February 16, 2021

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

Via Electronic Submission

RE: Community Reinvestment Act
Comments in Response to Advance Notice of Proposed Rulemaking
Docket No. R-1723

Dear Ms. Misback:

The African American Alliance of CDFI CEOs (hereinafter "Alliance" or "AAA") respectfully submits comments in response to the Board of Governors of the Federal Reserve (hereinafter "Board") Advance Notice of Proposed Rulemaking (hereinafter "ANPR") governing the Community Reinvestment Act ("CRA"). The Alliance is a nonprofit coalition comprised of over 46 CDFIs covering 50 states, with the purpose of strengthening the operational and fiscal capacity of AAA members, and empowering their organizations to deploy solutions at scale to build sustainable wealth, equality, and a just quality of life for low-and moderate-income Black populations and communities across the U.S. Central to AAA's mission is the objective of closing the Black wealth gap— through CDFI practice and advocacy, ensuring access to capital and continued growth of African American businesses and the Black economy.

I. Introduction

CRA was enacted in 1977 to address discriminatory practices in the banking industry that purposefully prohibited lending in African American communities. These discriminatory practices mirrored race discrimination in other parts of the economy, and cemented Black communities with depression-era conditions, void of employment, homeownership, business development, educational attainment, and economic growth.

CRA in its vision sought to reverse these practices, incentivizing banks to operate branches in once redlined areas; extend lending opportunities; and in general, conduct investments in African American neighborhoods that mirrored White communities. As provided in the ANPR, "the CRA invests the Board, the FDIC, and the OCC with broad authority and responsibility for implementing the statute, which provides the agencies with a crucial mechanism for addressing persistent systemic inequity in the financial system for LMI and minority individuals and communities."[1]

After nearly 45 years in practice, bank lending and investments in African American communities have increased, and Congress has developed additional tools such as CDFIs to deploy capital in previously excluded markets. However, Black economic growth still lags significantly when compared to Whites. In 2016, the gap between Black and White wealth was wider than what existed in 1968. In 1968, a middle-class African American household had $6,674 in wealth, with White households reporting $70,786. In 2016, wealth for White households was $149,703, while Blacks only attained $13,024.[2]

The existing wealth gap is not solely the result of past discrimination in bank lending and investments, but is also reflective of systemic race discrimination, and consistent disinvestment and underinvestment in African American communities that has existed for centuries, including through sanctioned government policies. For this reason, now is the time to strengthen, expand, and modernize CRA, particularly when the political will exists to achieve systemic equity.

That said, as CRA is modernized, the Board must look to certified CDFIs and MDIs serving LMI minority communities, including those led by and serving African American communities, as key mechanisms and tools to drive LMI investments. Unfortunately, support for African American-led CDFIs is being significantly challenged, substantively impeding their ability to effectively stimulate and sustain economic growth in targeted communities— this as White-led CDFIs see increased support and growth. According to a recent study conducted by the Hope Policy Institute, covering the period between 2014 to 2017, the assets of White-led CDFIs grew by $21.8 billion, while the assets of minority-led CDFIs grew by just $682.5 million.[3]

II. CRA Must Be Harmonized Across the Regulatory Community

The Board's ANPR is a welcomed and comprehensive approach to CRA modernization, and represents a significant improvement from the final CRA rule adopted by the Office of the Comptroller of the Currency (hereinafter "OCC") in May, 2020.[4] However, for CRA to have the effect envisioned in 1977, and the impact sought in the Board's proposal, the Alliance urges the Board to seek OCC and Federal Deposit Insurance Corporation (hereinafter "FDIC") alignment

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[1] Volume 85 Federal Register 66412, October 19, 2020 (hereinafter ANPR).
[2] Van Dam, Andrew, "The Black-White Economic Divide is as Wide as it Was in 1968." *Washington Post*, June 4, 2020.
[3] Closing the CDFI Asset Gap, Hope Policy Institute (2020).
[4] 12 CFR Parts 25 and 195, Docket ID OCC-2018-008.

with the Board's approach. A single rule adopted across the regulatory platform provides predictability for consumers and adds efficiencies to the compliance process. That said, notwithstanding the improved and favored Board ANPR, the Alliance provides the following comments.

