February 16, 2021

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

Re: Community Reinvestment Act; Docket No. R-1723, RIN 7100-AF94

To Whom It May Concern:

The Consumer Bankers Association (CBA)[1] is pleased to submit these comments to the Board of Governors of the Federal Reserve System (Federal Reserve) in response to the Advance Notice of Proposed Rulemaking, "Community Reinvestment Act Regulations" (ANPR).[2]

CBA and our members support the goals of the Community Reinvestment Act (CRA) and believe banks have an affirmative obligation to help meet the credit needs of their communities, including low- and moderate-income (LMI) areas, consistent with safe and sound banking practices. Through the CRA, banks across the nation invest hundreds of billions of dollars in their communities, demonstrably benefitting them. Our members remain committed to further supporting the communities we serve.

CBA also recognizes it has been decades since the CRA was meaningfully reformed, and much has changed for banks and the communities we serve in that time. Banking has undergone a radical transformation to keep pace with consumer demands, and now banks need a CRA framework that responds to these changes.

Part of banks' commitment to communities includes serving them in their most dire times of need. The unprecedented outbreak of COVID-19 has already greatly affected the communities we serve and will continue to impact communities for years to come. As banks and the Federal Reserve work to respond to consumer needs during this crisis, we urge the Federal Reserve to take the time necessary to fully consider the impacts of this crisis, particularly to LMI communities, while moving forward with the rulemaking process.

CBA also recognizes the challenges currently facing our nation regarding racial equity and equality and realizes the vital part the CRA plays in access to financial services for minority individuals and communities. CBA urges the Federal Reserve to ensure modernization efforts

[1] The Consumer Bankers Association is the only national trade association focused exclusively on retail banking. Established in 1919, the association is now a leading voice in the banking industry and Washington, representing members who employ nearly two million Americans, extend roughly $3 trillion in consumer loans, and provide $270 billion in small business loans.
[2] Community Reinvestment Act, 85 Fed. Reg. 66,410 (Oct. 19, 2020) (hereinafter, "ANPR").

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adhere to the statutory purposes of the CRA by upholding the affirmative obligation to meet the credit needs of LMI areas and individuals.

CBA believes implementing changes to the CRA is a worthwhile yet monumental effort for all interested stakeholders. CBA applauds the Federal Reserve for striving to modernize the CRA and for approaching reforms with an eye towards greater consistency and transparency in the evaluation of CRA performance. The current regime is often applied with great subjectivity and inconsistency between examinations and examination teams. CBA values efforts to address these issues to create a more efficient and objective process for all involved stakeholders.

CBA urges the Federal Reserve to continue to consider the nuanced and complicated nature of CRA and its impacts on the banking industry by implementing changes that encourage flexibility for regulated institutions to best serve our communities. We believe preserving optionality in a framework grounded in quantitative evaluations can help increase transparency, objectivity, and clarity throughout the CRA process. CBA details efforts to improve these goals for CRA reform throughout our response.

I. The Federal Banking Agencies Should Continue to Work Together on CRA

CBA applauds the Federal Reserve for taking steps towards reforming a decades-old CRA regime. The CRA is demonstrably vital to LMI communities across the country, yet has not been modernized, leaving a framework that often fails to consider the realities of banking today. It is clear throughout the ANPR that the Federal Reserve dedicated itself to reading and responding to stakeholder comments and joint-regulatory efforts present through the Office of the Comptroller of the Currency (OCC) and Federal Deposit Insurance Corporation's (FDIC) Notice of Proposed Rulemaking process and beyond.[3] We appreciate efforts by the Federal Reserve to reflect and build on the important issues raised through previous modernization efforts.

CBA firmly believes the most comprehensive and thorough CRA framework is one facilitated by all prudential regulatory banking agencies. The Federal Reserve, OCC and FDIC have worked together in implementing the CRA since the initial rulemaking process in 1978. Recently, a fragmented approach has emerged. CBA advocates a united approach to CRA modernization is of vital importance to preserve and strengthen CRA policy for the foreseeable future and to continue the positive impact of CRA efforts for LMI communities and individuals.

There are many reasons for maintaining consistent CRA standards among the federal banking agencies. The CRA places the same responsibility on each agency "to use its authority when examining financial institutions, to encourage [banks] to help meet the credit needs of the local communities in which they are chartered consistent with the safe and sound operation of such institutions."[4] Inconsistent CRA frameworks will undermine this uniform responsibility and would negatively impact CRA performance and the communities our members serve.

Banks consistently partner with other financial institutions on CRA activities. However, fragmented treatment of CRA activity among the federal banking agencies will greatly discourage these partnerships, which are extremely important to facilitating greater amounts of meaningful

[3] Community Reinvestment Act Regulations, 85 Fed. Reg. 1,204 (Jan. 9, 2020) (hereinafter, "NPR").
[4] 12 U.S.C. § 2901(b).

CRA activity. Further, good CRA policy is often established by bankers, community advocates, and examiners whose passion is the meaningful development of CRA policy. A fragmented framework will slow valuable improvements to the CRA moving forward and create a disjointed CRA regime at each agency.

While the CRA is unique in that each federal banking agency may issue its own set of CRA regulations, to maintain a level CRA playing field and facilitate accurate comparisons in bank CRA performance, the uninterrupted history of the Federal Reserve, OCC, and FDIC acting in tandem to issue uniform rules, interpretations, and guidelines must continue. CBA urges the Federal Reserve to continue to work jointly with its fellow federal banking agencies to create a consistent CRA framework to best serve communities across the country.

II. Flexibility is Necessary in Modernizing Assessment Areas

Like the Federal Reserve, CBA recognizes the massive challenge the modernization of banking presents for properly delineating assessment areas. Modernizing the CRA framework to reflect the changing nature of banking while also encouraging effective CRA activity is a massive trial for stakeholders and regulators alike. Given the various challenges a comprehensive solution may endure, it is vital the Federal Reserve retain flexible options for compliance in any reforms to how banks delineate assessment areas. CBA believes a comprehensive CRA evaluation framework should not establish different evaluation methods for varying bank models but should remain flexible in assessing where differently-structured banks conduct CRA activity.

A. The Federal Reserve Should Promote Flexibility in Assessing Activity Outside a Traditional Facility-Based Assessment Area

CBA agrees with the Federal Reserve that bank branches retain importance in a modernized CRA framework. Branches are often huge sources of deposits for many institutions, and ensuring they serve as drivers of CRA activity helps reinforce the statutory purpose of the CRA for banks to reinvest into the communities we serve. CBA advocates a modernized framework should retain facility-based assessments as the foundation for most evaluations. However, working to include a bank's activity outside of traditional facility-based assessment areas creates major challenges.

When evaluating a framework that considers how and where banks collect deposits outside of their facilities, the Federal Reserve should continue to consider flexible approaches to assessment area delineation and associated CRA evaluation that will not discourage different or innovative bank models in the future. While CBA feels facilities should retain their importance in a modernized framework, it is still clear through modernization efforts that more banks are increasing their use of digital and remote capabilities. A modernized framework should be cognizant of this shift in banking and fully consider the impacts of different frameworks on all bank models.

While there are many challenges facing the modernization of assessment areas, CBA member banks are committed to ensuring communities with ongoing and developing needs receive appropriate CRA consideration. A modernized framework should establish more meaningful procedures for qualifying CRA activity outside of a traditional facility-based assessment area. Activity conducted outside of a bank's facility-based footprint often is not given CRA consideration commensurate with the benefits conferred by such activities in the current framework. Banks should be encouraged when seeking out those areas with the most need for CRA activity in whatever regime the Federal Reserve moves forward with.

