under a single metric calculation, we caution that using local, aggregate data to measure a bank's retail lending performance will be limited by differences in economic conditions during the covered time period and the economic conditions occurring after regulators aggregate the data and average it out over a 3-5 year period. For example, consider the pandemic and its economic fallout. If the Retail Lending Test were in place today, 2019 data would significantly skew a subsequent exam. This further underscores the importance of continuing to take a bank's performance context into consideration.

3. Presumption of Satisfactory

Banks that meet or exceed 65% of the community benchmark and 70% of the market benchmark will receive a presumption of Satisfactory. Providing a presumptive rating of Satisfactory to banks that meet the benchmarks would bring transparency, consistency, and certainty to the CRA examination process. For quantitative performance metrics to be meaningful, they must provide banks with some degree of certainty that their performance will be deemed satisfactory upon meeting the established benchmarks. Without this certainty, the quantitative approach would have little value and would not achieve key objectives of CRA modernization.

4. Ratings Conclusions

Today, the CRA rating framework is opaque; it is unclear how the agencies assign specific ratings. We appreciate that the ANPR would articulate standards for drawing ratings conclusions. A modernized CRA framework should explain how examiners make judgments, the data that they use to inform those judgments, and the weight of other factors that examiners consider in determining a bank's CRA rating.

The Federal Reserve suggests establishing performance ranges for each rating category—Outstanding, Satisfactory, Needs to Improve, and Substantial Noncompliance. Performance ranges could be used to help reach Retail Lending Subtest conclusions in two ways. First, when a bank receives the presumption of Satisfactory, performance ranges could provide transparency and consistency regarding the level of performance that would merit upgrading to an Outstanding. Second, when a bank does not receive the presumption of Satisfactory, the performance ranges could help provide greater consistency and predictability about which of the four possible conclusions the bank would receive on the Retail Lending Subtest. In these two situations, the Federal Reserve envisions that the *recommended* conclusions developed through the performance ranges approach could be combined with an examiner's review of specific performance context factors along with any details about the bank's specific activities to reach a *final* conclusion for the Retail Lending Subtest.

The Retail Lending Subtest appears to refine and improve upon existing CRA regulations. In particular, we appreciate that the Federal Reserve aims to bring a quantitative approach to evaluating a bank's retail lending performance while still incorporating performance context into a bank's ratings conclusion. Basing Retail Lending Test ratings solely on a bank's quantitative performance would not provide a holistic view of a bank's retail lending activity.

5. Loans Evaluated Using Retail Lending Metrics

The Federal Reserve suggests setting a clear quantitative threshold to determine whether a bank's home mortgage, small business and small farm lending should be evaluated as major product lines at the assessment area level. We agree that incorporating these triggers into regulation would provide clarity and consistency regarding which product lines will be evaluated for CRA purposes.

<u>Home Mortgage, Small Business, Small Farm</u>. Under the ANPR, a bank's mortgage, small business, or small farm lending would be subject to the Retail Lending Subtest in an assessment area if that product line constitutes 15 percent or more of the dollar value of a bank's retail lending in a particular assessment area over the evaluation period. This would constitute a change compared to the current approach, which automatically includes reviews of these product lines in all assessment areas.

We support streamlining CRA evaluations to focus on retail lending activity that has the biggest impact at each bank. However, we offer the following suggestions for refining what constitutes a major product line.

First, we suggest that the Federal Reserve adopt a range in lieu of the 15 percent trigger. As we have emphasized throughout the modernization effort, regulators should improve certainty and predictability relative to CRA examinations. In this same vein, it is important that banks know at the *beginning* of an exam period whether they will be subject to the Retail Lending Subtest. Banks that cross the 15 percent threshold mid-exam cycle should not be subject to this performance measure. In place of the proposal's bright-line approach, we recommend that the Federal Reserve adopt a range and a look back period. After a product regularly falls within the specified range over a two or three year period, only then should it constitute a major product line.

Second, we suggest that the definition of major retail lending product line also include a minimum loan count. This would help to ensure that an evaluation is statistically valid and based on a sufficient number of data points.

<u>Consumer Loans</u>. Today, CRA examinations typically evaluate a financial institution's consumer lending only if such lending comprises a "substantial majority" of the institution's business. This reflects CRA's primary focus on home mortgage, small business, and small farm loans. However, a bank may elect to have its consumer loans included in its CRA evaluation if it has collected and maintained data on them.

This aspect of the CRA regulation is problematic because there is not an established threshold to determine whether consumer loans constitute a substantial majority of the bank's business. Instead, examiner judgment is used to determine whether consumer loans should be included in a bank's CRA exam. This has resulted in significant inconsistencies between agencies and from one examiner to the next.

To remedy this issue, the Federal Reserve suggests setting clear quantitative standards to determine whether to evaluate consumer lending as part of a bank's CRA exam. ABA supports this revision, as it would focus CRA examination on consumer lending that constitutes a significant part of a bank's business while also reaffirming CRA's focus on asset-building loans and community development. Banks whose consumer lending does not reach the articulated threshold should continue to have the option of having their consumer lending evaluated for CRA purposes.

To determine whether consumer lending is constitutes a major product line, we suggest that the Federal Reserve base a threshold on a bank's dollar volume of consumer loans in an assessment area relative to deposits. We believe this approach aligns with the spirit of CRA without imposing undue regulatory burden on banks that currently do not report consumer loans.

New data collection and reporting burdens for consumer loans could lead to increased fees and/or interest rates on consumer loans, which would be contrary to bank efforts to provide a variety of products and services that help consumers manage their finances and build assets and credit histories in preparation for becoming homeowners. For example, on March 26, 2020 the federal banking regulators issued a joint statement encouraging insured depository institutions to offer responsible small-dollar loans to consumers and small businesses in response to COVID-19. These products help consumers with their short-term financial needs while establishing a path to more mainstream financial products. Small dollar loans have very thin profit margins, and subjecting them to new CRA recordkeeping and reporting requirements would be a further disincentive to offering these products, which can provide an important source of funding for consumers.

B. <u>Retail Services Subtest Evaluation Approach</u>

The second component of the ANPR's Retail Test is a Retail Services Subtest for large banks that would evaluate the extent to which delivery systems and deposit products are responsive to the needs of LMI individuals. We offer the following comments on these components of the Retail Services Subtest.

1. <u>Delivery Systems</u>

The delivery systems portion of the Retail Services Subtest would examine a bank's branch distribution, its record of opening and closing branches, and its non-branch delivery systems. It is intended to evaluate the availability of deposit products and the degree to which they are tailored to meet the needs of LMI individuals as well as the usage and impact of such products.

We are pleased that the Federal Reserve seeks to account for digital delivery of products and services more fully.

<u>Digital Delivery Channels</u>. Even though society is well beyond the early days of the digital revolution, the existing CRA regulatory framework continues to focus heavily on a bank's branch locations. This aspect of the CRA regulation is ripe for modernizing and should reflect the proliferation and consumer use of online and mobile delivery channels. An updated regulatory framework should provide examples of methodologies by which a bank may demonstrate how

its non-bank distribution channels serve LMI individuals. For example, data points could include rates of usage of online and mobile services by customers, grouped by census tract. However, we recommend that the final rule avoid specifying the analytics that a bank must provide. Banks are at very different stages of their data transformation process and have varying degrees of access to information regarding their customer base. As such, a one-size-fits-all approach to providing data regarding digital channels is unlikely to be practical.