III. CRA Modernization Should Reflect the Financial Services Landscape and Existing Inequities in Access to Capital and Banking; Resolve Issues of Past Financial Services Discrimination; and When Possible Target CRA Policy to Close the African American Wealth Gap

The Alliance supports the Board's approach to CRA modernization— but believes the ANPR should be more closely aligned with achieving economic gains in underserved minority communities. Today's banking landscape is significantly different than in 1977, following substantial market-driven consolidation, in addition to a reduction in the number of banks resulting from national economic conditions. According to data provided by the FDIC, while we have 9,892 fewer banks since 1977, the nation's number of branches has more than doubled, to a number equaling 76,837 as compared to 33,108.[5] Moreover a proliferation of new financial services has also emerged, including those not subject to CRA regulatory compliance, in addition to regulated bank services becoming fully available online, absent any physical branch locations.

Arguably, more *opportunities* for financial services exist today than in 1977— yet, the wealth gap for African Americans has increased. In a recent study to identify the causes of the persistent Black wealth gap, the Federal Reserve Bank of Cleveland found that "the current racial wealth gap is the consequence of many decades of racial inequality that imposed barriers to wealth accumulation either through explicit prohibition during slavery or unequal treatment after emancipation. Examples of post-emancipation barriers include legally mandated segregation in schools and housing, discrimination in the labor market, and redlining, which reduced access to capital in black neighborhoods."[6] That said, according to the Federal Reserve Bank of Cleveland, when modeling and accounting for the many contributing causes of the wealth gap, researchers identified the racial ***income*** gap as the prevailing factor. Admitting that this conclusion differs from previous studies, the researchers concluded that their modeling more accurately takes into account "the dynamic nature of wealth accumulation."[7]

With the above in mind, if policies such as CRA are to be effective in solving for past and present systemic race discrimination and closing the wealth gap, those policies must effectively impact income for African Americans. As a general rule, income levels in underserved communities are primarily determined by available jobs, workforce development, training opportunities, education, and business development. However, the issue of income and jobs is

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[5] Banks.data.fdic.gov (measuring FDIC insured depository institutions 1977-2019).
[6] Aliprantis, Dionissi and Daniel Carroll. 2019. "What is Behind the Persistence of the Racial Wealth Gap?" Federal Reserve Bank of Cleveland.
[7] *Id.*

also connected to pay levels, and unless a community's payroll reaches at least to the level of a living wage, then poverty is more likely to persist, and the wealth gap will continue to expand.

The Alliance views CRA modernization as an opportunity to use the statute as intended, including inuring benefits of targeted investments, "to address economic challenges in predominantly minority urban neighborhoods that [have] suffered from decades of disinvestment and other inequities."[8] These systemic inequities, and the lack of public and private investment are the root causes of these communities' continued economic distress.[9] It is therefore fully legitimate that a modern CRA target results that achieve living wage job creation and substantial business development in relevant communities. The Act should also target and support financial services practitioners essential to producing the desired employment and business development— with a particular focus on CDFIs led by and serving minority communities, in addition to other local and national CDFIs, and the nation's MDIs.

These financial services providers are paramount to substantive economic development in their communities where they invest, and CRA incentives that drive capital and liquidity to these providers will allow them to more successfully serve as local economic engines that generate economic growth, living wage employment, business development, and progress in closing the wealth gap.

IV. Responses to Questions

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

CRA in its purpose was not designed to solve for all race discrimination, but as a tool has the function of preventing discrimination in regulatory banking. With that in mind, CRA can effectively incentivize lending and investment in communities previously subject to redlining, while simultaneously addressing identified outcomes from past discriminatory practices in banking, housing, education, employment, and other areas. Presuming the income gap is the primary nexus to the wealth gap, the Alliance proposes that the Board consider prioritizing CRA credit to lending and investment activities that create or expand employment in underserved minority communities, with a focus on employment that provides a living wage based on the geographic area where the investment is made.

The CRA currently considers community development activity resulting in job creation as eligible for CRA credit, however the Alliance requests that that Board prioritize employment and income creation in the CRA context, with consideration of a minimum minority job creation standard to achieve a satisfactory rating when appropriate, depending on assessment area

[8] ANPR, 66412.
[9] *Id*.

demographics. Similar to existing practice, CRA credit should be available through direct lending and investment for development of projects that hire minorities living in an assessment area, or indirectly, such as investments in Community Development Financial Institutions (CDFIs) that provide capital to small businesses, who themselves can create living wage jobs.

Question 6: *Would delineating facility-based assessment areas that surround LPOs support the policy objective of assessing CRA performance where banks conduct their banking business?*

The Alliance supports the Board's proposal to expand assessment areas to include loan production offices (LPOs). Delineating assessment areas around LPOs has the potential to generate additional targeted CRA qualifying activities, including community development lending and investments that include CDFIs and the communities they serve.

