NAAHL | National Association of Affordable Housing Lenders

February 16, 2021

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

Docket No. R-1723; RIN 7100-AF94 – Community Reinvestment Act

Dear Ms. Misback:

The National Association of Affordable Housing Lenders (NAAHL) appreciates the opportunity to comment on modernizing the Community Reinvestment Act (CRA) regulation.

NAAHL is the only national alliance of major banks, community development financial institutions (CDFIs), state and local housing finance agencies (HFAs), and other capital providers for affordable housing and inclusive neighborhood revitalization. (A list of NAAHL members is attached.) This mix of deeply experienced practitioners across sectors gives us a uniquely balanced perspective on the Advance Notice of Proposed Rulemaking (ANPR) and its likely effects.

In 2018, NAAHL member banks made 829,346 loans totaling $124.8 billion for low- or moderate-income (LMI) people and communities, including:

- 263,624 single-family home mortgages totaling $41.0 billion to LMI borrowers or census tracts;
- 4,045 multifamily mortgages totaling $23.2 billion in LMI census tracts;
- 556,059 small business/farm loans totaling $19.2 billion in LMI census tracts; and
- 5,618 community development loans totaling $414 billion.

We applaud the Federal Reserve Board (the Board) for publishing an ANPR. We share the Board's commitment to modernizing the CRA regulation. We also encourage the Board, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency (OCC) to work toward a joint CRA rule.

- We agree with the Board that a strong CRA continues to be vital to the economic health of LMI communities and people. America's economy, financial system, and society can be strong only if all people and communities can contribute to and benefit from them. CRA has significantly helped to include LMI people and places in the U.S. banking system. CRA modernization must strengthen, not weaken, financial inclusion.

- We agree that CRA modernization is long overdue. Banking, communities, and the practice of community development (CD) have all changed dramatically in the 25 years since CRA regulations were last changed significantly. CRA has become foundational to the success of affordable housing and economic development policy and practice.

- We agree that more clarity about what activities count is essential, including those outside assessment areas (AAs). Banks will provide more financing for activities they are confident will receive CRA credit.

- Greater clarity will expand capital for communities, reduce regulatory uncertainty and burden for banks and simplify the examination process for Board staff.

- We agree that more data could help to establish clearer performance benchmarks and contribute to simpler and more streamlined performance evaluations.

Question 1. Does the Board capture the most important CRA modernization objectives? Are there additional objectives that should be considered?

We believe that increasing the level of reinvestment should be an objective of CRA modernization. As discussed in our response to Question 81, maintaining the differentiation between high and low "satisfactory" ratings for component ratings is very important to motivating banks to reinvest more. Providing clear guidance on qualitative factors that will receive extra credit, such as we discuss in response to Question 47, would also be helpful. We also urge the Board to consider incentives for "outstanding" performance. For example, the Board might consider expedited reviews of bank requests for Board approval, including requests unrelated to CRA, for banks with "outstanding" CRA ratings.

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?

NAAHL strongly believes that now is the time for CRA to take racial equity directly into account.

Racial equity and justice have been at the heart of NAAHL's mission "to expand economic opportunity through the responsible financing of affordable housing and inclusive neighborhood revitalization."[1] We believe that overcoming racism is both morally imperative and essential to America's social cohesion, economic prosperity, and world leadership. Structural racism and White privilege persist across many aspects of American life – including housing, business ownership, and neighborhood opportunity – which continue to diminish the quality of life for Black and all communities of color. Expanding access to responsible credit and banking services is a fundamental component of a broad strategy for expanding opportunity, especially for people and communities of color.

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[1] NAAHL's Statement on Racial Equity and Justice is available at https://naahl.org/about/racial-equity/

NAAHL has a long record of service to low- and moderate-income neighborhoods. NAAHL members provide more than $100 billion in financing annually for affordable housing and community development (CD). Many of NAAHL's member banks have recently made additional commitments to racial equity. However, we also acknowledge our industry's failure to meet other responsibilities to communities of color. We have sometimes redlined neighborhoods and otherwise denied credit on fair and equitable terms. We have missed opportunities to develop and deploy the financial products that communities need. We have insufficiently engaged the power and agency of Black, Latinx, and all people and communities that have suffered under systemic racism.