We also urge the Federal Reserve to ensure that banks in rural areas or other geographies where broadband access is limited will not be penalized if their penetration of LMI via digital channels is less than that of their peers. In many locations, the distance of a few miles—or even a few hundred yards—can be the difference between high speed access and zero internet service.

Branch-Related Services. We also urge the Federal Reserve to take into account branch-related product and service offerings that could improve access to financial services or decrease costs to LMI individuals. Examples could include offering extended business hours; bilingual translation services; free or reduced or low-cost government, payroll or other check cashing services; and reasonably priced remittances. Giving qualitative credit for these product and service offerings would complement a quantitative evaluation and would help to provide a comprehensive evaluation of a bank's physical distribution channels.

2. Deposit Products

The Federal Reserve is considering creating a second prong of the Retail Services Subtest that focuses on the degree to which deposit products are responsive to the needs of LMI individuals as well as the usage and impact of such products. While it may be beneficial to measure the degree to which deposit products are designed for and used by LMI individuals, obtaining income information for deposit product customers poses a number of problems.

First, banks do not currently collect income information for deposit customers. Moreover, extrapolating a depositor's income based on deposit inflows and outflows would be fraught with inaccuracies and would therefore be an inappropriate measure of the extent to which a bank's deposit products are used by LMI individuals.

Second, deposit customers may be put off by bank requests for income information. Indeed, the request is likely turn unbanked and underbanked individuals away from banks and safe financial products—the exact opposite of what CRA is trying to achieve.

Third, the ability of many banks to leverage relevant data regarding LMI usage of deposit-related products and services will depend largely on third-party core processors. Regulators must be mindful that banks are at very different points in their digital transformation journey and have very different capacities to understand their customer base. Data access through the cores is a challenge for most banking organizations. Based on discussions with ABA's Core Platforms Committee, it does not appear that banks have access to standardized data sets that would be necessary to report quantitative data regarding utilization of deposit products by LMI individuals.

For these reasons, regulators should not require banks to collect and report depositor income information in order to receive CRA credit for accounts geared toward LMI individuals. Regulators have previously permitted banks to use census tract income data as a proxy for customer income information and should continue to do so. In addition, regulators should consider basing LMI penetration on other proxies, such as Individual Development Accounts or other types of products that are designed for LMI customers. Another measure might be accounts opened in partnership with organizations that support LMI individuals.

3. Retail Services Subtest Conclusion

The Federal Reserve proposes to provide a single Retail Services Subtest conclusion in each assessment area. The rating would be assigned in a qualitative manner that draws on the delivery system and deposit product components described. In assigning a rating, the Federal Reserve suggests giving more weight to the delivery systems component.

As the Federal Reserve refines and further contemplates this concept, regulators could factor in the types of online transactions offered by a bank in conjunction with the types of accounts that it opens online. The more robust the product or service offer, the more favorable it should be from a CRA perspective. For example, a BankOn account that is able to be opened electronically should receive more favorable consideration than a BankOn account that cannot be opened electronically.[10]

V. Community Development Test

The Federal Reserve is considering a new Community Development Test that would be comprised of two parts: (1) the Community Development Financing Subtest and (2) the Community Development Services Subtest. The Community Development Test would apply to large retail banks and wholesale and limited purpose banks. Banks subject to the Community Development Test would receive separate Community Development Financing and Community Development Services subtest conclusions for each assessment area.

A. Community Development Financing Subtest

One of the challenges with today's CRA framework is that regulators have adopted unofficial and unpublished CRA quantitative goals or metrics. CRA performance evaluations commonly reference a variety of benchmarks for determining the resources that a bank should allocate to CRA (e.g., a percentage of assets or Tier 1 capital). Such informal policies are highly

[10] The CFE Fund has worked closely with the BankOn National Advisory Board and other key stakeholders to develop the Bank On National Account Standards. Inspired by the FDIC's Model Safe Accounts Template, these standards provide local programs with a benchmark for account partnerships with financial institutions, including their local partners. Financial institutions with accounts that meet these Standards can apply free for national certification.

problematic; regulators should not expect institutions to meet minimum thresholds for CRA activity that are not required by law or regulation.

To remedy this situation, the Federal Reserve is considering developing a framework for quantitatively assessing a bank's community development loans and investments. Under this approach, the Federal Reserve would establish a "community development financing metric" that measures the ratio of the dollar amount of a bank's qualifying community development financing activities (the numerator) compared to its deposits within each assessment area (the denominator). The Federal Reserve is also considering how to use local and national data to establish benchmarks for the community development financing metric at the assessment area level. Wholesale and limited purpose banks generally do not accept retail deposit accounts, and therefore would be evaluated under separate procedures that would not involve retail deposits as the denominator for their community development financing metric.

Quantitative performance metrics would provide much-needed transparency and certainty regarding the evaluation and sufficiency of a bank's community development activities. We appreciate the Federal Reserve's effort to provide clarity in this regard. However, the metrics are complex, and many of our community bank members are struggling to fully comprehend how the contemplated performance measures would impact their CRA programs.

In addition, we recognize that quantitative community development performance metrics will involve additional data reporting. However, the nature of that reporting is unknown at this point. As a result, banks are unsure whether the benefits of quantitative performance measures would outweigh the associated costs. As a general matter, however, a revised framework should not result in massive new data collection and reporting requirements simply for the sake of adopting a metrics-based approach. Rather, any new burdens must be offset by corresponding improvements to and efficiencies in the administration of bank CRA programs and regulatory examination. Calibrated correctly, a modernized CRA regime will bring welcome transparency to the examination process while focusing CRA resources on community and economic development, not program administration.

1. Numerator

Aggregation of Loans and Investments. Under the existing CRA framework, large banks are evaluated under a lending, service, and investment test—all of which have a community development component. Requiring banks to meet separate community development lending and investment tests is a check-the-box exercise that artificially drives funds to certain activities rather than allowing banks to tailor their CRA activities to the unique needs of their communities. For example, one community may benefit from more community development loans, while another community may be better served by more investments.

To address this issue, the Federal Reserve suggests defining the numerator of the community development financing metric as a bank's average annual dollars of community development loans and investments originated or purchased in each year of the evaluation period plus the value of community development loans and qualifying investments originated or purchased in a prior year and remaining on a bank's balance sheet. We strongly support this approach. Evaluating activities under one subtest would give banks more flexibility to provide the type of financing—loans or investments—most appropriate to support their local communities without concern about meeting different evaluation criteria.

Prior Period Loans and Investments. We also appreciate that the Federal Reserve's framework would harmonize the treatment of community development loans and investments. Today, banks receive CRA consideration for community development investments made during the current exam cycle as well balances of outstanding community development investments made in prior exam cycles.[11] However, banks only receive consideration for loan originations and extensions made during the current exam cycle. Limiting CRA consideration for community development loans to the exam cycle in which they were originated incentivizes banks to match the terms of the loans to the cycle of their CRA examination, which results in shorter term loans.