Question 7: *Should banks have the option of delineating assessment areas around deposit taking ATMs or should this remain a requirement?*

As the Board seeks to modernize CRA, the end result must ensure continued incentives for investments, lending, and other qualifying activities within a given assessment area, while at the same time achieving efficiencies reflective of the modern era. The Board is considering whether to remove the requirement that banks delineate facility-based assessment areas around deposit-taking ATMs.[10] In support of the change, the Board cites the use of smartphone devices in making deposits, and suggests ATM delineation as possibly outdated.

The Alliance recommends that the Board further study the impact of eliminating identified assessment areas for delineation before further action at this time. Moreover, the Alliance is concerned that a rationale for eliminating delineation today could be the basis for eliminating ATM services in the future. The Alliance does not agree that delineating assessment areas around ATMs is outdated, and believes ATM access is critical and essential to financial literacy and access in underserved communities.

Question 8: *Should delineation of new deposit- or lending-based assessment areas apply only to internet banks that do not have physical locations or should it also apply more broadly to other large banks with substantial activity beyond their branch-based assessment areas? Is there a certain threshold of such activity that should trigger additional assessment areas?*

As a general rule, CRA examines where a bank is investing and where it is not, and the exam captures for purposes of CRA compliance, how a bank's activities have excluded or included LMI communities or individuals. Measuring this activity was much easier when CRA was first enacted but has become more challenging as mobile and internet financial services evolve—and banking becomes less locally centralized. Due to this evolution, large parts of a bank's activities are now more dispersed, nationally.

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[10] *Id*. at 66417.

Some have argued that bank decentralization makes CRA obsolete because LMI individuals theoretically have easier access to banking services than what existed in 1977. However, this conclusion ignores the impetus behind CRA, which is to prevent banks from excluding LMI communities and individuals from lending, deposits, and bank investments—commonly known as redlining. While delineating a bank's assessment area based on where a facility is located allows for effective measurement, if that facility is only a part of the bank's total activities and the bank has expanded beyond its physical assessment areas, then the bank's obligations under CRA should be reflective of its expanded and evolved community. To otherwise limit the assessment area solely to the facility and not expand it to include total evolved activity would allow banks to use the internet and mobile banking as a shield to limit participation in additional qualifying CRA activities that would otherwise match the level of the bank's lending, investments, and deposit taking.

The Alliance proposes that when a bank expands its activities via the internet, outside its usual facility delineated assessment area, the bank has also expanded its community. In as much as these activities occur outside the facility assessment area, the Board should consider whether such banks also delineate additional assessment areas. Possible solutions could require that LMI activities in the additional assessment areas match the percentage of activity geographically; require LMI activities in other identified areas based on requirements in the facility-based assessment area; or by some other meaningful measurement. The Board should also consider a percentage threshold of lending activity that would trigger the additional assessment delineation. That said, the board should further review whether investment activities under additional delineated assessment areas could be solely satisfied through activities with local CDFIs, nationally— provided the investments in these CDFIs meet an identified percentage measurement.

The Alliance is not prepared to endorse a national assessment area construct due to possible perverse incentives, allowing banks to choose the path of least resistance, versus where investments might have the greatest impact. With that in mind, the Board's final solution must ensure that LMI investments target underserved minority communities; reaches areas of persistent poverty, rural and urban; positively impacts an increase in living wage jobs; and contributes to closing the black wealth gap.

Question 9: *Should nationwide assessment areas apply only to internet banks? If so, should internet banks be defined as banks deriving no more than 20 percent of their deposits from branch-based assessment areas or by using some other threshold? Should wholesale and limited purpose banks, and industrial loan companies also have the option to be evaluated under a nationwide assessment area approach?*

As provided in Question 8, when a bank expands its activities via the internet, outside its usual facility delineated assessment area, the bank has also expanded its community. In as much as these activities occur outside the facility assessment area, the Board should require such banks to delineate additional assessment areas, requiring LMI activities in the additional assessment areas.

The Alliance believes further research and data may be required prior to determining an appropriate threshold for defining what is an internet bank, and what would constitute a hybrid, in addition to development of an appropriate solution to ensure that additional assessment area delineations target LMI investments in underserved minority communities; reaches areas of persistent poverty, rural and urban; positively impacts an increase in living wage jobs; and contributes to closing the black wealth gap. The Alliance also supports the Board approach allowing wholesale and limited purpose banks and industrial loan companies to have the option to be evaluated under a wider geographic assessment area.