However, CBA has concerns with frameworks that require banks to delineate new assessment areas solely based on where they source deposits. Often, deposits sourced from online sources come from large population centers. Creating a framework that strictly provides CRA credit only for activity in those areas will lead to a potential over-saturation of CRA activity in certain metropolitan markets. Rural and distressed communities are not often sources of large deposit volumes, making it difficult to warrant new assessment areas under most major threshold evaluations.

Further, a requirement for banks to lend and invest in particular markets where they have no actual presence may run contrary to safety and soundness concerns. While CBA appreciates the challenges in ensuring proper CRA activity beyond traditional facility-based assessment areas, we are concerned about a system which puts stringent requirements on banks to lend in specific communities.

As such, the Federal Reserve should ensure geographic flexibility and optionality for all bank models when considering any changes to the geographic framework for assessing performance. Any approach should allow banks to seek out the geographic areas with the most need and opportunity. CBA further offers the consideration of any new framework must be based on a thorough evaluation of what activity should be considered, and when banks are able to look beyond their facilities to engage in CRA activity. It is crucial a modernized CRA framework does not limit the wide range of bank business models to ensure banking continues to respond to customer demand for decades to come.

B. Lending Based Assessment Areas Do Not Serve the Goals of the CRA

CBA concurs with the much of the Federal Reserve's analysis on lending-based assessment areas. While there may be more data to quickly facilitate a bank's delineation of a lending-based assessment area, a lending-based framework will not provide the CRA activity LMI communities need and will not properly reflect the activity of banks across the country. For the majority of institutions, most retail lending is done within a bank's facility-based assessment area. Further, lending activity is often not concentrated within a particular geography, limiting its use in delineating assessment areas. Finally, a lending-based framework may not meet the CRA's statutory purpose by not properly reinvesting funds to the LMI communities banks aim to serve. CBA does not believe a lending-based framework will properly evaluate and encourage CRA activity in LMI communities.

C. Optionality Is Key in Modernizing Assessment Areas

Flexibility must be captured in different elements of an assessment area framework. CBA appreciates the ANPR's discussion with respect to proposals that would streamline various elements of the assessment area model. CBA urges however, in some cases, flexibility is still the best route forward. For instance, while establishing an assessment area framework wherein large banks exclude partial county assessment areas in favor of whole county designations for facility-based assessment areas may appear to create a more streamlined approach, the Federal Reserve should provide banks with option to do either. The streamlined county-level approach discussed in the ANPR may in fact hinder the targeted activity banks conduct in smaller geographies. To ensure this activity is properly considered in future CRA examinations, and to help provide the most comprehensive evaluation framework, the Federal Reserve should instead allow large banks to retain the option to include partial county assessment areas at their discretion.

Another area where CBA feels the benefits of optionality outweigh the advantages of a streamlined approach is for expanding assessment areas to include loan production offices (LPOs). Often, LPOs are limited in the scope of products they offer, which do not always make their activities a proper fit for CRA evaluation. Still, some organizations will use LPOs to facilitate more targeted CRA activity in an area; as a result, banks should continue to have the option to delineate assessment areas to encompass geographies surrounding their LPOs.

CBA agrees with language in the Federal Reserve's ANPR that suggests giving banks the option to delineate their facility-based assessment areas around deposit-taking ATMs. This is one of the opportunities for consistency between regulators as the OCC outlined this approach in their June 2020 CRA rule.[5] As stated in the ANPR, the current requirements to delineate assessment areas around deposit-taking ATMs have lost some effectiveness as banking has changed to include more digital channels.[6] However, some deposit-taking ATMs may generate significant bank deposits or comprise a large market share within a community and may be ripe for CRA evaluation. As a result, CBA supports permitting, but not requiring banks to include deposit-taking ATMs in their facility-based assessment areas at a bank's option.

D. The Federal Reserve Must Back Any Changes with Thorough Data

Changes to where CRA activity is measured must be backed by appropriate and thorough data. As the Federal Reserve recognizes throughout much of the ANPR, proper data must be collected to ensure a modernized framework would not overly complicate or hinder CRA activity. The Federal Reserve should be targeted in any data requests moving forward to ensure the burdens of collecting the data do not outweigh the benefits its collection could provide to creating a more comprehensive CRA framework.

III. Cautiously Developing Retail Lending Metrics Can Help Create Objectivity in Evaluating CRA Performance

CBA appreciates the Federal Reserve's understanding of the need for greater clarity and transparency through the retail lending evaluation. Current evaluation measures are vague on the levels of activity necessary to achieve particular ratings, and CBA advocates the establishment of appropriate metrics and thresholds will help to better regulate and facilitate effective retail lending activity.

[5] 85 Fed. Reg. 34,734 at 34,795.
[6] *See*, ANPR at 66,410, 66417.

CBA is encouraged by the metrics outlined in the ANPR and feels proper use of tailored quantitative metrics can help increase transparency and certainty throughout the evaluation process. The use of tailored geographic and borrower metrics can help serve as the foundation for important performance context factors and examiner judgment throughout the evaluation process and will ground CRA evaluations in quantitative measures. Still, the Federal reserve should proceed with caution when implementing new standards, benchmarks, and thresholds to ensure the new framework does not strictly limit the responsiveness of different CRA activities and models.

CBA also argues the Federal Reserve should not require the reporting and use of corporate and commercial deposits in its various retail lending metrics and screens. Usually, the use of retail domestic deposits more accurately reflects the markets banks serve through CRA activity, better represents banks' capacity to lend and invest, and better holds a nexus to CRA's stated purpose. Corporate and commercial deposits can greatly skew CRA obligations, and their exclusion can lead to more responsive CRA behavior. For these reasons, the Federal Reserve should allow banks to report and use corporate and commercial deposits in its various retail lending metrics at their option.

A. The Federal Reserve's Retail Lending Screen Should Not Create Affirmative Obligations for Banks

CBA is optimistic about the potential benefits of a retail lending screen as the first step to evaluating a bank's retail lending activity. However, CBA urges the Federal Reserve to clarify the retail lending screen is not intended to set an affirmative obligation for banks to reach a certain level of activity to receive a "Satisfactory" or "Outstanding" rating. Although we feel efforts to establish this screen to streamline a presumption of "Satisfactory" are well-founded, the Federal Reserve should still consider important performance context factors in making its evaluation.

For instance, the retail lending screen could create a distorted assumption of the retail lending activity a bank facilitates in areas that are disproportionately deposit rich. This could include areas where a bank has its main office location which will inherently require a more qualitative analysis of the borrower demographics at play. Further, the Federal Reserve should consider how deposits are collected and recorded at various institutions, as variations in deposits may skew the basis for the retail lending screen.

B. The Federal Reserve Should Use Loan Counts in Its Retail Distribution Analysis

CBA agrees with the ANPR's analysis that continuing to count originations and purchased loans as part of the retail lending distribution analysis is a sounder approach than evaluating the dollar amounts of these loans. Basing the analysis on originations and purchased loans will avoid major regulatory and data collection burdens and create a more solid foundation for analysis. More importantly, this approach will help ensure sufficient consideration for mortgages and small business loan programs which are vital to serving communities but may not result in large dollar volumes for review.

C. The Federal Reserve Should Proceed with Caution in Combining Categories for Its Retail Distribution Analysis

CBA appreciates the ANPR's discussion on simplifying aspects of the retail distribution metrics. However, we remain concerned about the practical impacts of combining various categories of the evaluation. CBA urges the Federal Reserve to allow for optionality in the combination of various categories throughout an examination to ensure the statutory purposes of the CRA are met while streamlining procedures.