To remedy this issue, the Federal Reserve suggests defining the numerator of the community development financing metric to include the value of community development loans and investments originated or purchased in a prior year and remaining on a bank's balance sheet. We believe that this approach will remove disincentives in the existing framework that discourage banks from making longer term loans that can be more impactful to community development than short-term revolvers (depending on market conditions). Capturing the book value of qualifying community development loans that remain on the balance sheet from prior evaluation periods, as currently happens with qualifying investments, would more effectively encourage patient capital.

Average Annual Dollars*.* ABA also supports evaluating a bank's community development activity based on a bank's average annual dollars of community development financing activity loaned or invested in a given assessment area. This approach recognizes that community development activities do not always occur on an even cadence. In some years, community development opportunities are plentiful, while in others they are more limited. In addition, identifying and underwriting transactions can take an extended period of time. Evaluating a bank's community development performance based on average annual dollars would provide regulators with a holistic view of a bank's community development loans and investments over the course of the evaluation period. It would also provide an equitable comparison of banks regardless of whether they have a three or five-year exam period.

2. Denominator

For the denominator of the Community Development Financing Metric, the Federal Reserve suggests using a bank's annual average dollar amount of deposits within a given assessment area. Deposits would be an appropriate measure of a large retail bank's CRA capacity, as it

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[11] *See* Community Reinvestment Act; Interagency Questions and Answers Regarding Community Reinvestment; Guidance, 81 Fed Reg. at 48, 533 (citing§___.12(t)—8).

aligns with the CRA statute's objective of ensuring that a bank meets the credit needs in the communities where it conducts business.

The Federal Reserve is considering two options for how to construct this denominator for large retail banks. The first option would use FDIC Summary of Deposit (SOD) data to measure the dollar amount of deposits assigned to branches within a bank's assessment area.[12] The second option would use the dollar amount of retail domestic deposits held on behalf of depositors residing within each assessment area.

Regulators should keep two considerations in mind when crafting a deposit-based denominator. First, covered deposits should have a direct correlation to a bank's community footprint. This nexus is particularly important for banks with facility-based assessment areas. Therefore, we recommend that the Federal Reserve specifically exclude brokered deposits, exempt sweep deposits, reciprocal deposits, health savings accounts, listed deposits, and prepaid cards from the community development financing denominator, as they are not associated with identifiable individuals or communities. We also suggest that deposits of foreign governments and municipal deposits likewise be exempted.

Brokered Deposits. Under the Federal Deposit Insurance Act, a brokered deposit is defined as "any deposit that is obtained, directly or indirectly, from or through the mediation or assistance of a deposit broker." In turn, "deposit broker" is statutorily defined as "[a]ny person engaged in the business of placing deposits, or facilitating the placement of deposits, of third parties with insured depository institutions, or the business of placing deposits with insured depository institutions for the purpose of selling interests in those deposits to third parties[.]"[13] Typically, these deposits are raised in national money markets or with the help of a third party that distributes deposits across multiple banks. Brokered deposits are an important source of funding for many banks. Yet, due to their structure, such deposits are gathered through national markets and are not associated with specific communities.

Affiliated Sweep Deposits. Certain affiliated broker-dealer sweeps that move cash overnight from a brokerage account at a broker-dealer into an FDIC insured deposit account are not considered "brokered" under the primary purpose exception of the FDIC's brokered deposit rule ("affiliated sweep deposits").[14] Like brokered deposits, affiliated sweep deposits are not associated with particular communities and should not be factored into the denominator used to calculate a bank's community development obligations.

[12] FDIC SOD data includes deposits pertaining to: (1) Individuals, partnerships, and corporations, (2) the U.S. Government, (3) states and political subdivisions in the United States, (4) commercial banks and other depository institutions in the United States, (5) banks in foreign countries, and (6) foreign governments and official institutions (including foreign central banks). *See* FFIEC, "Consolidated Reports of Condition and Income for a Bank with Domestic and Foreign Offices—FFIEC 031," Schedule RC-E, Deposit Liabilities, p. 34, https://www.ffiec.gov/pdf/FFIEC_forms/FFIEC031_202006_f.pdf.

[13] 12 C.F.R. § 337.6(a)(5)(i)(A). See also 12 U.S.C. § 1831f(g)(1)(A).

[14] Brokered deposit is defined as "any deposit that is obtained, directly or indirectly, from or through the mediation or assistance of a deposit broker." 12 CFR 337.6(a)(2). The primary purpose exemption is an exception from the definition of deposit broker." An agent or nominee whose primary purpose is not the placement of funds with depository institutions." 12 CFR.6(a)(5)(ii)(I).

Reciprocal Deposits. Under the Federal Deposit Insurance Act, reciprocal deposits are deposits that a bank receives through a deposit placement network in return for deposits that the bank places through the network. Banks that receive reciprocal deposits have a business relationship with a third party intermediary, but ordinarily have no relationship with the individual or community from which a reciprocal deposit originates, which could be anywhere in the United States.

Moreover, including reciprocal deposits in the denominator of the Community Development Financing Subtest would be impractical, as such deposits are typically titled in the name of a custodian or sub-custodian and the receiving bank typically does not know the identity or locations of the underlying beneficial owners.

Health Savings Accounts. Health savings accounts (HSAs) are owned by account holders and remain the account holder's property even if s/he changes jobs or health plans or retires. Banks do not necessarily maintain a direct relationship with HSA account owners. Rather, account owners may interact with third parties to open and manage HSA accounts. In that regard, but only in that regard, HSA deposits can resemble brokered deposits, which should be excluded from the denominator of the community development financing metric.

Listed Deposits. Some depositors use national listing services to find the best rate available for a given deposit type and, in the case of a certificate of deposit, a term. Deposit listing services come in different forms, but all connect those seeking to place a deposit with banks. As with other deposits described in this section, listing service deposits are raised nationally; therefore, the depositor is not necessarily tied to the community in which the bank maintains a footprint. As a result, such deposits should be exempt from the community development financing denominator.

Prepaid Cards. We also request that the agencies exclude prepaid cards from the community development financing denominator. Some prepaid cards do not have an address associated with the purchaser or the end user. For example, in the case of a prepaid gift card that is purchased at a retail store, no identifying information is collected at the point of sale.

Second, we also suggest that a deposit-based denominator focus on deposits intended primarily for personal, household, or family use. To that end, regulators could leverage Schedule RC-E, items 6.a, 6.b, 7,a(1) and 7.b(1) of the Call Report. This approach would minimize regulatory burden by leveraging existing bank reporting requirements. It would also more accurately represent a bank's capacity to engage in qualifying activities for the benefit of individuals, small businesses, and small farms. And, by excluding corporate deposits, this definition would ensure that the deposits of a large corporation do not distort a bank's CRA obligations in a particular assessment area. Finally, this approach would address many of the issues described above presented by deposits that lack a connection to a particular assessment area and the inability to geocode them. While banks with $1 billion in assets or less are not required to include these items in their Call Report, rightsizing the definitions of Small and Intermediate Small banks would address this issue.