Question 13: *Is $750 million or $1 billion an appropriate asset threshold to distinguish between small and large banks? Or should this threshold be lower so that it is closer to the current small bank threshold of $326 million? Should the regulation contain an automatic mechanism for allowing that threshold to adjust with aggregate national inflation over time?*

The Alliance would oppose increasing the asset threshold for small bank designation at this time, and is concerned that such a change could drastically remove or curtail community development and investment activities currently practiced by a large section of the banking community who do not currently qualify for small bank status, but would, should the Board implement the proposed change. The CRA statute and regulators treat small banks differently based on policy rationale, thus allowing these institutions to more easily comply with CRA, balancing the aims of the statute against any burden on the bank. Banks that operate at $750 million or $1 billion asset size are not equal in burden share to that of small banks, and therefore should be held to existing standards. While adjusting the small asset threshold to inflation seems reasonable, the Alliance requests that the Board consider detailing how such a change might increase or decrease investments in LMI communities.

Question 27: *Should a bank receive consideration for delivering services to LMI consumers from branches located in middle- and upper-income census tracts? What types of data could banks provide to demonstrate that branches located in middle-and upper-income tracts primarily serve LMI individuals?*

The Alliance requests that the Board reconsider allowing branches located in middle- and upper-income census tracts to be incorporated into the analysis of branch-related services. The Board correctly identifies that allowing such incorporation could "deemphasize the importance of branches in LMI areas."[11] Data show that when lenders, technical assistants, business coaches, housing and credit counselors, loan officers, and community lenders reflect the identities and experiences of their non-White potential clients, that the rate of funding, professional support, loan flexibility, and positive economic outcomes increase dramatically.[12] Moreover, the Board must consider existing cultural and social barriers cemented by systemic

[11] *Id*. at 66432.

[12] Lyons-Padilla Sarah, Markus Hazel Rose, Monk Ashby, Radhakrishna, Shah Radhika, Dodson IV Norris A., Eberhardt Jennifer, Race Influences Professional Investors' Financial Judgments (2019).

racism and discrimination that serve as barriers for many individuals living in LMI minority communities, preventing them from traveling into middle- and upper-income areas.

Question 37: *Should the Board continue to define small business and small farm loans based on the Call Report definitions, or should Regulation BB define the small business and small farm loan thresholds independently? Should the Board likewise adjust the small business and small farm gross annual revenues thresholds? Should any or all of these thresholds be regularly revised to account for inflation? If so, at what intervals?*

The Alliance would support retaining existing loan thresholds, and would concur with the Board that additional data is required prior to adopting definition changes.

Question 38: *Should the Board provide CRA credit only for non- securitized home mortgage loans purchased directly from an originating lender (or affiliate) in CRA examinations? Alternatively, should the Board continue to value home mortgage loan purchases on par with loan originations but impose an additional level of review to discourage loan churning?*

As provided by the Board, LMI home mortgage loans are sold 3.3 percent of the time versus 0.6 percent of the time for non-LMI loans.[13] Additionally, based on stakeholder comments, loan purchases following the original purchase may not have reached or impacted relevant LMIs.

Notwithstanding genuine concerns related to loan churning, the Alliance seeks to better understand whether the reselling of relevant loans provides direct LMI market benefit. We request that the Board identify potential impacts on LMI market liquidity, should existing CRA credit considerations be eliminated. While loan churning should be avoided, prohibiting the re-selling of originations could have a chilling effect on origination liquidity.

Question 39*: Are there other alternatives that would promote liquidity by freeing up capital so that banks and other lenders, such as CDFIs, can make additional home mortgage loans to LMI individuals?*

As identified above, the Alliance is concerned that undue restrictions on loan purchases could unnecessarily restrict market liquidity, particularly for CDFIs. Indeed, a case can be made that a first purchaser of a CDFI loan is aware of the active marketplace, and therefore, for whatever reason, is willing to make the purchase due to market predictability. That said, the Board could consider and study whether restricting such purchases for CRA credit after the third or fourth purchase avoids incentives that allow some banks to simply purchase LMI loans instead of conducting the hard and needed work of community investment. However, to ensure a more restrictive policy does not chill liquidity, particularly for CDFIs, the Board should consider a CDFI exception, which would allow full CRA credit for those loans originated by CDFIs, regardless of the number of purchases.

[13] ANPR, 66412.