A cascade of developments over the past year – including relentless police killings of Black people and COVID-19's disproportionate health and economic devastation borne by people and communities of color – require concerted policy change to address long-standing racial inequity. We applaud the comments of Raphael Bostic, President of the Federal Reserve Bank of Atlanta, on February 5:

> Judy Woodruff:
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> > Mr. Bostic, you said last October that this pandemic economy has — and I'm quoting you — excuse me — I'm quoting you.
> >
> > You said: "It's laying bare and exacerbating disparities that have long plagued our economy along ethnic, racial, gender, geographic, and occupational lines." You said: "The Fed must participate in a deeper and more creative reckoning with a history of racial injustice that continues to weaken the economy for all of us."
> >
> > My question to you is, is the Fed doing that? Have you been doing that, and, if so, how?
>
> Raphael Bostic:
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> > We are absolutely doing that.
> >
> > We have spent a lot of effort raising the issues that are important in terms of understanding those racial barriers and the structural things that are keeping people from being fully engaged. We are bringing people together with solutions and talking about how we can apply them in communities and in our — in our policy.
> >
> > And we are having conversations with businesses across the country to really get them to examine their practices and policies and to rethink how they engage with people across the country, and, in particular, in neighborhoods where they have not necessarily been so attentive.

> And so we are really trying to drive a different kind of conversation, and have that conversation translate into action, because action is really what we need to see.[2]

We believe that CRA must be at the forefront of Board policies, in concert with those for fair lending and public welfare investments, to drive this action. As the ANPR documents, CRA has always been intended largely as a civil rights law, yet CRA's implementing rules have addressed race only peripherally, insofar as evidence of racial discrimination can lower a bank's CRA rating. However, CRA's establishment of a "continuing and affirmative obligation" by banks to serve their entire communities goes far beyond the fair lending mandate to do no harm. While CRA does examine service to LMI people and communities, "LMI" and "minority" are far from the same: nearly two-thirds of LMI households are White, while nearly 40 percent of Black households more than half of Hispanic households are *not* LMI. [3]

Moreover, rates of home and business ownership for people of color – which are critical to overcoming racial wealth gaps – are significantly below those for Whites, even after considering inter-group income disparities. For example, White households with incomes below $25,000 have a higher homeownership rate (45.6 percent) than Blacks overall (42 percent); Whites with incomes $50,000-$99,999 have a high homeownership rate (73.3 percent) than Blacks with incomes $100,000-$149,999 (67.5 percent); and the gap between Black and White homeownership was wider in 2019 than in 1968, when the Fair Housing Act was enacted.[4] Because of the U.S. racial homeownership gap, Morgan Stanley "estimate[s] that ~4.9 million fewer ownership households have been created, equating to roughly 6 years of household formation. Knock-on effects include up to 784,000 fewer long-term jobs and the loss of as much as $400 billion in tax revenue. The gap also may imply a drag on consumption, given Bureau of Labor Statistics data showing that household expenditures are, on average, 55% higher for homeowners than for renters."[5] By expanding access to credit and banking services, CRA can contribute meaningfully to racial equity as part of a more concerted national commitment.

CRA should directly evaluate how well banks are serving people and communities of color because what gets measured gets done. The challenge is to find an approach that reflects many important and nuanced policy concerns and avoids unintended consequences. More data analysis would help clarify the following and doubtless other issues.

- How can reinvestment in minority neighborhoods promote economic diversity without either reinforcing segregation or the involuntary displacement of incumbent residents and businesses?
- How can CRA expand opportunities for people and businesses of color outside minority communities?
- In examining home mortgage lending, should all minority borrowers be included or only those for whom homeownership rates are particularly low? Should home mortgage

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[2] https://www.pbs.org/newshour/show/who-is-bearing-the-brunt-of-the-pandemics-economic-pain

[3] https://www.census.gov/data/tables/time-series/demo/income-poverty/historical-income-households.html

[4] Sources: Decennial Census, American Community Survey, and Urban Institute.

[5] Morgan Stanley, *Entrenched Inequality: Racial Disparity in Access to Homeownership,* November 12, 2020.

lending to middle-income and perhaps even upper-income Blacks and Latinx be considered, since they have lower homeownership rates than Whites with lower incomes? Would consideration of home mortgage lending in gentrifying minority neighborhoods excessively reflect White borrowers, and perhaps inadvertently encourage the displacement of minority residents?

- How can CRA support lending to minority small businesses, especially since data on minority business lending will not be available until Section 1071 of the Dodd-Frank Act is implemented?
- How should retail lending to minority borrowers be weighed along with lending to LMI borrowers, especially considering that minorities comprise varying shares of the population in different assessment areas?
- How should the location of bank branches in or near minority neighborhoods be analyzed?
- How can CRA promote community development so that minority neighborhoods can have affordable housing, employment, retail and other business services, facilities for childcare, education, and healthcare, as well as supportive institutions such as CDFIs, MDIs, NeighborWorks affiliates, and even churches – all of which help to improve economic opportunity and quality of life?
- Should CD activities in middle-income minority neighborhoods be recognized in addition to LMI minority neighborhoods?

NAAHL is committed to work with the Board and other stakeholders to find the best path forward.