Finally, we note that the Federal Reserve acknowledges that the deposit denominator it is considering for large retail banks would not be appropriate for wholesale and limited purpose banks. Accordingly, the Federal Reserve is considering two alternatives: (1) assets instead of deposits or (2) the amount of qualifying loans and investments without scaling to deposits or assets. We agree that wholesale and limited purpose banks should not be evaluated using a deposit-based denominator due to the potential for widely disproportionate outcomes. We also agree that it's appropriate for the Federal Reserve to consider the development of an alternative asset-based measure of CRA capacity. Still, we do not believe that a general metric, such as "total assets," is sufficiently responsive to differences in underlying business model, and in fact could result in outcomes that are just as disproportionate as a deposit based denominator. Instead, we recommend that the Federal Reserve consider the use of an approach for wholesale and limited purpose banks based on "CRA-eligible assets"—that is—those assets held by the bank which have a reasonable nexus to the CRA and its mandate to support the LMI communities in which the bank operates. For instance, it may be appropriate for the Federal Reserve to exclude both foreign assets and central bank placements from CRA-eligible assets due to their particular characteristics relative to a bank's CRA obligations. Finally, we note that a deposit-based denominator may not be appropriate for banks with strategic plans.

3. Where Community Development Activities Count

Today, a bank will not receive CRA consideration for qualified activities outside of its assessment area unless the examiner concludes that the bank has been responsive to community development needs and opportunities within its assessment area(s). Even then, the current CRA regulations and Q&A guidance generally limit consideration of community development activities to the broader statewide or regional areas (BSRA) that include the bank's assessment area(s).[15]

Many banks feel that regulatory guidance is unclear as to what the BSRA encompasses. In addition, banks do not receive confirmation as to whether they receive CRA consideration for BSRA activities until exam time, which can be years after a transaction closes. As a result, many banks are reluctant to engage in CRA activities outside of their assessment area. This framework has contributed to a concentration of community development activity in large urban areas, which has led to pricing distortions for community development loans and investments in

[15] *See* Community Reinvestment Act; Interagency Questions and Answers Regarding Community Reinvestment; Guidance, 81 Fed. Reg. at 48, 529 (citing §__.12(h)-6). For banks evaluated pursuant to the community development test for wholesale or limited purpose banks, the agencies also consider qualified investments, community development loans, and community development services that benefit areas outside the bank's assessment area(s), if the bank has adequately addressed the needs of its assessment area(s). 12 C.F.R. §§ 25.25(e)(2), 195.25(e)(2))(2018).

certain locations (i.e., CRA “hot spots”). It is important that any modernized CRA regulatory framework address these issues.

Under the community development financing metric outlined in the ANPR, only qualifying activities and deposits that are within an assessment area would be included in calculating a bank’s community development financing metric for that assessment area. At the same time, to emphasize the importance of community development activities in broader statewide and regional areas, the Federal Reserve would consider all qualifying activities that are contained within an eligible state, territory, or region in which a bank has an assessment area and would factor these activities into the state, multistate MSA, or institution conclusion or rating. The inclusion of these broader activities in state, multistate MSA, and institution rating would no longer depend on a bank’s performance within a bank’s assessment area.

We strongly support the Federal Reserve’s effort to incentivize banks to provide funding in areas that have a demonstrated need even if those geographies are outside of a bank’s assessment area. The ANPR’s approach is a productive step forward in reducing red tape and uncertainty that has discouraged banks from engaging in community development activities in those locations. However, we are concerned that the approach described in the ANPR does not go far enough to alleviate the persistent issue of inequitable concentration of CRA investments in population centers and CRA hot spots.

Instead, we suggest that banks receive CRA credit at the bank level for community development activities conducted anywhere outside of a bank’s assessment areas. Requiring banks to satisfy the community development financing metric in each assessment area means that a bank will prioritize meeting the community development needs of those locations, which is appropriate. However, limiting out-of-assessment area credit to certain states, regions, Indian Country, or areas designated by the Federal Reserve as economically distressed will continue to exacerbate CRA “deserts” that are struggling economically and have significant unmet needs.

We further recommend that CRA activities outside of a bank’s assessment area receive a multiplier or be assigned a high impact score[16] to offset the extra effort that will be required to make community development loans and investments in these locations. Underserved markets in need of CRA funding are often far removed from a bank’s CRA infrastructure. Making community development loans and investments in these areas will require that banks devote time and human capital to build relationships to identify CRA needs, opportunities, and potential local partners.

Another option the Federal Reserve could consider is providing CRA credit for qualifying community development activities outside of the bank’s assessment area if the bank received an overall rating of Satisfactory or better on its previous CRA exam. This approach would provide a strong incentive for banks to maintain satisfactory CRA performance on an ongoing

[16] For further discussion of impact scores, see discussion in Section V.A.7, below.

basis. Banks with unsatisfactory CRA performance would lose their ability to earn out of assessment area credit during the next exam cycle.

4. Benchmarks for the Community Development Financing Metric

The Federal Reserve recommends establishing one local and one national benchmark tailored to each assessment area that would serve as appropriate comparators for the community development financing metric. Both of these benchmarks would be based on the dollar amount of community development financing and the dollar amount of deposits provided by all large retail banks at the corresponding geographic level.

At this time, we do not have specific comments regarding the composition of the local and national benchmarks. However, we appreciate the Federal Reserve's effort to develop quantitative benchmarks that account for variations in community characteristics and economic conditions. A one-size-fits-all approach simply would not be a workable metric because community and economic development opportunities and conditions across the country vary significantly. For example, some rural areas have a limited number of organizations with whom banks can partner on community development initiatives. Other parts of the country experience inflated competition for community development loans and investments, the terms of which can price local lenders out of the markets in their own geographies. While performance context remains a critical component of the Community Development Test, mathematically incorporating local market conditions into the Community Development Financing benchmark will help to reduce subjectivity and address criticisms that CRA ratings are unpredictable.

While we support the objective of tailoring the Community Development Financing benchmark, we are still working with members to assess how—or if—the benchmarks would work in practice. For example, how would a bank know what its target threshold is if the bank defines its assessment area differently than the geography covered by the published benchmark? There does not seem to be a mechanism to make the data available such that a bank could add up the community development loans and community development investments found within the specific assessment area unless it is an aggregation of the loans/investments by census tract. Furthermore, we are uncertain how the local and national benchmarks would come together and be weighted and whether banks with different business models (e.g., retail, wholesale, or limited purpose banks) would be subject to the same benchmarks. We request that the Federal Reserve address these issues in a future CRA NPR.

5. Data Reporting

While the creation of quantifiable performance standards for community development financing has the potential to eliminate much of the uncertainty regarding the sufficiency of a bank's community development activities, it also has the potential to create substantial new costs and burdens. It is unknown at this point what that reporting would entail. As a result, we are uncertain whether the benefits of quantitative performance measures would outweigh the associated costs. As a general matter, however, a revised framework should not result in massive new data collection and reporting requirements simply for the sake of adopting a metrics-based approach. Rather, any new burdens must be offset by corresponding improvements to and efficiencies in the administration of bank CRA programs and regulatory examination.

We also emphasize that these data burdens make it critical that the Federal Reserve right-size the definition of Small and Intermediate Small Bank by tailoring the new the new data requirements so as not to disproportionately burden community banks, particularly those that are classified as Intermediate Small Banks today.