First, CBA is committed to ensuring the combination of low- and moderate-income categories during the retail lending distribution metric does not degrade levels of CRA performance in low-income communities. While examiners may often combine these two demographics in their evaluations, CBA urges the Federal Reserve to thoroughly review the impacts of this combination to ensure those communities that need the activity most will not be adversely impacted.

To best facilitate this protection, the Federal Reserve should continue to include poverty level data and consider it in future analysis. CBA and our members remain committed to serving vulnerable communities and wish to ensure they are still properly represented if the rules are simplified. As such, if the Federal Reserve moves forward with the combination of the low- and moderate-income categories, it should allow banks to do so at their option and should not make this a definitive rule for all regulated institutions.

Additionally, CBA remains seriously concerned about the impacts of combining mortgage and home equity line of credit (HELOC) data through the Federal Reserve's analysis. HELOC products are significantly different from mortgages, and to collate these categories would require such great performance context evaluations that any potential benefits of combination would be lost. CBA advocates the Federal Reserve review home purchase and refinance lending separately from home improvement and HELOC data rather than combine these categories for all institutions, and once again argues any such combination should be permitted at bank option to ensure both products are properly represented in future evaluations.

D. CBA Urges Caution in Changes to Benchmarks

CBA is optimistic about the Federal Reserve's potential use of various benchmarks designed to establish more quantitative thresholds for existing comparators for regulated institutions. Proper and efficient standards that reflect the real market conditions where banks conduct CRA activity are vital to ensuring evaluation measures are appropriately set and maintained. CBA is further encouraged by language in the ANPR suggesting the establishment of a quantitative approach for institutions to receive a presumption of "Satisfactory". As noted above whichever quantitative factors are set must be established only to provide a presumption of "Satisfactory" and not instead used as hurdles banks must overcome to receive that rating.

The Federal Reserve should be cautious in moving forward with different datasets in setting the planned community and market benchmarks. CBA urges the Federal Reserve to continue to closely analyze these data sources and their effectiveness in setting benchmarks. As non-bank lenders without CRA obligations account for an increasing market-share of mortgage and consumer lending activity, including non-banks in these datasets may artificially skew the actual activity in an area. Including only data from deposit-taking institutions can help ensure benchmarks are properly set in underserved and smaller markets and can further safeguard more accurate and considerate CRA activity. The Federal Reserve should continue to closely analyze the impacts of including these broad datasets in the benchmark calculations to ensure accurate expectations are set.

CBA is similarly optimistic about the flexibility provided for setting community and market thresholds and believes much of the accommodations the Federal Reserve has taken in determining which thresholds will be binding can help banks continue to serve communities, even if those communities experience rapid change. Guardrails on how expectations may fluctuate will ensure thresholds remain reflective of the individual context of each changing market condition.

CBA values language in the ANPR discussing potential efforts by the Federal Reserve to protect a presumption of "Satisfactory". As banks will have to pass both the retail lending screen and various benchmarks in the ANPR to receive a presumption of "Satisfactory", we urge the Federal Reserve to ensure the presumption will hold, absent the limited circumstances that can be used to rebut the presumption. Safeguarding the presumption of "Satisfactory" will help regulated institutions better meet the needs of their communities and encourage more comprehensive and effective CRA programs. Greater clarity and transparency in receiving a presumption will also allow banks to focus CRA activity more effectively in areas where it is needed most.

CBA is also appreciative of the ANPR's reference to the potential for the Federal Reserve to establish an online portal displaying the thresholds for each major product line in specific assessment areas. CBA urges the Federal Reserve to commit to updating the portal on a quarterly basis, as more up-to-date and reflective data will better help banks appropriately conduct CRA activity where it is needed most.

As the Federal Reserve considers changes to its benchmarks and the data it uses to establish new procedures, the Federal Reserve should continue to collect data from all sources necessary to set benchmarks. As noted above, the inclusion of certain datasets may skew benchmarks, so the Federal Reserve should proceed with caution before determining their approach to evaluating thresholds for activity such as consumer lending. The use of proper and sound data sets will similarly help ensure presumptions of "Satisfactory" and other benchmarks are properly established for difficult-to-serve communities.

E. The Federal Reserve Should Incentivize Activity Through Presumptions

CBA appreciates the Federal Reserve's data-driven approach to the discussion in the ANPR on establishing potential threshold levels and apparent commitment to providing a presumption of "Satisfactory". In our initial review of the ANPR's proposed threshold levels of 65 and 70 percent for the community and market benchmarks respectively, CBA feels it is clear these were calculated with a firm foundation and understanding of the underlying data. CBA encourages the Federal Reserve to continue to analyze all relevant data before finalizing the thresholds to ensure they are accurate.

While CBA values the approach to creating a presumption of “Satisfactory”, CBA encourages the Federal Reserve to establish procedures for a presumption of an “Outstanding” CRA rating. CBA member banks frequently strive for outstanding CRA activity, and a reflection of this commitment in the Federal Reserve’s framework will help encourage more institutions to raise their programs to this exceptional level. The ANPR provides little detail on how banks can achieve an “Outstanding” rating and as many strive for this higher level of activity, CBA encourages the Federal Reserve to establish a framework wherein a presumptive rating of “Outstanding” can be achieved.

F. The Federal Reserve Should Continue to Consider Full Performance Context

CBA is concerned by language in the ANPR suggesting the Federal Reserve may ultimately restrict the use of performance context to exclude economic factors or other conditions affecting assessment areas as a whole. CBA believes examiners should not be restricted to using bank-specific performance context factors. While certain aspects of the analysis provided by the performance context may be included in the ANPR’s proposed benchmarks, a CRA examination is still far too nuanced and intricate a process to eliminate full performance context in deciding ratings for institutions.

Practically, there often exists a lag in data necessary to CRA activity provided to many institutions and examiners from government entities. Ignoring practical challenges at each institution in an effort to streamline and limit examiner judgment may actually hinder the accurate representation of CRA activity conducted in an assessment area. Further, while CBA feels the use of innovative, complex, and responsive factors should be used in determining performance context, these should not be the only factors considered, and the Federal Reserve should not overly specify the activity that will qualify for each.

Examiner judgment is often critical when evaluating the specific economic factors facing each individual institution and limiting it at this crucial stage could negatively impact banks working to respond to the most difficult of community needs. The Federal Reserve should ensure full performance context, tied to the quantitative factors outlined in the benchmarks, is provided for institutions to ensure they are best able to respond to developing community needs.

CBA appreciates efforts by the Federal Reserve to consider establishing thresholds to set expectations more clearly on where a bank’s performance may fall. CBA once again notes establishing procedures to reach a presumptive rating of “Outstanding” will further encourage CRA activity and ground examiner judgment in objective factors to help institutions go above and beyond a “Satisfactory” rating. CBA is concerned about the establishment of a predetermined list of performance context factors and feels the establishment of such a list may undermine the purpose of performance context evaluations. Ensuring institutions may submit a full range of performance context factors will help ensure evaluations properly reflect the real-world conditions our members navigate while continuing to serve their communities.

G. Flexibility Is Required in Branch Distribution Analyses

CBA agrees with the Federal Reserve that while non-branch delivery channels may increase and banking will continue to transform, branches still hold CRA importance and are often vital to LMI communities. CBA appreciates efforts by the Federal Reserve to establish more quantitative factors aimed to increase transparency into evaluations of a bank's branch distribution.

CBA also appreciates efforts taken by the Federal Reserve in the ANPR to consider limiting the data collection necessary to conduct a more quantitative analysis on branch distribution. We are optimistic about the use of community and market benchmarks in the quantitative analysis and feel their use can help ground many of the qualitative evaluations examiners must make as part of a branch distribution analysis.