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

The Board should reaffirm that large banks may designate entire MSAs as assessment areas. The ANPR "would require facility-based assessment areas for large banks to consist of whole counties." Given the context and a subsequent statement that an assessment area "may not extend substantially beyond an MSA boundary", we believe more clarity is warranted.

Additionally, "The Board proposes a technical update to Regulation BB to also include a combined statistical area, in addition to MSAs, as a limitation to branch-based assessment areas." We believe that combined statistical areas are too large and diverse to be effective as assessment areas. For example, the Los Angeles-Long Beach combined statistical area includes 19 million residents and extends from Ventura County to the Arizona border, a distance of nearly 400 miles.

Finally, it is important to permit banks to designate the whole non-metropolitan area of a state as an AA, for several reasons. First, such AAs will increase attention to rural communities by aggregating their deposit bases. Second, in many cases a smaller rural AA, such as a single county, will not generate significant opportunities for CD activities every year, unfairly causing banks to fail their AA-level CD test. Third, some banks pass over large CD activities in a small rural AA as excessive for what a bank needs in that AA. Fourth, reducing the number of small AAs will greatly streamline the examination process. We appreciate that the OCC final rule permits a bank to designate the whole non-metropolitan area of a state as an AA. We encourage the Board to adopt that policy.

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?

No. AAs should be based only on deposit-taking branches that are open to the public. LPOs are not routinely open to the public and generally do not take deposits.

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

Banks should retain the option. It is relatively rare for a bank to locate deposit-taking ATMs in markets where they do not maintain branches. Mandating assessment areas in such cases would impose undue requirements for local lending. We discuss immediately below a workable approach to evaluating retail and CD activity outside assessment areas.

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?

NAAHL supports the need for CRA to evaluate activity banks undertake outside branch-based AAs as one of the primary reasons for updating the CRA rule. However, we oppose the establishment of deposit- or lending-based AAs because AAs are the wrong paradigm for evaluating activity that is inherently not local. Instead, we propose a new framework that establishes accountability for activity beyond branch-based AAs for the full continuum of large retail bank business models as the industry evolves.

We agree with the Board that deposit-based and lending-based AAs would generally: favor the most populous markets, most of which are already generally well served; worsen disparities between CRA hot spots and underserved areas; and most fundamentally, fail to capture most retail lending outside branch-based AAs. Moreover, new AAs would convey a bundle of obligations for retail financing and services and CD financing and services that reflect neither a bank's activities nor its capacities at the local level. Rigid adherence to an AA model traps the Board between two bad policy options: first, to establish numerous new AAs where banks have a multitude of fragmented responsibilities but no local presence to meet them; or second, to establish only a few new AAs that bypass many less populous parts of the country where banks are doing business but may still be underserved. At worst, banks could decide to refrain from serving new markets to avoid the additional administrative burden and compliance risk associated with AA designation.

Instead of creating new AAs, we propose a new, more consistent framework for evaluating CRA performance outside AAs that can apply seamlessly to the full continuum of large retail banks -- from banks that serve customers entirely within facility-based AAs to those operating both within and beyond their branch footprints to those with no branches at all. The framework would accommodate changing business models as they evolve over time.

Our framework incorporates many elements of the Board's ANPR: (1) separate analysis of retail and CD performance; (2) retaining branch-based AAs; (3) determination of AA ratings; (4) building state and multi-state metro ratings from AA ratings; (5) aggregating state ratings at the institutional rating level; (6) determination of institutional level ratings for banks without significant retail lending beyond their AAs; (7) a nationwide evaluation for all branchless banks, including internet, wholesale, and limited purpose banks; (8) a CD test but no retail test for wholesale and limited purpose banks; and (9) retention of the strategic plan option.

<u>Retail lending outside facility-based AAs</u>. Banks that make a significant share of their home mortgage or small business loans outside their facility-based AAs should have an obligation to serve LMI people and communities equitably. A bank's loans in any retail lending product line (e.g., home mortgage or small business loans) made outside its branch-based AAs would be separately evaluated *in the aggregate* if they comprise at least 20 percent of the bank's total loans in that product line. No analysis of retail lending would apply for any product line if such loans outside the bank's facility-based AA comprise fewer than 20 percent of its loans within that retail product line. In contrast with a deposit- or lending-based AA model, this framework would capture a bank's entire lending for any retail product line with significant business outside its AAs.

- Comparators: The loans will be subjected to the same community and industry comparator tests as to geography and borrower as would be applied at the AA level for each applicable retail lending product line.

- Benchmarks (against which the metrics are compared as per ANPR): The Board should consider two alternatives:

    - A single "nationwide benchmark" for each retail lending product line to be used regardless of a bank's distribution of loans across geographies outside its AAs; or
    - "Tailored benchmarks" for each retail lending product line to reflect each bank's actual mix of markets served outside its AAs, weighted based on the number of loans in each market.