At a minimum, we anticipate that a community development financing metric would necessitate some additional reporting of community development lending and investment activity. To minimize the burden associated with this regulatory change, regulators should leverage existing data and reporting as much as possible. Conceivably, banks could report their community development loan and investment origination totals on an annual basis, as is done for community development loans today, and could provide the balances for prior period activity at the end of the examination period. This approach would align more closely with existing practices and would be significantly less burdensome than a more frequent reporting requirement. Similarly, regulators should seek to leverage Call Report data as much as possible for purposes of reporting the deposit-based denominator of the Community Development Financing Subtest.

Furthermore, there are many unanswered questions regarding how using deposits as the denominator for the Community Development Financing Subtest would work in practice. Would the Federal Reserve create a new reporting regime for calculating such deposits? If the data does not align with the Call Report, would banks be required to report this deposit information publicly, or would it be used for exam purposes only? Would banks be required to geocode this information?

In sum, while we support the development of quantitative benchmarks in theory, we need additional information regarding how the data reporting and benchmarks would work in practice in order to have greater confidence that the burden of a metrics-based approach would provide meaningful benefit. As the Federal Reserve reviews comments on this ANPR and works toward crafting a proposed rule, we would welcome the opportunity to arrange meetings between the Federal Reserve and our member banks to explore these issues in-depth and offer suggestions for minimizing burden associated with a quantitative performance metric.

6. Presumption of Satisfactory

The Federal Reserve suggests that if a bank's Community Development Financing metric surpasses a certain threshold, the bank could be presumed to have achieved at least satisfactory performance. Examiners would then evaluate qualitative factors to help determine whether a bank that surpasses the threshold should receive a Satisfactory or Outstanding rating, or to help determine the appropriate conclusion for a bank that does not meet the threshold.

The Federal Reserve notes the lack of data regarding prior-period community development loans, community development financing activities in a bank's broader statewide or regional areas, and activities in many smaller cities and rural areas and goes on to note that calibrating the Community Development Financing metrics appropriately based on sufficiently robust data and analysis is essential to setting performance standards that are neither too high nor too low.

In light of initial data limitations, the Federal Reserve observes that it might be necessary at least initially to treat the thresholds as a general guideline rather than creating a presumption of Satisfactory. Under this gradated approach, surpassing a threshold would be taken into consideration, but would not initially grant a presumption of a specific conclusion. Regulators would employ this graduated approach until they gathered sufficient data for the presumptive approach. ABA supports phasing in the thresholds over time. Any new CRA benchmarks or performance measures should be based on data that is collected on a go-forward basis rather than requiring banks to engage in the labor-intensive exercise of reconstructing information. Devoting personnel and monetary resources necessary to construct the historical data would be wasteful and unproductive, particularly if regulators revise the definitions of qualifying community development activities.

The Federal Reserve notes that in situations where the dollar amount of a bank's activities is large, but the activities are not determined to be particularly responsive or impactful, examiners may determine that a bank may not merit a conclusion of Satisfactory on the Community Development Financing Subtest, even if it has surpassed the quantitative threshold. Moreover, the Federal Reserve states that the reverse would also apply; a bank that does not surpass a quantitative threshold reflecting Satisfactory performance may still be assigned a Satisfactory or Outstanding conclusion based on an examiner's review of performance context factors and a detailed review of the bank's activities.

We caution that if exceeding the threshold does not guarantee the bank will be considered at least Satisfactory, then the system remains as subjective and opaque as it is today. Similarly, legitimate comparisons of bank performance in a community would not be possible. If, as suggested, a Satisfactory can be assigned without meeting the threshold, an objective observer cannot reliably be expected to come to the same conclusion.

We reiterate our support for consideration of a bank's performance context. However, the concerns described above, in conjunction with the Federal Reserve's effort to quantify and assign additional scores to various aspects of a bank's CRA performance risks adding more complexity to the CRA evaluation process than exists today and fails to increase transparency and predictability. In sum, it is very important that CRA modernization strike the right balance between quantitative and qualitative factors, and the appropriate application of those factors to different types of banks, as well as presumptions of compliance versus consideration of performance context. Otherwise, revising the CRA framework will create a substantial amount of work and burden without providing needed certainty.

7. Qualitative Considerations

The Federal Reserve is considering providing more specificity regarding performance context and other qualitative factors that examiners will consider as part of the Community Development Financing Subtest. In particular, the Federal Reserve would describe how impactful activities are factored into performance ratings. Performance context would continue to play an important role in identifying the unique community development needs of each assessment area, which would help inform examiners' evaluation of the impact and responsiveness of a bank's activities.

Notably, the Federal Reserve considered using activity-based multipliers, but concluded that the impact and responsiveness of particular community development financing activities can vary considerably, which could not be captured using uniform weights. Instead of activity-based multipliers, the Federal Reserve is considering assigning an impact score of 1-3 (with 3 being the highest) to each community development financing activity, based on the examiner's assessment of the activity's impact locally. Under this approach, examiners could use bank-provided information along with a review of performance context to determine an impact score for a bank's community development activities in an assessment area. All Community Development Financing Subtest conclusions could include a statement about both the community development financing metric and the impact score, which could also be used to adjust the bank's performance conclusion relative to the quantitative assessment.

The Federal Reserve also is considering using supplementary metrics to illustrate the composition of a bank's community development activities (i.e., the percentage and dollar amount of the bank's community development loans, investments, and contributions). The Federal Reserve believes that the supplementary metrics could help stakeholders better understand how well banks are leveraging their resources to meet the needs of local communities.

These supplementary metrics seem to work at cross purposes with aggregating community development loans and investments under the Community Development Financing Subtest. As previously discussed, the purpose of consolidating community development loans and investments is to provide banks with more flexibility to tailor their community development activities to the needs and opportunities in their communities. As such, supplementary metrics should not measure the distribution of a bank's loans relative to investments. A loan versus investments comparison risks becoming an unproductive, check-the-box exercise. Instead, CRA's broader focus should be on whether the bank is serving its community effectively.

In addition, both the supplementary metrics and the impact score illustrate the inherent challenge in CRA modernization—that is, providing transparency and rigor regarding how examiners will apply qualitative performance measures in a manner that does not layer additional complexity onto an already complicated regulatory framework. Ultimately, CRA modernization should not add complexity to CRA administration and examination.

B. Community Development Services Subtest

The Federal Reserve is contemplating ways to provide more transparency and consistency regarding the quantitative and qualitative aspects of its evaluation of a bank's community development services. Specifically, the Federal Reserve is exploring whether there are quantitative measures that banks could submit regarding their activities, such as the number and hours of community development services, the community development purpose, and the geographies impacted by the activity. To complement this approach, the Federal Reserve is evaluating whether a standardized data format could streamline the evaluation of community development services and provide a more consistent and transparent evaluation methodology. The Federal Reserve is also interested in whether other standardized metrics could improve the consistency of the evaluation, such as the ratio of community development services hours to the number of bank employees.

In addition to quantitative measures, the Federal Reserve is considering application of an impact score to establish more consistent and transparent standards for the qualitative review of community development services. This concept is similar to the one described above for the Community Development Financing Subtest.

We agree that regulators could improve CRA evaluations by standardizing the manner in which community development services are reported in order to bring more consistency to this aspect of CRA supervision. Examiner expectations and practices vary widely in this regard. For example, some instruct banks to track volunteer service hours, while others evaluate the number of services provided per branch. Also, some examiners appear to have undocumented expectations regarding the community development service metrics a bank should be expected to achieve. Still others base expectations on the number of total bank employees divided by the number of bank branches, which provides an estimated number of organizations across which examiners believe volunteers should be distributed. This area of CRA is ripe for improvement and standardization.