The Federal Reserve's language noting benchmarks set forth in a future rulemaking would be intended only to set the foundation for analysis of branch distribution and not to become thresholds institutions must meet in each assessment area is apt. As outlined in the discussion throughout the ANPR, the data used can help give important performance context to where branches are located within an assessment area, which can help examiners evaluate branch distribution. This performance context is necessary for a full evaluation not solely determined on the number of branches in LMI areas. Still, establishing more transparent benchmarks surrounding branch distribution is pertinent and will be useful to ensuring branches continue to serve those communities that need them most.

CBA feels the need for proper performance context is underpinned by the Federal Reserve's discussion on requiring a minimum number of branches in an assessment area to conduct a branch distribution analysis. Performance context can help determine when a branch distribution analysis should be conducted, and it may similarly prove a distribution analysis is not warranted in each assessment area. CBA is concerned about setting strict thresholds on when the distribution analysis should be conducted. Instead, we recommend the Federal Reserve once again should take a flexible approach in providing options on when the analysis will occur. Data points such as deposit market share may be useful in any quantitative analysis the Federal Reserve plans to conduct, but we once again believe offering flexible options tailored to bank activity will best streamline the evaluation process.

H. Optionality Is Key in Evaluating Non-Branch Delivery Channels

CBA appreciates efforts by the Federal Reserve to consider how to add clarity and transparency to the consideration given to non-branch delivery channels and feels properly capturing these important technologies can help examiners better understand the levels of activity that take place outside the branch. CBA is similarly aligned in the Federal Reserve's mission to find ways to make consideration of non-branch delivery channels more consistent while avoiding burdensome data requests. CBA urges the Federal Reserve to remain committed to this principle as it weighs different potential datasets to use through evaluations.

As noted by the Federal Reserve, many of the potential useful datasets may contain proprietary information and may not be appropriate for public disclosure. While CBA understands the risks to transparency that may result from treating this data as confidential, its use in understanding the levels of activity banks commit to through non-branch methods outweighs any potential pitfalls. This data could also help examiners better understand performance context factors individual to each institution as they work through an examination, and therefore, the Federal Reserve should continue to develop enhanced standards for what may be reported to show the effectiveness of non-branch delivery channels.

CBA encourages the Federal Reserve to make the reporting on any data specific to the use of non-branch delivery channels optional for regulated institutions to further ensure any burdens associated with such reporting do not outweigh the benefits.

CBA is wary of the use of quantitative benchmarks to evaluate non-branch delivery channels and emphasizes benchmarks should only be established after thorough review of their potential benefits. As it stands, much of the analysis on non-branch delivery channels is done through performance context and tailoring to institutions. CBA urges the Federal Reserve to refrain from adopting a method for evaluating non-branch delivery channels that would force institutions to maintain or even increase their use of such channels. The Federal Reserve should instead adopt a flexible approach for evaluating these channels for regulated institutions.

I. The Federal Reserve Can Improve Activity in Difficult Markets and Expand Activity in LMI Areas

CBA agrees more can be done to incentivize activity in difficult to serve markets, or as the ANPR calls them, "banking deserts". Similarly, more quantitative factors about the activities that will best serve these markets will help improve the activity conducted within. While CBA wishes to see more quantitative factors placed on these markets, we urge the Federal Reserve to abandon the strict definition of a "banking desert" and instead look to better qualify activity which impacts demographics that are served in the same markets.

Demographic factors such as persistent unemployment, persistent poverty levels, declines in housing values, population loss, and number of branches per 10,000 residents can help target the same communities as an intended "banking desert" definition without strictly limiting the communities that should be considered in a more quantitative and structured analysis. The Federal Reserve could also look to other definitions typically used in analyses for areas like opportunity zones[7] to help expand the scope of qualifying activity.

Similarly, many of these demographic factors can help capture activity in Indian Country. Often, these communities will share many demographic similarities with rural areas and other communities the Federal Reserve looks to serve through its definition of a "banking desert".[8] One way to streamline the process and encourage banks to engage in qualifying activities would be to ensure incentives for these markets are based on demographic factors instead of specific designations like Indian Country and "banking deserts". Focusing incentives on the communities' needs instead of set definitions will help ensure increased activity in the areas where it is most needed.

[7] 26 USC §1400Z (2017).
[8] ANPR at 66,430.

Further, the Federal Reserve can help ensure activity in LMI communities by providing consideration for delivering services to LMI consumers who reside in middle- and upper-income census tracts. Often, branches in these areas are on the border of an LMI census tract and frequently provide services to LMI consumers. Ensuring activity from branches in middle- and upper-income census tracts will be considered will help banks better leverage existing branch networks to further serve LMI communities. CBA appreciates the method discussed in the ANPR of allowing banks to request consideration of activity from branches in these areas and feels a flexible approach to their consideration will help ensure the branches and branch activities are reported appropriately. Optionality is key for their full inclusion and proper consideration in a modernized framework.

To ensure a branch in a middle- and upper-income census tract serves LMI consumers, data on the number of accounts held by LMI consumers at a particular branch may be useful to the Federal Reserve. An analysis of the proximity of branches in middle- to upper-income census tracts relative to neighboring LMI census tracts may also assist in developing a thorough analysis of which branches truly serve LMI consumers.

J. Strategic Plans Should Be Retained

CBA appreciates efforts by the Federal Reserve to not only retain but improve the strategic plan process. Strategic plans offer great benefits to unique banks and the communities they serve, and CBA advocates they should be retained in a modernized framework. Strategic plans often offer ways for banks whose business models were not anticipated in the original regulations to meaningfully engage with their communities and provide great CRA activity to the communities they serve.

CBA also appreciates notions in the ANPR to ensure public comments help banks identify community needs and priorities while also giving banks opportunities to develop responsive products for those needs. Banks work together with their communities in developing strategic plans so that their underlying CRA activities are responsive to the specific needs of these communities and the individuals and businesses operating therein. A bank's engagement with the communities it serves during the public comment process is of paramount importance in ensuring that the institution's CRA efforts remain focused on community improvement within a bank's assessment area(s).

Finally, codifying current guidance that makes clear banks are not required to enter into community benefit agreements as a condition of developing a strategic plan is vital to ensuring strategic plan banks are best able to meet the needs of the communities they serve. By formally adopting this guidance and making clear that banks' primary focus should be on the communities they serve, the Federal Reserve will better position banks to develop flexible and responsive strategic plans that are focused on community needs and that will provide the greatest community benefit.

As emphasized elsewhere throughout our response, flexibility and optionality throughout the CRA evaluation process is vital to ensuring every bank's CRA program remains responsive and reflective of community needs. CBA is encouraged by language throughout the ANPR advocating for increased flexibility in setting plan goals, amendments, and assessment areas for strategic plan banks.

K. The Federal Reserve Should Ensure Optionality in the Reporting of Deposit Product Data

While CBA values the ANPR's discussion of measures to strengthen the evaluation of deposit products that are particularly responsive to LMI communities and consumers, CBA urges the Federal Reserve to continue to make many of the proposed features optional for regulated institutions. With respect to the proposed categories, CBA notes that our members already submit huge swaths of data that would serve the stated goal of increasing transparency and provide more information on the types of deposit products that should be considered. Given the recognized challenges of providing new and often proprietary data to the Federal Reserve, banks should be permitted to submit this data and for it to be included in the resulting analysis at their option. The Federal Reserve will likely still be able to determine the scope and role of deposit products in serving LMI consumers based on the data already provided if reporting is at a bank's option.

Similarly, banks should retain the option to provide deposit product and usage data at the assessment area level. While CBA understands some aspects of this data may be more useful in the Federal Reserve's analysis of institutions' assessment areas, banks are often precluded from collecting information for certain deposit products, and it could be similarly difficult for banks to provide meaningful data to examiners. Allowing banks to provide this information at their option will help those institutions able to provide the data better display the usefulness and utility of deposit products to LMI communities.