  The Board should analyze retail lending data to determine whether there would be a significant difference between the nationwide and tailored benchmarks. In concept, the tailored benchmark might be more accurate and fairer than the nationwide benchmark, but it would be simpler for all banks to have the same benchmark. Whether the additional accuracy is worthwhile in practice depends on how much the benchmarks vary among local markets. The Board could also generally apply the nationwide benchmark but permit a bank to use the tailored bench at its option.

- Weighting of retail lending within and outside AAs would be based on the share of loans outside AAs for each applicable product line or, alternatively, on a combination of the share of a bank's loans outside AAs and the share of deposits received from outside its AAs. Accordingly, AA performance would be weighted more heavily if that is where a bank is lending, while a bank that mostly lends outside its AAs would have that lending weighted more heavily.

CD activity outside facility-based AAs. Supporting CD activity both in AAs and nationwide is one of the most important imperatives of CRA modernization. Current policies have failed to serve either local or national CD needs well, and instead have frustrated the needs of CD organizations and attempts by banks to receive CRA credit for addressing them. The Board has recognized that current CRA policies have contributed to the uneven provision of CD financing between so-called hot and cold markets.

CD and retail activities are fundamentally different, as the Board recognizes, so bank responsibilities for CD and retail activities should also be different. Many banks make retail loans outside their AAs in their normal course of business, so it is appropriate that CRA assess whether that lending equitably serves LMI borrowers and communities. The same concept does not apply to CD activities, which by definition are targeted to LMI people and communities.

Accordingly, banks should not be required to undertake CD activity outside AAs. However, banks should receive full credit for CD activities outside AAs at the institution level. Moreover, a bank's total CD activity – both within and outside its AAs – should be measured against its total domestic deposits. This combination of policies sets a consistent standard for all banks while accommodating a wide range of CD opportunities and bank strategies. One bank may decide to meet its entire CD obligation within its AAs; a second bank might serve its AAs and other areas; and a third, branchless bank with no AAs could meet its CD obligation anywhere.

The Board suggests that certain chosen underserved locations or institutional partnerships could qualify for extra consideration nationwide, but the list of such activities will certainly exclude other worthy activities. It would be better to allow all CD eligible activities to count in the numerator of the CD financing metric and still offer extra qualitative consideration/credit for certain activities without stifling others.

We also believe this approach is preferable to maintaining the "broader statewide and regional area" (BSRA) model, which in our view has outlived its usefulness. We appreciate that BSRAs did serve a purpose within the constraints of the 1995 rule by recognizing CD activities proximate to AAs; and some multi-regional banks could, at least in theory, string together enough BSRAs to accommodate CD activity across most of the U.S. Ultimately, however, BSRAs have proved to be arbitrary, frustrating, and unresponsive the practice of CD. Numerous CD financing funds operate nationally, but BSRAs have constrained and greatly complicated their work.

We appreciate that the ANPR does address two problems with BSRAs. First, BSRA activities would no longer contribute to AA ratings, where they might displace CD activity within an AA. Second, consideration for BSRA activity would no longer be contingent on a subsequent determination that CD needs in the AA were adequately addressed. But, more fundamentally, BSRAs act as an unnecessarily artificial and burdensome constraint to CD capital formation (e.g., through national funds) that would serve no compelling purpose under a modernized CRA rule. CRA should harness banks' capacity to move capital to where it is needed and can productively be deployed. Recognizing CD activities outside AAs without restriction, while also requiring responsiveness to AAs, would serve this purpose better and more simply.

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?

All branchless banks, including branchless internet banks and branchless wholesale and limited purpose banks should have a nationwide institution-level evaluation that reflects their activities nationwide instead of AAs, which are inherently local. These banks collect deposits and provide financing and services nationwide. Although branchless banks designate a facility to collect deposits, such a facility should not be treated as a branch unless it is physically accessible to the public on a regular basis. Please see our response to Question 8 for our recommendations for banks that have branches and significantly serve customers outside AAs.

Question 10. How should retail lending and community development activities in potential nationwide assessment areas be considered when evaluating an internet bank's overall CRA performance?

Please see our response to Question 8.

Question 14. Is the retail lending screen an appropriate metric for assessing the level of a bank's lending?

An appropriately calibrated retail lending screen can be useful in identifying banks that do not provide a minimum level of retail lending. The Board should consider the performance context of banks that do not meet this screen.

Question 16. Should the presumption of "satisfactory" approach combine low- and moderate-income categories when calculating the retail lending distribution metrics in order to reduce overall complexity, or should they be reviewed separately to emphasize performance within each category?