In addition, we request that any NPR provide more specificity regarding how community development services will tie into a bank's overall CRA rating. In setting CRA goals and objectives, it is important that banks understand how important these activities are relative to lending and investments. Many banks report that they invest substantial time and effort to gather data pertaining to community development services, only for those activities to receive little consideration in the exam itself. Regulators must provide additional transparency and consistency in this regard.

Finally, as discussed throughout this letter, one of the significant challenges with CRA modernization is to appropriately balance quantitative and qualitative performance measures. The evaluation of community development services poses these same challenges. We support the Federal Reserve's work to standardize how community development service information is reported and to increase transparency regarding how those services will be evaluated and factored into exam ratings. However, we remain concerned that the creation of an impact score will add an additional layer of complexity to an already complicated regulatory framework.

1. Volunteer Activities

Under current rules, community development services must meet the definition of community development and must be related to the provision of financial services. The Interagency Q&A explains that these services are limited to the provision of financial expertise, such as credit counseling, financial planning, or other types of financial education. In addition, services reflecting an employee's role at the bank, such as human resources, information technology or the provision of legal services, will receive positive CRA consideration.[17] These restrictions artificially limit a bank's options for addressing needs in its community. For example, banks are unable to receive positive CRA consideration for volunteer hours to construct a home sponsored by Habitat for Humanity.

To address these problems, the Federal Reserve is considering several potential revisions to the definition of community development services to include a wider range of volunteer activities. First, the Federal Reserve suggests crediting volunteer activities in rural areas unrelated to the provision of financial services, such as volunteering in a homeless shelter or a food kitchen. Second, the Federal Reserve is considering expanding activities in rural communities to include activities that address local needs generally, without having to demonstrate a primary purpose of community development (e.g., credit would be given for serving on the board of directors for a local chamber of commerce or providing leadership to other nonprofit and civic organizations). Finally, the Federal Reserve requests feedback on whether providing financial literacy instruction and housing counseling should count for positive CRA consideration without regard to the income of the participants.

We appreciate the Federal Reserve's willingness to think flexibly in order to allow for increased bank employee participation in community development service activities that benefit LMI individuals more broadly. As a practical matter, the current approach artificially restricts the manner in which banks and their employees can assist LMI individuals. For example, younger employees that are not as advanced in their career may not have acquired the professional skills needed to provide non-profit board service or technical expertise. Nevertheless, the time and service contributions of these associates can provide a direct benefit to LMI individuals and should be given CRA credit. Any volunteer activity conducted through a CRA-qualified organization should receive positive CRA consideration.[18]

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[17] *See* Community Reinvestment Act; Interagency Questions and Answers Regarding Community Reinvestment; Guidance, 81 Fed. Reg. at 48, 530 (citing §__.12(i)).
[18] In that regard, we note that the OCC's CRA rule defines community development services as bank employee time spent volunteering as a representative of the bank on activities that meet the criteria of § 25.04(c) or supporting activities that meet the criteria of § 25.04(c)(2), (11).

We also support giving CRA credit for financial literacy and housing counseling activities without regard to the income level of the recipients. Credit should not be limited to providing financial education to LMI individuals or schools where a majority of students qualify for free or reduced-price meals. In addition, banks should receive credit for creating financial education materials, whether in print or digital form.

As a practical matter, requiring financial literacy initiatives to have a principal purpose of serving LMI individuals is inconsistent with school boundaries in many communities. Rural schools typically draw students from a wide geographic area, and many rural counties have only one high school. Moreover, some school districts in small cities and suburban areas intentionally draw their attendance maps so that the student population is economically diverse. In both of these scenarios, CRA regulations fail to give due and proper recognition to the efforts of banks to partner with schools to provide financial literacy instruction.

Banks also are important providers of financial education for adults. This may take the form of housing counseling, budgeting instruction, or programs to prevent elder financial exploitation. Senior citizens in all income brackets are at heightened risk financial abuse, and policymakers, including the Consumer Financial Protection Bureau, encourage banks to participate in programs to prevent financial exploitation. As such, these activities should receive CRA credit.

Banks also provide instruction pertaining to financial services innovation, such as information regarding merits of different types of payment processors or the use of digital wallets. Digital financial literacy is important for individuals from all income levels—not just those who are low income. We also note that digital outlets can be very effective in improving financial literacy, but examiners give very little CRA consideration for this.

VI. Qualifying Activities

The Federal Reserve asks several questions pertaining to qualifying activities, with the goal of providing banks and communities greater certainty about those activities that will be given CRA credit. We strongly support this effort, as our members report significant inconsistencies between examiners and from one exam to the next.

A. Illustrative List and Pre-Approval Process

The Federal Reserve is exploring (1) publishing an illustrative, non-exhaustive list of activities that meet requirements for CRA consideration and (2) establishing a "pre-approval" process to improve certainty about qualification of community development activities. We encourage the Federal Reserve to establish both a publicly available, non-exhaustive, illustrative list of CRA-qualified activities, as well as a list of activities that do not meet the regulation's criteria for being CRA-eligible. Providing clear standards regarding qualified activities, in conjunction with an illustrative list of qualifying activities, would reduce uncertainty regarding what counts for CRA credit and would give banks greater confidence as they plan their CRA activities. We offer the following suggestions for enhancing the administration of the qualified activities list.

- Illustrative Nature. Activities on the qualified activities list should be strictly illustrative; they should not be viewed as exclusive, nor should they create an expectation that banks engage in all or some of the approved activities. Moreover, regulators should make clear that examiners should not view CRA-eligible activities as being limited to those that are on the list. Regulators should solicit public comment on the types of activities that would receive automatic credit.

- Search Feature. Regulators should develop a list that is searchable and organized by topic (rather than by date). This approach would be significantly more helpful than a list that is organized chronologically.

- Activities Removed from the List. If regulators determine that a qualifying loan or community development investment no longer meets the qualified activities criteria, that loan or community development investment should not be considered a qualifying activity for any subsequent purchasers. However, the regulation should also specify that a bank holding a loan or investment that is removed from the qualified activities list will continue to receive CRA credit as long as that loan or investment is held on the bank's books. In other words, removal from the qualified activities list should not be retroactive.

- Interagency List. As the Federal Reserve continues its work with the goal of eventually reaching interagency agreement on a revised CRA framework, we urge the agencies to develop a single list. Maintaining one list would be consistent with the spirit of a joint rulemaking and would ensure consistency across agencies.

Similarly, we are very supportive of the ANPR's suggestion that regulators establish a process banks could use to confirm with their regulator whether a proposed activity would receive CRA credit. This mechanism would address current impediments to engaging in new and innovative CRA projects that benefit communities by giving banks confidence that activities qualify for CRA credit before they invest time and resources in those activities. Importantly, the success of the preapproval mechanism hinges on the timeliness of regulators' response to a qualifying activity confirmation request.