Finally, CBA argues against the mandatory inclusion of a strategic statement for large banks to articulate their approach to offering retail banking products. Such statements are ripe for criticism without proper context and will offer little valuable information to examiners and the Federal Reserve. Requiring strategic statements solely from large institutions would set unnecessary delineations and would present at least the appearance of discrimination among bank models and sizes.

IV. <u>Flexibility Is Necessary in Retail Lending Subtest Definitions</u>

CBA appreciates efforts by the Federal Reserve to ensure examinations more accurately reflect the products and services banks offer. We recognize the approach in the ANPR of analyzing banks' major product lines is aimed to create a flexible approach that is tailored to the specific needs and actions of individual institutions, and CBA values this flexibility.

A. The Federal Reserve Should Set Flexible Thresholds

CBA supports designating major product lines for evaluation under a metric-based approach. As noted in the ANPR, those activities that are not heavily engaged in within an assessment area already receive lower weight under the current evaluation framework. Creating a system that allows banks to focus on the activities which are most prevalent in their business strategies will encourage more responsive activity across assessment areas.

To maintain flexibility in the proposed framework, CBA believes the Federal Reserve should set thresholds for major product lines based on the share of each bank's activity with the product. Adopting a method that is responsive to a bank's business model and strategy instead of an absolute threshold will provide for a more comprehensive and flexible response to CRA activity.

To ensure any new thresholds adequately consider activity based on where banks focus their lending, CBA encourages the Federal Reserve in any future rulemaking to raise the threshold from 15 percent in individual assessment areas, as discussed in the ANPR, to 30 percent for home mortgage, small business, and small farm loans. This will better ensure examinations focus on major product lines.

B. The Federal Reserve Should Include Consumer Loans Only at a Bank's Option

CBA urges the Federal Reserve to enact a framework that provides for the reporting and evaluation of consumer loans principally at the bank's option, as is current practice. We appreciate the Federal Reserve evaluating when consumer loans should be reported, and thereby recommending in the ANPR that banks should not be required to report at every examination, but CBA feels any revised CRA framework must continue to allow banks to determine when consumer loans should be reported.

The mandatory inclusion of consumer loans in a bank's CRA evaluation constitutes a significant expansion of a bank's affirmative CRA obligations, with no evidence to indicate banks are not making enough consumer loans to LMI individuals or in LMI communities. Reporting of consumer loans also would pull into CRA categories of loans that are wholly unconnected to neighborhood development or LMI community credit needs, such as recreational vehicle loans. The Federal Reserve should also not make reporting and inclusion of credit card and credit-card-like (e.g., point of sale programs) products mandatory under the Retail Lending Subtest. Credit card loans and credit-card-like programs like point-of-sale financing do not play as significant a part in building consumer wealth as other consumer loan types such as mortgages and student loans. Mandatory inclusion of credit programs that do not contribute to wealth building and economic development in CRA evaluation, could inadvertently undermine those objectives.

If the Federal Reserve moves forward with an evaluation of consumer loans in a future CRA rulemaking, CBA advocates thresholds for evaluation should be set to at least 30 percent of a bank's loan portfolio dollar value, and at least 100 originations in a given assessment area. Additionally, CBA advocates consumer loan categories should be evaluated separately, not in the aggregate. There exists major disparities between products like consumer credit cards and consumer automobile loans and combining these products will not recognize the varying customers they serve.

V. Flexibility Is Necessary for Increasing Community Development Activity

In evaluating changes to the community development framework, it is important for the Federal Reserve to continue to weigh the risks of streamlining the reporting of various activities against the real impacts to how this activity is conducted. Allowing for optionality in reporting as well as local tailoring will help ensure community development activities are properly engaged in and reported.

A. CBA Supports Efforts to Better Quantify Community Development Activity

CBA is encouraged by the ANPR's proposed community development metrics and their potential impact both within and outside of assessment areas. CBA supports a framework that evaluates community development activity within an assessment area at the assessment area level during an examination while evaluating community development activity conducted outside of an assessment area at broader statewide or institution ratings. The proposed metrics can help increase out-of-assessment area activity while ensuring in-assessment-area activity is properly considered.

B. The Federal Reserve Should Fully Evaluate the Impacts of Combining Community Development Loans and Investments

CBA appreciates the ANPR's discussion about recording and encouraging community development activity more appropriately by combining loans and investments under one test. As noted within the ANPR, the current regulation may not always reward patient investments, which can have the greatest positive impact on a community.[9] As all community development loan and investment activity is eventually evaluated by the federal banking agencies through an examination, it could be beneficial to combine the two under one subtest to encourage better and more comprehensive community development activity.

Combining community development loans and investments will not only streamline the evaluation process for each but will also help improve bank community development activity. CBA supports counting prior period balances in any new subtest as this will further encourage meaningful, patient community development loans and investments.

Like the Federal Reserve, CBA is similarly concerned with the potential impacts combining community development loans and investments could have on Low Income Housing Tax Credits (LIHTC) and other tax credits that may be eligible for CRA credit. Depending on how each was financed, they could potentially lose consideration under the new subtest. It is important to continue to count these activities as both a loan and investment if applicable to each. The Federal Reserve should continue to weigh the impacts of combining community development loans and investments on LIHTC and other applicable tax credits to ensure they are still properly recorded and incentivized in each market.

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[9] ANPR at 66,410, 66438.

C. The Federal Reserve Should Clarify and Refine the Community Development Financing Metric

CBA values the Federal Reserve's apparent commitment to more accurately qualifying community development using its community development financing metric. Further, we agree the approach exemplified in the ANPR, which focuses on the dollar amounts of community development activity, sets a firm foundation for improving qualification. While CBA discusses the appropriate use of responsiveness and innovativeness below, we further urge the Federal Reserve to weigh whether corporate and commercial deposits should be included in the community development financing metric.

CBA agrees the correct data source for the community development financing metric is the use of FDIC Summary of Deposit (SOD) data, which should be used to measure the dollar amount of deposits assigned to branches within an assessment area. However, it may prove pertinent for the Federal Reserve to exclude corporate and commercial deposits from this equation. Often, corporate and commercial deposits may skew the data in certain assessment areas, and more importantly, there is a weaker nexus between these deposits and the statutory purpose of the CRA. As such, it may not serve the metric well to include corporate and commercial deposits.

Further, CBA agrees with the Federal Reserve on the challenges presented by trying to require limited purpose and wholesale banks to use the community development financing metric. In our view, the current framework for these institutions already properly evaluates their unique activities and business models.

D. The Federal Reserve Should Work to Establish Flexible Benchmarks

While CBA appreciates efforts to bring more clarity and transparency to community development, we have concerns about the practical impacts of the benchmarks described in the ANPR. First, consistent with the parallel discussion in the ANPR, CBA is extremely concerned the levels of data required to properly establish benchmarks may become onerous and would outweigh any potential benefits of its collection. CBA urges the Federal Reserve to carefully analyze the real costs and frequency of the new data collection to ensure it helps establish sound and reputable benchmarks. Given the data requests proposed by the benchmarks, CBA is concerned about the sheer frequency of data that would have to be reported to be useful.

Additionally, CBA shares the Federal Reserve's concerns raised in the ANPR regarding disparities in where performance standards are calibrated and set. As echoed in the ANPR, activity in smaller local markets may not get proper consideration, and other assessment areas may in fact have disproportionately high standards to reach. Further, national benchmarks that are too inflexible and standardized will not properly compensate for the disparities in local markets and may once again set unbalanced standards among institutions. As such, ensuring flexibility is built in to both local and national benchmarks can help ensure benchmarks meet their purpose of creating a more objective and transparent CRA regime, without sacrificing the important context and situational awareness required of a comprehensive CRA program.