For purposes of the presumption of "satisfactory", combining low- and moderate-income categories makes sense. There are too many local circumstances – such as the limited opportunity to make home mortgage loans to low-income people in high-priced markets – to differentiate between low-income and moderate-income for this purpose. However, the income differentiation should apply in determining the specific rating for retail lending.

Question 17. Is it preferable to retain the current approach of evaluating consumer lending levels without the use of standardized community and market benchmarks, or to use credit bureau data or other sources to create benchmarks for consumer lending?

The current approach should continue to apply.

Question 18. How can the Board mitigate concerns that the threshold for a presumption of "satisfactory" could be set too low in communities underserved by all lenders?

This question is difficult to address without some measure of underservice. We encourage the Board to explore how underservice could be determined.

Question 19. Would the proposed presumption of "satisfactory" approach for the Retail Lending Subtest be an appropriate way to increase clarity, consistency, and transparency?

Yes. However, we strongly urge the Board to retain the distinction between high and low "satisfactory" ratings. Consistent with our response to Question 82, if a single "satisfactory" rating is used, the threshold level for "satisfactory" performance would risk a race to the bottom.

Question 20. Is the approach to setting the threshold levels and a potential threshold level set at 65 percent of the community benchmark and at 70 percent of the market benchmark appropriate?

It is difficult for us to address this question without knowing how well communities are being served at these thresholds.

Question 21. Will the approach for setting the presumption for "satisfactory" work for all categories of banks, including small banks and those in rural communities?

It is difficult for us to address this question because it is not clear without knowing how well communities are being served at these thresholds.

Question 22. Does the performance ranges approach complement the use of a presumption of "satisfactory"? How should the Board determine the performance range for a "satisfactory" in conjunction with the threshold for a presumption of "satisfactory"? How should the Board also determine the performance ranges for "outstanding," "needs to improve," and "substantial noncompliance"?

It is difficult for us to address this question without knowing how well communities are being served at these thresholds.

<u>Question 23</u>. Should adjustments to the recommended conclusion under the performance ranges approach be incorporated based on examiner judgment, a predetermined list of performance context factors, specific activities, or other means to ensure qualitative aspects and performance context are taken into account in a limited manner? If specific kinds of activities are listed as being related to "outstanding" performance, what activities should be included?

We believe that performance context can help identify retail lending activities that are especially responsive to community needs. A non-exhaustive list of activities that would receive extra credit could contribute to clarity and transparency. Examples might include: (1) small business loans under $100,000; (2) small balance home purchase mortgages, especially in markets or neighborhoods where home values are low; (3) home improvement loans; (4) loans in remote rural areas and within Indian Country; (5) retail lending partnerships with CDFIs, NeighborWorks affiliates, MDIs, women-owned banks, and low-income credit unions; (6) counseling for homebuyers, homeowners, and small businesses; and (7) default mitigation initiatives. Please see our response to Question 47 regarding CD.

<u>Question 33</u>. Should the Board establish a major product line approach with a 15 percent threshold in individual assessment areas for home mortgage, small business, and small farm loans?

Yes.

<u>Question 34</u>. Would it be more appropriate to set a threshold for a major product line determination based on the lesser of: (1) the product line's share of the bank's retail lending activity; or (2) an absolute threshold?

Both. In addition to the 15 percent threshold, a minimum number of loans is necessary for statistically valid analysis.

<u>Question 35</u>. What standard should be used to determine the evaluation of consumer loans: (1) a substantial majority standard based on the number of loans, dollar amount of loans, or a combination of the two; or (2) a major product line designation based on the dollar volume of consumer lending?

The current policy should be maintained: a substantial majority of a bank's business, based on the number of loans.

<u>Question 36</u>. Should consumer loans be evaluated as a single aggregate product line or do the different characteristics, purposes, average loan amounts, and uses of the consumer loan categories (e.g., motor vehicle loans, credit cards) merit a separate evaluation for each?

We advise against analyzing auto loans and consumer credit cards. Access to credit cards and auto loans is abundantly available to LMI and other consumers, even with CRA's current limited coverage. In addition, retail lending distribution analysis should not apply to consumer lending because industry-wide data would not be available. Accordingly, any marginal benefit to LMI people from greatly expanding CRA coverage would be outweighed by the substantial resource burden on banks of collecting and reporting consumer lending data.

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?

Small business/farm loan limits for borrower revenue and loan amounts should remain at their current levels. Increases are not justified, notwithstanding inflation since the levels were established, because the primary need for small business and farm credit remains the greatest below the current thresholds. Moreover, raising these limits would be administratively burdensome. Regular inflation adjustments to these limits would require banks to make costly and burdensome changes to their systems. Thus, annual adjustments would only lead to additional costs and confusion, clearly running counter to the stated objectives of CRA reform.