***Question 50**: Should volunteer activities unrelated to the provision of financial services, or those without a primary purpose of community development, receive CRA consideration for banks in rural assessment areas? If so, should consideration be expanded to include all banks?*

The purpose of CRA is to examine and incentivize lending, deposit taking, and investments in delineated assessment areas. If the primary purpose of the activity does not reach CRA's objective, then the Board should not incentivize the activity. The Alliance supports policies that drive institutions to employ measurable investments that lead to homeownership, business growth, and community development. The creation of additional activities that fail these outcomes could have the effect of distracting lenders from activities that measurably make a difference.

***Question 51:** Should financial literacy and housing counseling activities without regard to income levels be eligible for CRA credit?*

The modernization of CRA should not include expansion of activities that do not meet the needs of LMI communities. As indicated in Question 50, additional activities that fail the objectives of the statute would distract lenders from conducting the investments and services CRA envisions.

***Question 57:** What other options should the Board consider for revising the economic development definition to provide incentives for engaging in activity with smaller businesses and farms and/or minority-owned businesses?*

The Alliance concurs with the Board's proposal to focus on the smallest businesses, smallest farms, and minority-owned businesses— and considering community development activities directly impacting these entities as responsive and impactful. The Alliance recommends that the Board further identify activities in which banks engage with non-bank CDFIs— who are direct service providers to qualifying smallest businesses, smallest farms, and minority-owned businesses— as especially responsive and impactful, perhaps receiving even greater weight.

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

The Alliance proposes that the Board identify as responsive and impactful in developing a community, and also provide special weight to LMI job creation, retention, or improvement that pays a living wage, based on the national living wage at a minimum, but meeting the living wage in the assessment area where the job is created.

***Question 59:** Should the Board consider workforce development that meets the definition of ''promoting economic development'' without a direct connection to the ''size'' test?*

The Alliance would support workforce development activities as a separate prong of the economic development definition, even when not connected to small businesses and farms.

However, the Board should additionally consider whether tie-ins can be developed that would better ensure that workforce development results in the creation, retention, or improvement of jobs that pay a living wage, based on the national living wage at a minimum, but meeting the living wage in the assessment area where the job is created.

Question 64: *Would providing CRA credit at the institution level for investments in MDIs, women-owned financial institutions, and low-income credit unions that are outside of assessment areas or eligible states or regions provide increased incentives to invest in these mission-oriented institutions? Would designating these investments as a factor for an ''outstanding'' rating provide appropriate incentives?*

The Alliance concurs that providing CRA for investments in MDIs, women-owned financial institutions, and low-income credit unions that are outside of assessment areas or eligible states or regions provide increased incentives to invest in these mission-oriented institutions. The Alliance additionally supports designating these investments as a factor for an outstanding rating. However, the Alliance recommends that qualifying activities are clearly defined in any final rule.

Question 67: *Should banks receive CRA consideration for loans, investments, or services in conjunction with a CDFI operating anywhere in the country*?

The Alliance supports the Board's proposal to grant automatic CRA community development consideration for community development activities with Treasury-certified CDFIs, and further supports applied scrutiny for non-certified entities.

As to the issue of whether geographic limitations should apply, the Alliance is concerned that allowing CRA consideration in conjunction with a CDFI regardless of where it exists, could have the effect of incentivizing bank activities with only the largest of CDFIs, thus draining capital resources for those CDFIs with the primary mission of serving local communities, a state, or a region. A possible solution for consideration to ensure that banks participate with the most local of CDFIs, the Board could also incentivize substantial participation with local CDFIs regardless of where they exist, as a condition precedent to an "outstanding" rating. That said, the Alliance requests that the Board ensure that necessary safeguards are in place to ensure that banks first focus on their delineated assessment areas.

V. Conclusion

The Alliance thanks the Board for its careful consideration of the history of CRA and stakeholder comments in development of the present ANPR. The Alliance supports a modernized CRA that achieves LMI investments; results in living wage job growth and business development, particularly in minority communities; and that narrows the Black wealth gap. AAA further supports policies that incentivize CRA consideration for activities with CDFIs, with a focus on local CDFIs, including those led by and serving communities of color. The Alliance looks forward

to additional opportunities to provide its views following the ANPR process. Thank you, and if you have any questions or need additional information, please contact Donna Gambrell, AAA Chair, or Calvin Holmes, AAA Vice Chair.

Sincerely,

Donna Gambrell
Chair
African American Alliance of CDFI CEOs

Calvin Holmes
Vice Chair
African American Alliance of CDFI CEOs