VI. Broader Consideration of Qualifying Activities Will Improve Community Development

CBA appreciates efforts by the Federal Reserve to undertake CRA reform efforts geared towards gaining a better consideration of what qualifies as community development activity and the commitment to ensuring affordable housing holds its important relevance under a new framework. Broader consideration of these important initiatives can help incentivize their use, and in turn better serve communities through a new framework.

A. The Federal Reserve Should Increase Consideration for Housing Programs

Working with different affordable housing programs is one of the most vital and responsive activities established throughout the CRA. Housing programs should be encouraged and strengthened through CRA reforms. CBA believes many of the definitions outlined in the ANPR will help solidify housing's role within the banking industry's CRA efforts. CBA offers considerations for the Federal Reserve to deliver greater effectiveness in any future rulemakings.

CBA appreciates the ANPR's proposed definition of "subsidized housing"[10] including activity taken in conjunction with various government affordable housing programs with the bona fide intent of providing affordable housing. As noted in the ANPR, there are many such programs that need to be considered in any quantitative definition of affordable housing, including LIHTC, federal direct subsidies, and state and local subsidies. Creating a broad definition intended to include these activities will help incentivize their use in any new CRA framework without excluding potentially beneficial activity.

CBA values aspects of the ANPR's proposed definition of "unsubsidized housing"[11] but has concerns about this potential definition's intention to tie affordability to where a unit is located. Including unsubsidized housing in the definition of "affordable housing" is important and will help increase affordable housing activities across the country. However, CBA urges the Federal Reserve to consider this definition's impact in high-cost markets, and further, to ensure middle-income units are still afforded CRA credit under any future rulemakings. Analyzing this definition's impact on each will help ensure banks engage in more thorough and effective affordable housing activity.

Additionally, CBA is concerned about the Federal Reserve's apparent intent to tie the definition of qualifying unsubsidized affordable housing to where the unit is located. CBA feels affordability should not be tied to where a unit is located as this will likely hamper important activity in high-cost markets and limit banks' abilities to invest in affordable housing. Affordable housing in high income communities should be encouraged by any future rulemakings and would better align with Department of Housing and Urban Development guidance encouraging access to affordable housing. A definition of "affordable housing" should instead look at the quantitative factors discussed later in the ANPR and below, and not tie consideration of activities to a particular geography.

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[10] ANPR at 66,444.
[11] *Id.*

While CBA appreciates the Federal Reserve's apparent intent to better qualify particularly responsive affordable housing activity, we encourage the Federal Reserve to ensure any specification they set includes a broad range of activities. CBA does not feel creating an enumerated list of particularly responsive behavior or any definition that excludes particular activities will encourage important affordable housing activity.

Instead, in any future rulemaking, the Federal Reserve should set a baseline definition that ensures any activity which is particularly responsive in meeting public policy goals may qualify as particularly responsive. We note performance context in this case is already effective in properly considering particularly responsive behavior, and CBA urges some ensured level of flexibility and nuanced consideration is necessary. The Federal Reserve could also ensure any work through a government program that supports affordable housing activity may qualify, which would better quantify and incentivize the behavior. Still, a broader definition of this activity in a modernized CRA framework would best serve communities.

B. The Federal Reserve Should Allow Affiliate Activity

CBA advocates the Federal Reserve should ensure banks are given the option to include affiliate activity for CRA consideration. Often, banks engage in important partnerships and CRA activity in the name of another party which have great impacts on the communities we serve. These opportunities should not be constrained, and banks should retain the option in a modernized framework to include the activity for CRA consideration.

C. The Federal Reserve Should Set Consistent Definitions

In establishing definitions for affordable properties, any future CRA rulemakings issued by the Federal Reserve should strive to establish definitions that are streamlined and consistent throughout a modernized framework. CBA feels basing affordable rents on 30 percent of area median income could be a sound definition to establish, but we also urge the Federal Reserve to use similar definitions throughout its CRA framework when determining affordability. Consistent definitions will greatly help increase the reliability and understanding for various activities.

D. The Federal Reserve Should Enforce CRA's "Primary Purpose" Through Updates to Regulation H

Updates to the CRA should better harmonize aspects of Regulation H,[12] and those investment not requiring prior approval by the Federal Reserve. Under Regulation H, certain qualified investments must meet a standard of being engaged in "solely" for one of six purposes, which is a significantly higher standard than the typical CRA "primary purpose" test. Regulation H requires prior approval from the Federal Reserve for investments that are not made entirely and exclusively for one of the community development purposes outlined in Regulation H. Such a standard makes the qualification of many investments an impossibility for regulated institutions. The Federal Reserve should address this discrepancy any future rulemaking to modernize its CRA framework by adopting provisions to codify the existing "primary purpose" test in qualifying the activities under Regulation H.

[12] 12 U.S.C. §24.1-7 (2015).

E. Pro-Rata Consideration Should Be Improved

CBA is supportive of the ANPR's discussion of potential improvements to the CRA framework that would ensure appropriate consideration for mixed-income developments. Proper investment in mixed-income housing is vital to effective community development in areas with lower poverty rates.

Given the importance of investment activity related to mixed-income housing, CBA supports any future efforts by the Federal Reserve to incentivize banks and support mixed-income housing. CBA is optimistic about the language in the ANPR regarding a potential option of providing a flat rate of 50 percent consideration for projects financed by a bank that contain or will contain a minimum percentage of affordable units.[13] However, we remain concerned about the possibility of activity that did not meet a stated threshold not qualifying for *any* CRA consideration and thus advocate for flexibility to ensure all relevant activity is properly qualified and incentivized. While we appreciate the Federal Reserve articulating its views on future steps towards increasing activity that could be considered, we stand committed to ensuring all activity gets qualified appropriately.

F. The Federal Reserve Should Continue to Promote Economic Development Through Financing Small Businesses

CBA believes activities that qualify for CRA consideration based on their role in promoting economic development through financing small businesses are vital public policy initiatives and should continue to receive CRA consideration. Small businesses have historically played a critical role in job creation, with banks providing essential financing through many types of loans and investments. Considering the current COVID-19 pandemic, which is currently causing immeasurable damage to our country's small businesses, it is more important than ever for banks to continue to provide financing to small businesses that help create jobs, and to continue receiving CRA consideration for doing so.

The Interagency Questions and Answer Regarding Community Reinvestment (Interagency Q&As) outlines five categories of activities that promote economic development by supporting "job creation, retention, and/or improvement".[14] CBA believes banks should continue to receive CRA consideration for activities that promote economic development by financing small businesses, including job creation, retention, and/or improvement in all the five categories currently contained in the Interagency Q&As.[15]

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[13] ANPR at 66,410, 66445.

[14] *See* Interagency Q&As, §___.12(g)(3) 1.

[15] *Id.* Stating, "To meet the ''purpose test,'' the institution's loan, investment, or service must promote economic development. These activities are considered to promote economic development if they support • permanent job creation, retention, and/or improvement o for low- or moderate-income persons; o in low- or moderate-income geographies; o in areas targeted for redevelopment by Federal, state, local, or tribal governments; o by financing intermediaries that lend to, invest in, or provide technical assistance to start-ups or recently formed small businesses or small farms; or o 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

We further urge the Federal Reserve to not place restrictions on the types of activities that would qualify as "promoting economic development" through unnecessarily installing new size tests based on gross annual revenue. The ANPR's discussion of these tests could have the effect of disincentivizing banks to engage in activities to promote economic development because the tests may very well result in fewer activities qualifying for CRA consideration. If through its analysis, the Federal Reserve identifies particular needs, it should work to incentivize that activity using the existing categories that are presumed to qualify under the Interagency Q&A so banks can receive proper CRA consideration.