B. Economic Development.

Today, banks receive positive CRA consideration under the community development test for activities that promote economic development by financing businesses or farms that meet both a "size" test and a "purpose" test. An institution's loan, investment, or service meets the ''size'' test if it finances, either directly, or through an intermediary, businesses or farms that either meet the size eligibility standards of the Small Business Administration's Development Company (SBDC) or Small Business Investment Company (SBIC) programs, or have gross annual revenues of $1 million or less. To meet the purpose test, the institution's loan, investment, or service must promote economic development. Activities are considered to promote economic development if they support:

- Permanent job creation, retention, and/or improvement:
  - For LMI persons;
  - In LMI geographies;
  - In areas targeted for redevelopment by Federal, state, local, or tribal governments;
  - By financing intermediaries that lend to, invest in, or provide technical assistance to start-ups or recently formed small businesses or small farms; or
  - Through technical assistance or supportive services for small businesses or farms, such as shared space, technology, or administrative assistance; or
- Federal, state, local, or tribal economic development initiatives that include provisions for creating or improving access by low- or moderate-income persons to jobs or to job training or workforce development programs.

The agencies presume that any loan or service to or investment in a SBDC, SBIC, Rural Business Investment Company (SBIC), New Markets Venture Capital Company, New Markets Tax Credit (NMTC)-eligible Community Development Entity (CDE), or Community Development Financial Institution (CDFI) that finances small businesses or small farms, promotes economic development.[19]

The Interagency Q&A also note that community development "also includes…workforce development or job training programs targeted to low- or moderate-income persons…and activities that revitalize or stabilize low-or moderate-income areas, designated disaster areas, or underserved or distressed nonmetropolitan middle-income geographies."[20]

<u>Size Test</u>. The Federal Reserve is considering qualifying economic development activities using only a revised gross annual revenue threshold, and not SBIC or SBDC size standards. The Federal Reserve believes that this approach could help focus economic development activities on smaller businesses and farms and might also reduce confusion about multiple size standard options by establishing a single, transparent threshold.

Under this approach, many currently eligible activities would no longer qualify, including:

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[19] § __.12(g)(3)—1.

[20] The agencies note that only one of the examples in the final Q&A explicitly refers to permanent job creation, retention, and/or improvement for low-or moderate-income persons. The agencies encourage activities that promote economic development through opportunities for low- and moderate-income individuals to obtain higher wage jobs, such as through private industry collaborations with workforce development programs for unemployed persons and are clarifying that examiners will consider the qualitative aspects of performance related to all activities that promote economic development. In particular, activities will be considered more responsive to community needs if a majority of jobs created, retained, and/ or improved benefit low- or moderate-income individuals.

The agencies proposed that permanent job creation, retention, and/ or improvement is supported ''through the creation or development of small businesses or farms'' and, therefore, such activity would be considered to promote economic development and meet the ''purpose test.'' The agencies proposed this example in an effort to recognize the impact small businesses have on job creation in general, and to address industry concerns that activities in support of intermediary lenders or other service providers, such as business incubators that lend to start-up businesses and help businesses become bankable and sustainable, are often not considered under the purpose test.

- Loans to or investments in SBICs, which often lend to companies that have more than $1 million revenues but still meet the SBA's size standards. These loans and investments are an important component of many banks' CRA portfolios and are often an efficient way for banks to engage in small business lending and job creation;
- Loans to or investments in Rural Business Investment Company, which are an important conduit for funds to flow to rural communities;
- Loans to or investments in NMTC venture capital companies and NMTC-eligible CDEs; and
- Many deposits or investments in CDFIs (because not all of the small businesses they lend to are under $1 million in gross annual revenues).

We recommend that the Federal Reserve maintain the current "size" test standards and incent more loans to the very smallest businesses by expanding the list of activities that are "presumed to promote economic development" (and thus do not have to document job creation) by adding a category for small businesses with less than a specified amount of annual gross revenue.

Also, in conjunction with the Federal Reserve's policy objective of incentivizing investments in the very smallest of businesses, we suggest retaining the category of "financing intermediaries that lend to, invest in, or provide technical assistance to start-ups or recently formed small businesses or small farms," as those entities are most often the businesses that have little or no annual gross revenue.

The Federal Reserve could make other expansions to the list of activities "presumed to promote economic development," such as investments in minority-owned or -led small businesses, financing provided in conjunction with a federal, state, or local program (such as the Paycheck Protection Program), etc. In sum, it is critical that the Federal Reserve retain a list of the "presumed activities."

<u>Purpose Test</u>. The Federal Reserve is also evaluating how to provide more clarity regarding standards for demonstrating that an activity supports job creation, retention and improvement. We recommend that the Federal Reserve continue to permit examiners to employ appropriate flexibility in reviewing any information provided by a financial institution that reasonably demonstrates that the purpose, mandate, or function of the activity meets the "purpose test." Regulators could specify that banks could provide documents for the purpose test in the form of a list of each small business financed, the number or employees (and income breakdown, as appropriate), and other relevant information. Some of our members have been providing this documentation over a period of several years and have received CRA consideration for those investments. This practice should continue, and examiner training should be refreshed to emphasize this aspect of the purpose test that exists today.

In sum, we recommend that banks continue to receive community development credit for (1) financing small businesses that promote job creation, retention, and/or improvement for LMI individuals and LMI communities, and areas targeted for redevelopment and (2) by financing intermediaries that invest in or lend to start-ups or recently formed small businesses. In light of the devastating COVID-19-related damage to small businesses and their millions of LMI employees, it is more crucial than ever that banks continue to receive CRA for all of the activities that currently qualify as "promoting economic development" through job creation as currently outlined in the Interagency Q&A Section __.12(g)(3)– 1.

C. Activities with CDFIs and MDIs

We strongly support the addition of activities with CDFIs and Minority Depository Institutions (MDIs) as an explicit qualified activity. With this change, CDFI and MDI banks seeking CRA-motivated deposits and investments will be empowered to collaborate with other banks located throughout the United States regardless of the location of the bank's assessment areas. We recommend that a revised CRA regulation specifically provide CRA credit for "capital investment, deposits, loans, loan participations, other financial and nonfinancial support, or other ventures undertaken in conjunction with such institutions." We believe this will eliminate any ambiguity with examiners that the full range of bank support of these institutions is a qualified activity. We also suggest that regulators assign a multiplier or favorable impact score for capital investments in CDFIs and MDIs.

D. Definition of Small Business/Small Farm

The Federal Reserve is contemplating adjusting the definition of small business and small farm to account for inflation. Specifically, the Federal Reserve suggests setting the loan cap for small businesses at $1.6 million and $800,000 for small farm. The Federal Reserve is also considering adjusting the gross annual revenue limit for small businesses to $1.65 million. We support amending these caps. In addition, we share the following concerns regarding the treatment of small business lending under the existing CRA regulation.

Community Development. We have two concerns related to the intersection of small business lending and community development. First, under current rules, a loan that meets the definition of a small business loan must be reported as such. A bank may not choose to report it as a community development loan even if it has a community development purpose. As a result, the existing rules do not accurately reflect the extent to which banks are financing community and economic development. To remedy this issue, banks should have the option of classifying small business loans with a community development purpose as a community development loan or as a loan under the general lending test. This would allow for more accurate tracking of the community development impact that banks are having in their communities.