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?

The Board should provide retail lending consideration for home mortgage loan purchases but impose additional review to discourage loan churning.

Question 40. Should CRA consideration be given for retail lending activities conducted within Indian Country regardless of whether those activities are located in the bank's assessment area(s)?

Consistent with our response to Question 8, which generally addresses treatment of activity outside AAs, lending within Indian Country merits additional consideration, consistent with our response to Question 23.

Question 41. Should all retail lending activities in Indian Country be eligible for consideration in the Retail Lending Subtest or should there be limitations or exclusions for certain retail activities?

All retail lending activities in Indian Country should receive consideration. Median incomes in Indian country tend to be exceptionally low, so setting benefit standards as a percentage of median income will be inappropriate. In addition, few high-income people reside in Indian Country, so the risk of abuse is negligible.

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

We greatly appreciate the Board's recognition of the importance of CD activities under CRA. CRA has made a uniquely valuable contribution to CD. Indeed, an entire generation of CD finance has been built on the foundation of CRA. Banks' leadership and participation in affordable housing and economic development has contributed greatly to the remarkably positive performance and community impact of these initiatives. Banks have provided important market discipline that has distinguished current practices from those of the pre-CRA era. For example, Low Income Housing Tax Credit (LIHTC) investments are the best performing real estate asset class[6] and proved especially robust through the Great Recession.[7] Moreover, CD activities have been far more flexible and responsive to local needs and engaging of local partners than previous federal policy interventions.

David Erickson, currently of the Federal Reserve Bank of New York, has chronicled this history well in *The Housing Policy Revolution: Networks and Neighborhoods. "*In total, it is hard to overestimate the role that the CRA has played in promoting the decentralized housing network. At every turn in the process of developing affordable housing – site acquisition, construction, permanent mortgage financing, repair and rehabilitation – there is a need for financing, and banks and thrifts have provided that credit to [nonprofit community development corporations] and to for-profit real estate developers."[8]

We support a CD test that combines loans, investments, and services. Separating investments from CD loans places the form of an activity ahead of its function, thereby reducing responsiveness to CD needs and obscuring evaluation of a bank's overall CD activities. In addition, the volume of high-value CD investment opportunities, such as LIHTC and New Markets Tax Credits (NMTC), is insufficiently available in all communities to fulfill the obligations of all large banks.

That said, it is vitally important to CD that special consideration be provided within the CD test for *equity* investments, including those for LIHTCs, NMTCs, CD REITs, unsubsidized affordable housing, MDIs, and equity-equivalent investments in CDFIs. These activities expose banks to higher risk than loans, require higher capital reserves, tend to be illiquid, are often technically and financially complex, and – most important – are generally catalytically responsive to community needs. Additional consideration for equity investments could be accomplished through the impact scoring approach the Board proposes.

We also strongly support the Board's proposal to apply full-scope reviews for all AAs. Limited-scope reviews eliminate recognition of an activity's responsiveness and impact, which are integral to CD.

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[6] CohnReznick LLP, *The Low-Income Housing Tax Credit at Year 30: Recent Investment Performance (2013-2014)*, December 2015, p. 229. https://issuu.com/cohnreznick/docs/cr_lihtc_dec2015

[7] CohnReznick LLP, *The Low-Income Housing Tax Credit at Year 30: Recent Investment Performance (2013-2014)*, December 2015, p. 38. https://issuu.com/cohnreznick/docs/cr_lihtc_dec2015

[8] David J. Erickson, *The Housing Policy Revolution: Networks and Neighborhoods*, The Urban Institute Press, Washington, D.C., 2009, page 63.

<u>Question 43</u>. For large retail banks, should the Board use the ratio of dollars of community development financing activities to deposits to measure its level of community development financing activity relative to its capacity to lend and invest within an assessment area? Are there readily available alternative data sources that could measure a bank's capacity to finance community development?

This is a reasonable starting point for evaluating CD activity, but performance context should also be an important consideration, reflecting local CD needs and opportunities and the bank's local market share and capacity. The characteristics of CD activities should also be considered, such as those discussed in our response to Question 47. We recommend that deposits within AAs should be based on the address of depositors.

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

This is reasonable in concept. However, we are not aware of datasets that would allow for comprehensive CD analysis. The level of CD activity within an area could be useful but risks reinforcing CD hot spots and deserts. Narrower datasets, such as number of affordable multifamily housing buildings, could be helpful but not comprehensive.

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

Impact scores are a plausible way to convert qualitative factors into a quantitative measure, but the Board should explain in more detail how they would affect ratings. We would be skeptical of the kind of multiplier approach that OCC has adopted, implying that one activity is two or four times as meaningful as another.