G. Flexibility Is Needed in Clarifying Revitalization and Stabilization Activities

CBA appreciates the ANPR's discussion of the need to add certainty about which activities will be considered as part of the revitalization and stabilization subcomponents of the community development definition. However, CBA suggests in any future rulemaking the Federal Reserve should not overly-restrict the activities that may qualify. As reflected in similar discussions surrounding the creation of lists of qualifying activities, CRA modernization efforts by the Federal Reserve should ensure any enumeration of the activities that may qualify as revitalization or stabilization is strictly illustrative, non-binding, and not presented as exhaustive. Any activity the Federal Reserve outlines in a future rulemaking or in guidance as "qualifying" for CRA consideration should be presumed to qualify, but an activity should not be ineligible for CRA consideration solely as a consequence of not being included in any official document listing "qualifying" activities.

Similarly, CBA is also concerned about the potential for a strict standard for determining whether an activity satisfies essential community needs and infrastructure. We feel any such standards should not be applied the same across all geographies. These activities should be encouraged, and a broader definition in a future rulemaking will better serve communities by allowing for more responsive activity in different areas. Each market's needs are unique, and different activities will have different impacts in different geographies. The same standard should not be applied across all as this could result in key differences in behavior and responsiveness being ignored, thereby harming the CRA activity conducted within any given area.

Additionally, CBA argues flexibility is needed for delineating which activities should require association with a government plan in order to demonstrate eligibility as an activity that contributes to revitalization or stabilization of a particular community. In its CRA reform efforts, the Federal Reserve should not restrict the types of activities that will qualify if taken in conjunction with or as part of a government plan. Instead, CBA recommends any future rulemaking by the Federal Reserve ensure these activities are further incentivized.

While CBA understands the Federal Reserve's concerns surrounding infrastructure, community facilities and large-scale projects, CBA argues small scale projects can still be emphasized under any new CRA framework. If the Federal Reserve chooses to move away from the framework of full- and limited-scope assessment areas, small-scale projects may hold a disproportionate weight in any new framework.

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that include provisions for creating or improving access by low- or moderate-income persons to jobs or to job training or workforce development programs."

To help alleviate concerns about large-scale projects holding too much bearing in a revised CRA framework, CBA suggests the Federal Reserve could consider implementing a pro-rata share approach to large-scale projects that cover a geography which is less than 50 percent LMI. A framework that allocates a pro-rata share for these larger scale projects may help alleviate concerns about large-scale projects becoming the focus of an institution's CRA activity.

CBA is similarly committed to safeguarding CRA consideration for activities to support minority depository institutions (MDIs), women-owned financial institutions, and low-income credit unions in any future framework. To that end, we support aspects of the ANPR that, if adopted could help ensure such activities not only continue but thrive. Similar to the positions articulated within our response regarding other aspects of community development and corresponding CRA consideration, the inclusion of activity related to MDIs, women-owned financial institutions, and low-income credit unions should be included at the institution level for the bank receiving CRA consideration to properly reflect these activities on a broader scale. We also urge the Federal Reserve to consider a flexible approach that may also allow a bank to receive CRA consideration for these activities with respect to performance within the bank's assessment area where there is evidence of a direct correlation between the activity and that geography.

H. Banks Should Be Able to Receive Pre-Approval for Qualifying Activities

CBA is supportive of the future establishment by the Federal Reserve of a publicly available, illustrative, and non-exhaustive list of qualifying activities. Such a list will help banks ascertain which activities will receive CRA consideration, provide greater transparency, and enable improved consistency across banks being evaluated. CBA urges the Federal Reserve to formally establish an illustrative list of activities presumed to qualify for CRA credit and to do so in coordination with the other federal banking agencies to ensure consistency among the lists. Ensuring the lists remain illustrative will provide CRA practitioners more flexibility in engaging in new and innovative activity, provided the Federal Reserve also establishes an efficient pre-approval process for activities not on the illustrative list.

To best encourage new and innovative activities, the Federal Reserve should codify in a future rulemaking, a process for reviewing and deciding upon an institution's request for the Federal Reserve's pre-approval of a new CRA related activity. CBA recommends the Federal Reserve adopt a timeline for this process that would require a decision to be issued within 30 days. Often, banks must move quickly to take advantage of innovative opportunities to serve their communities as they arise. Ensuring banks can quickly receive a determination is necessary to encourage innovative behavior.

Additionally, CBA believes pre-approval mechanisms could be leveraged beyond confirmation of qualifying activities to allow banks to obtain certainty concerning other bank-specific nuances during a CRA examination period, as discussed throughout the ANPR. Such conversations that may currently occur during a CRA performance evaluation could be resolved earlier and thus would further foster the goals of examination clarity and transparency.

VII. <u>Improvements to Ratings Can Better Incentivize CRA Activity</u>

CBA echoes the concerns surrounding examination ratings raised by banks and community groups alike, which are noted in the ANPR. In many instances, CRA examination ratings are often the byproduct of far too subjective a process, with examiner judgment and discretion sometimes serving as dominating factors in determining a bank's CRA rating. CBA supports endeavors by the Federal Reserve to tie CRA ratings to quantitative factors in efforts which would increase transparency and objectivity throughout the examination process. Ensuring these objective processes remain flexible is necessary to encourage the most effective and impactful CRA activity.

A. More Clarity Is Needed on How to Receive an Outstanding CRA Rating

CBA members strive for the absolute best in their respective CRA efforts, and as such, our members are frequently among the top performers in CRA compliance. CBA notes the bulk of the discussion on ratings in the ANPR focuses on the activities that will help an institution receive a "Satisfactory" rating, with limited discussion on the activities that will be considered as demonstrative of a bank which goes above and beyond.

While CBA understands the majority of institutions currently receive "Satisfactory" CRA ratings, in any future rulemaking or related guidance, the Federal Reserve clearly delineate and emphasize those activities that, if undertaken effectively and appropriately, would assist a bank in achieving an "Outstanding" rating. By outlining these activities in a modernized CRA framework and through proper examiner training, banks can get a better understanding of the expectations associated with an "Outstanding" rating. The goal for modernization efforts should be to facilitate the best possible outcomes for LMI communities across the country and illuminating the path to "Outstanding" will better serve banks and communities alike.

B. The Federal Reserve Should Carefully Consider Changes to Weighting Performance in Assessment Areas

While CBA values any future efforts by the Federal Reserve to appropriately weight performance in all assessment area(s) based on the levels of activity that take place therein, we urge the Federal Reserve to carefully consider in any CRA reforms whether the weighted average approach discussed in the ANPR would be effective. CBA feels adhering to weighting approaches found in the existing CRA framework provides for greater clarity throughout an examination. Weighting performance in all assessment areas based on deposits, when paired with proper performance context evaluations will better serve LMI communities than an approach that weights performance based on both deposit activities and lending activities, as set forth in the ANPR.

CBA appreciates the Federal Reserve's apparent intent to ensure all activity is properly assessed in any new approach to weighting performance. CBA feels weights in this context should be grounded only in the levels of deposits within assessment areas, as lending data is unlikely to provide much usable information. It is uncommon for markets to have a significant disparity between lending activity and deposits. CBA argues the use of proper performance context tied with a deposits-weighted approach will best impact the various communities our members serve.

As such, elimination of the current use of whole and limited scope assessment areas may not be pertinent. Elimination of whole and limited scope designations will not have an appreciable effect on ensuring each assessment area is properly weighted and receives applicable activity. The Federal Reserve should proceed with caution in making any changes to whole and limited scope assessment areas as these changes may not result in greater transparency, clarity, and consistency of ratings.