Second, because a loan that meets the definition of a small business loan cannot be counted as a community development loan, banks currently count small business loans with originations over the $1 million cap as community development loans, if they meet the size and purpose test in §__.12( ). While we generally support revising the definition of "small business loan" to reflect changes in inflation, banks are concerned that increasing the threshold could increase the difficulty of meeting the Federal Reserve's suggested Community Development Financing Subtest.

Loans Secured by Real Estate. A related issue involves loans to nonprofit organizations that are secured by real estate. These loans must be counted as small business loans—and not as community development loans—even if the loan has a community development purpose. By contrast, loans to nonprofits that are not secured by real estate may be counted for community development credit. A bank's credit decision to require collateral should not be a determining factor as to whether a loan qualifies for community development credit.

Adjustments. Annual adjustments for inflation are too frequent. Although we support adjustments for inflation, annual adjustments will require frequent reprogramming for what are likely to be relatively small changes. We request the Federal Reserve to consider adjustments for inflation less frequently than annually—perhaps every 3-5 years.

Other Impacted Rulemakings. Finally, the Federal Reserve should coordinate with the banking agencies and the Consumer Financial Protection Bureau (CFPB) on multiple rulemakings involving small business lending. Our members are also concerned about friction between the definition of small business loan for CRA purposes and a definition for purposes of Dodd Frank Act section 1071, which will require financial institutions to collect and report data on lending to women-owned and minority-owned small businesses. This year, the CFPB is poised to issue a NPR that will define a small business for purposes of section 1071. In addition, the banking agencies are considering changes to the definition of a small business loan in the Call Report. Banks are very concerned about implementing overlapping and inconsistent definitions of "small business loans" under different regulations. We urge the Federal Reserve to coordinate closely with the CFPB, and to coordinate CRA reform with any revisions to the Call Report definition of a small business loan.

E. Persons with Disabilities

The CRA regulatory framework should provide positive CRA consideration for community development activities that benefit individuals with disabilities. Data show that persons with disabilities are often financially vulnerable.[21] In light of the correlation between disability and

[21] For example:

- 17.6% were unbanked compared to 6.5% of people without disabilities.
- Only 54% have a checking and savings account, versus 80% of nondisabled peers.
- 37% do not have a credit card, versus 20% of their nondisabled peers.
- People with disabilities are almost 3 times (23% versus 9%) more likely to have extreme difficulty paying bills.
- They are also more likely (55% versus 32%) to report that they could not come up with $2,000 if an unexpected need arose.
- People with disabilities are more likely to be late on mortgage payments (31% versus 14%), overdraw on checking accounts (31% versus 18%), and take loans from retirement accounts (23% versus 10%).

LMI status, revisions to the CRA regulatory framework could provide positive CRA consideration to loans and investments to nonprofit organizations whose mission is to serve the disability community. In addition, regulators could consider an individual's receipt of Social Security Disability payments as a proxy for LMI status.

F. Public Welfare Investments

As part of the dialogue on CRA modernization, we bring to the Federal Reserve's attention a misalignment between the Federal Reserve's regulations governing public welfare investments (PWI's) and the CRA regulations and Q&A's. Specifically, Regulation H requires that state member banks obtain approval from the Board of Governors (the Board) prior to investing in certain PWI's, even though such investments receive positive CRA consideration and do not require prior approval by the OCC or the FDIC. This is problematic because Regulation H has much more restrictive requirements than CRA. For example, CRA requires only that the "primary purpose" of an investment be for community development, while Regulation H requires Board approval if an investment is not "solely" for the purpose of six narrow categories of activities.[22] The Federal Reserve has taken the position that a PWI that does not meet the "solely" standard must be approved by the full Board, which can take several years.

This misalignment between CRA and Regulation H has created several problems:

Lack of Awareness. Because PWI's receive positive consideration under the CRA rules, many state member banks (especially community banks) are unaware that prior Board approval is required.

Divestiture. The Federal Reserve has not addressed awareness issues consistently. *Some* banks that were unaware of the prior approval requirement have been required to divest multiple PWIs. By contrast, other banks have been permitted to hold unapproved PWIs *and* received CRA credit for those investments.

Delays. In general, the Board must act on a request for prior approval within 60 days.[23] Nevertheless, some banks have had PWI applications pending for a year or more. Banks report being told that the Board's agenda is full or pressured to withdraw their request. The Board should align its regulations so that banks are not caught between regulatory requirements with conflicting policy goals. It is not reasonable to expect banks to wait one to two years for Board approval.

See National Disability Institute, *Financial Capability of Adults with Disabilities: Findings from the FINRA Investor Education Foundation National Financial Capability Study* and *Banking Status and Financial Behaviors of Adults with Disabilities: Findings from the 2015 FDIC National Survey of Unbanked and Underbanked Households.*

[22] 12 C.F.R. 208.22(B)(1)(iv).
[23] 12 C.F.R. § 208.22(d)(3).

Community Detriment. The prior approval requirement and associated delays discourage banks from making PWI investments and deny communities a key funding source. Moreover, Regulation H encourages banks to structure community development activities as loans rather than investments. Reconciling Regulation H and CRA will encourage banks to pursue investments that are responsive to community needs rather than limiting their CRA investments to activities that do not have to go through a lengthy and expensive approval process (e.g., MBS).

Community Banks Disadvantaged. Obtaining Board approval is a daunting and time-consuming process that deters state member banks from seeking out PWIs that benefit communities. For example, a $1 billion bank would like to invest in PWIs, but it does not have the staff hours, expertise, or legal budget required to shepherd a PWI request through Federal Reserve staff and a vote by the Board.

Unlevel Playing Field for Community Development Investments. Regulation H's restrictive approach reduces the options available to state member banks for meeting their community development investment obligations under CRA. This puts state member banks at a competitive disadvantage, particularly those that operate in areas where there is hyper-competition for CRA-eligible community development investments.

Disjointed Public Policy. For decades, the Federal Reserve has been part of the interagency process to issue joint CRA regulations and Q&A's. It is unclear why the Federal Reserve participated in the interagency effort only to subsequently interpret Regulation H to prohibit state member banks from engaging in certain CRA-eligible community development investment activities absent prior Board approval. The banking agencies will not be aligned on CRA until they harmonize their treatment of PWIs.

For these reasons, we request that, in conjunction with the CRA modernization process, the Federal Reserve revise Regulation H to clarify that if an investment is a qualified investment under CRA regulations, then such investment also qualifies as a PWI that does not require prior approval from the Board. Instead, banks could be required to provide after-the-fact notice, consistent with the PWI notice requirement for national and state nonmember banks.
From a policy perspective, if an investment is important enough to receive CRA credit, the Federal Reserve should give banks the legal authority to make those CRA investments without Board approval.

VII. Looking Forward

Thank you for the opportunity to comment on potential revisions to the regulations that implement the Community Reinvestment Act. We are grateful for the Federal Reserve's leadership in soliciting ideas to modernize these regulations and in crafting an ANPR with the goal of developing broad consensus that will lead to an interagency final rule. Updates to these regulations are long overdue, and we remain optimistic that it is possible to improve the effectiveness and administration of CRA on an interagency basis.

We welcome the opportunity to provide additional information and input as the modernization effort proceeds. Should you have any questions regarding our comments, please contact Krista Shonk.

Sincerely,

Krista Shonk
VP & Senior Counsel
Fair and Responsible Banking
Regulatory Compliance & Policy