In our view, a scoring range of 1 to 3 would be too limited. A wider scale would be more appropriate to reflect the range and combination of factors that should be considered. We recommend that the Board consider recognition for activities involving:

- Equity investments. As discussed in response to Question 42, it is vitally important to CD that special consideration be provided within the CD test for *equity* investments, including but not limited to those involving LIHTCs, NMTCs, CD REITs, unsubsidized affordable housing, MDIs, equity-equivalent investments in CDFIs, and Qualified Opportunity Zone funds that directly and primarily benefit LMI people. These activities expose banks to higher risk than loans, require higher capital reserves, tend to be illiquid, are often technically and financially complex, and – most important – are generally catalytically responsive to community needs. Absent additional consideration within a CD test, there is significant concern that banks may be less motivated to make equity investments than under the current investment test.

- Chronically underserved communities, including economically distressed counties in both metropolitan and non-metropolitan areas, as well as regions like the Mississippi Delta, the Colonias, Appalachia, and Indian Country.

- Partnerships with CDFIs, NeighborWorks affiliates, MDIs, women-owned financial institutions, and low-income credit unions. We do not believe, as the Board suggests, that these partnerships should be necessary to achieve an "outstanding" rating, but they do merit favorable consideration along with other factors.

- Activities that are especially responsive to community needs. For example, these might include small-balance multifamily affordable housing loans, construction loans for small scale developers of affordable housing, commercial revitalization loans in LMI neighborhoods, working capital for community developers, or receivables financing or real estate loans for nonprofit community service providers whose revenue depends on government grants and contracts.

- Financing with unconventional terms or that require underwriting flexibilities.

- Minority communities and businesses, including minority developers of CD projects.

- Grants. Grant amounts are typically very small relative to loans and investments, but they are disproportionately valuable to CD. Unless grants receive additional consideration, their modest size would result in their undervaluation within CRA.

- CD services. As discussed in response to Question 48, CD services should not have a separate subtest, for several reasons. First, services are much less important than financing in the overall scope of CD. Second, the level of CD service activity is much lower than for CD financing, so a meaningful CD services subtest would carry too much weight in the overall CD rating. Third, it is difficult for banks to provide most CD services, such as volunteer service, beyond their facility-based AAs, a consideration that is likely to grow as the banking industry expands beyond its activities beyond branch-based AAs. For all these reasons, CD services should be a plus factor on the CD test but not a separate subtest.

Question 48. Should the Board develop quantitative metrics for evaluating community development services? If so, what metrics should it consider?

As discussed in response to Question 47, CD services should not have a separate subtest, for several reasons. First, CD services are much less important than CD financing in the overall scope of CD. Second, the level of CD service activity is much lower than for CD financing, so a meaningful CD services subtest would carry too much weight in the overall CD rating. Third, it is difficult for banks to provide most volunteer services beyond their facility-based AAs, a consideration that is likely to grow as the banking industry expands beyond its activities beyond branch-based AAs. For all these reasons, CD services should be a plus factor on the CD test but not a separate subtest.

In concept, we would be supportive of such metrics, but strongly advise against imposing excessive administrative burdens that discourage banks from tracking and supporting such activities. The OCC's rule on this matter was unhelpful in ways that are instructive here. First, the OCC's approach treats all volunteer service hours as equally valuable. But service as a board member of a nonprofit CD organization may be more impactful than the same amount of time spent cleaning up a neighborhood park. Second, OCC's valuation of service based on an hourly rate results in a negligible dollar value compared with other activities.

Finally, some CD financial services, such as investment banking service to help CDFIs issue and market bonds to raise capital, are especially impactful and take advantage of core capacities of some banks. Such services merit particular consideration.

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?

Volunteer activities should have a community development purpose but should not be limited to the provision of financial services. This standard should apply to all banks.

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

Yes. As a practical matter, it is our members' experience that financial literacy and housing counseling do predominately serve LMI people, but documenting clients' income is often personally intrusive, perceived as offensive or dissuasive by clients, and administratively burdensome.

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

Both subsidized and unsubsidized affordable housing should receive CRA credit. While subsidized housing has rightly been an important part of CD under CRA, we are especially appreciative of the Board's interest in clarifying the treatment of unsubsidized affordable rental housing.

Under the Board's current policy, unless the renters' LMI is verified, usually because of a government subsidy program requirement, CRA consideration for financing affordable rental housing depends on an Agency examiner's determination that LMI renters are likely to occupy the housing. Indeed, Q&A Section __12.(g) (1)-1 explicitly warns that affordable rents alone are insufficient to obtain favorable CRA consideration as affordable housing. Additional analysis of demographic, economic, and market data is required for each property financed. No guidance is offered regarding what data are relevant or how they should be analyzed and interpreted.