C. The Federal Reserve Should Be Cautious in Capping Assessment Area Performance Ratings

CBA understands the purpose of limiting overall state or multistate metropolitan statistical area (MSA) ratings if there exists a pattern of weaker performance in multiple assessment areas. We urge the Federal Reserve to base any such limits imposed under any future rulemaking on deposit weights, and to not employ arbitrary thresholds. For example, if a bank received a "Satisfactory" rating in more than 50% of assessment areas by deposit weight, that would be a more effective cap on an "Outstanding" rating than setting an arbitrary limit of 50% of all assessment areas, regardless of weight. Weighting the evaluation will help ensure an overall state or multistate MSA rating is reflective of the overall activity among a majority of the assessment areas.

D. Clarity Is Needed for "Needs to Improve" Downgrades

CBA feels any future rulemaking should seek to provide more specificity with respect to decisions to downgrade an institution's performance from "Needs to Improve" to "Substantial Non-Compliance". To ensure any standards for low performance are appropriately set, the Federal Reserve should strive to establish quantitative factors for what is considered "appreciable improvement" between examinations and should clearly state the factors examiners will consider as part of the performance context evaluation.

This stands as another example of why properly weighting performance in assessment areas is necessary if whole and limited scope assessment areas are to be eliminated. Some smaller and limited markets may prove more difficult to engage in, and these markets should not degrade the entire state or multistate MSA rating.

E. The Federal Reserve Should Not Eliminate High and Low Satisfactory Designations

While CBA understands the Federal Reserve may be interested in efforts to streamline and bring greater efficiency to ratings systems, we do not feel the elimination of "High Satisfactory" and "Low Satisfactory" designations is necessary. Any perceived benefits of streamlining the ratings system in this way are heavily outweighed by other likely negative implications.

As noted throughout the ANPR, the vast majority of institutions receive a "Satisfactory" CRA rating. With so many institutions already receiving a "Satisfactory" rating, more detail on performance across the industry helps banks compare their programs to those of their peers. The designation helps to incentivize banks to take on more innovative or impactful CRA activities as they seek to improve from a "Low Satisfactory" rating to a "High Satisfactory" rating or beyond.

These designations also help institutions analyze performance trends as they move between rating categories. An organization that goes from an "Outstanding" rating to a "Low Satisfactory", for instance, is likely to have more interest in improvement than one that just moves to a general "Satisfactory" rating.

F. Flexibility Is Still Needed in Metrics and Weighting Approaches

CBA values the Federal Reserve's efforts discussion in the ANPR about future efforts to provide more quantitative factors around the various subtests performed throughout a CRA examination. Establishing a quantitative matrix that clearly breaks down how performance is evaluated and graded will help tie examiner discretion to a quantitative foundation. This in turn grounds ratings in more measurable metrics for both examiners and entities.

However, CBA urges that any future rulemaking make use of various matrices and metrics to serve as the foundation for a flexible approach to CRA examinations and to ensure examiners fully consider each institutions' particular business model and CRA performance. While CBA feels the use of matrices will increase transparency in executing the retail and community development tests, we advocate the Federal Reserve should not set arbitrary test weights for each throughout the examination under any rulemaking. Doing so establishes a CRA framework that ignores individual bank business models and responsive behavior in favor of a one-size fits all approach. Different or unique business models should not be penalized in any modernized framework promulgated by the Federal Reserve or its fellow federal banking agencies. CRA activity should be promoted in whatever method is most effective for and impactful to the communities our members serve. Establishing a framework with quantitative thresholds for the retail and community development tests that can be adjusted at the outset of an examination will best serve LMI communities and properly reflect the actual activity undertaken by banks.

Certain aspects of the framework outlined in the ANPR lack the flexibility necessary to properly incentivize thorough and responsive CRA activity across entire CRA portfolios. If the framework discussed in the ANPR is adopted oversaturated and underserved areas could in fact be exacerbated by the lack of optionality. Instead, a future rulemaking by the Federal Reserve should allow institutions to work together with their examiners to delineate the weight given to each test at the outset of an exam, which would result in an evaluation system that recognizes the particular nuances in each bank's business model and CRA engagement strategy.

VIII. The Federal Reserve Should Be Cautious in Any New Data Requests

CBA appreciates the ANPR's apparent focus on building much of any future CRA framework on existing data and on minimizing new data collections. CBA understands that inherent in any new framework will be the need for new sources of data. We encourage the Federal Reserve to closely evaluate the real burdens any new collection will pose against the potential benefits of the new data in future rulemakings or related guidance. CBA also urges the Federal Reserve, in developing CRA reform proposals, to carefully consider the frequency at which data is reported and to work to ensure the reporting is accurate without becoming unduly burdensome on reporting institutions.

Any new or reformed CRA requirements will inevitably involve not only the collection of new data, but also the reporting and qualification of this data. While CBA understands banks may be required to collect new sources of data under a modernized framework, we urge the Federal Reserve to carefully evaluate how much of this new data should be reported throughout an examination. Often, reporting and qualifying data on particular activities can be burdensome on banks, and as such, CBA offers that CRA reforms should not require banks to report and qualify all data throughout an examination. Instead, a future rulemaking issued by the Federal Reserve should permit banks the flexibility to choose which datasets to report and qualify as part of their CRA examination. Banks are best situated to determine which programs, loans, investments, and other activities are relevant to the subject matter of their respective CRA examinations. They should be permitted to choose which of these activities to report throughout an evaluation to limit the burdens of reporting and qualifying the data.

CBA also has concerns about any future proposals that would require or necessitate the public reporting and disclosure of data. CRA data that would be reported by regulated banks would create an incomplete dataset of the actual financial activity within a community, making it ripe for skewed and, in some cases, unfounded criticism. Under a revised framework, the Federal Reserve should only consider aggregate level data for public disclosure to ensure the CRA's purpose is served while also protecting the important support banks provide to LMI communities.

We once again advocate data requests and the underlying activity should be focused on the statutory purposes of the CRA, and as such, should exclude corporate and commercial deposits from any metrics the Federal Reserve plans to implement in a modernized framework. These activities do not reflect the purpose or intent of the CRA and will not lead to more responsive and reflective CRA behavior.

Similarly, CBA urges the Federal Reserve to abstain in any future rulemaking from requiring the collection and reporting of consumer loans; in our view these products do not fit the statutory goals and intent of the CRA. A modernized framework should remain focused on the activities most central to the statute, and as such, CBA advocates the Federal Reserve should not require banks to report data on consumer credit cards, credit-card-like products, consumer automobile loans or student loans in its CRA evaluations. Each of these products are markedly different, and banks should not be required to report these products together under the umbrella of consumer loans in any future rulemakings.

Given the multiple challenges presented by new data collection and reporting, CBA urges the Federal Reserve to only pursue a future rulemaking that includes an established implementation timeline for any corresponding data collection in a method that adequately allows for banks to align their systems with any new framework. Reforms to the CRA have not been commonplace, so major structural overhauls to the framework will inherently take time and effort by regulated institutions and the federal banking agencies alike. Providing enough time to properly collect new data will be crucial to any modernized framework's success.

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Once again, CBA appreciates the thoughtful and thorough nature of the Federal Reserve's ANPR. We are committed to working with the Federal Reserve, FDIC and OCC on ensuring CRA modernization works for the communities our members serve. Thank you for the opportunity to share our comments throughout this process. We would be pleased to answer any questions and to participate in any further efforts to improve and modernize the CRA.

Sincerely,

Richard Hunt
President and CEO
Consumer Bankers Association

Stephen Congdon
Assistant Vice President
Consumer Bankers Association