While likely LMI benefit is a valid policy concern, the current policy is unworkable. Over 80 percent of the nation's 32.8 million rental units affordable to LMI renters are *not* publicly subsidized and have no restriction on tenant incomes.[9] It is essential that CRA policy positively considers financing for this unsubsidized affordable housing. Lenders need to know when they make financing decisions how an activity will be treated under CRA, but an examiner's determination is only made years later and without clear and consistent standards. Moreover, lenders for unsubsidized housing generally do not collect tenant income data and conducting a demographic, economic, and market analysis for each loan or investment is burdensome for banks and examiners alike. As a result, the current guidance offers little or no encouragement of bank financing for much of the unsubsidized rental housing stock that is both affordable and actually serves LMI households. The policy is particularly unsupportive of fair housing efforts in middle-income "opportunity areas" because examiners are less likely to qualify unsubsidized affordable rental housing outside LMI census tracts.

NAAHL proposes that rental housing not subject to tenant income restrictions should receive favorable consideration as affordable housing if most of the property's rents are affordable when the financing is committed and the property meets *one* of the following three additional standards:

1. The property is located in a LMI neighborhood (i.e., census tract). It is long-standing CRA policy to recognize activities located in LMI census tracts. Examiners usually recognize unsubsidized affordable housing located there. We support the Board's proposal to continue this standard.

2. Most renters in the neighborhood are LMI *and* most rents in the neighborhood are affordable.

   - The income of renters already living in the neighborhood is a better indicator of the likely tenants of a property than the income of all neighborhood residents, many or most of whom are homeowners. The median renter has about one-half

[9] HUD, *Worst Case Housing Needs: 2017 Report to Congress,* Table A-12) shows 32.8 million rental units are affordable to renters earning 80% of the area median income. About 6.0 million affordable rental units are subject to federal income restrictions, including 3.0 million HUD assisted units (Source: U.S Department of Housing and Urban Development, FY 2016 Annual Performance Report https://portal.hud.gov/hudportal/documents/huddoc?id=FY_2016_APR.pdf , p. 44); and 3.0 million LIHTC units (Source: U.S Department of Housing and Urban Development, Low-Income Housing Tax Credit Database http://www.huduser.gov/portal/datasets/lihtc.html). The 6.0 million estimate does not account for double-counting of properties that are both LIHTC- and HUD-assisted. As such, it over-estimates the total number of subsidized units and under-estimates the number of unsubsidized units.

the income of the median homeowner[10], so it is understandable that there are twice as many LMI-*renter* census tracts as LMI *family or household* census tracts, as the attached table shows for the 50 largest MSAs/MDs. Applying a median renter income standard would qualify affordable housing in many middle-income "opportunity areas", while adhering to the principle of likely LMI occupancy. We support the Board's proposed adoption of this standard.

- If most neighborhood rents are affordable, a property owner will be unlikely to charge higher rents because the market will not support them. This criterion would address the Board's concern that properties are likely to remain affordable without subsequent redocumentation.
- These criteria are readily determinable when financing is committed, using broadly available data from the U.S. Census Bureau's American Community Survey, which is updated annually. The only data required are the median rent and the median renter income for the census tract and the area median income (AMI).

Most renters are LMI and most rents are affordable in 58 percent of all census tracts in the 50 largest metropolitan areas (MSAs) and metropolitan divisions (MDs), far more than the one-third of census tracts where the median family or household income is LMI. There is, appropriately, considerable variation among MSAs/MDs, reflecting differences in AMIs and rent levels. In markets where rents are generally low relative to the AMI, more tracts would qualify (e.g., 79 percent in Indianapolis and 77 percent in Cincinnati). Where rents are generally high relative to the AMI, fewer tracts would qualify (e.g., 41 percent in San Francisco and 43 percent in New York). Appropriately, gentrifying neighborhoods would generally fail to meet this standard because rents there are not affordable to LMI households. This sensitivity to local conditions validates the policy approach.

3. The owner agrees to maintain affordability to LMI renters for the life of the financing. This alternative would accommodate affordable housing opportunities in neighborhoods where most rents are *not* affordable. Although most property owners in these neighborhoods would likely be unwilling to commit to ongoing affordability, most nonprofit owners would be willing to do so, as might some other owners.

Meeting this affordability standard would establish a rebuttable presumption of likely LMI occupancy, thereby qualifying the property as affordable housing. However, an examiner could disallow consideration in rare cases where evidence is presented that the property is maintained in substandard condition or it is upgraded such that rents are no longer affordable.

Mortgage-backed securities (MBS). To address the Board's discussion of MBS, the Board should carefully balance two legitimate needs: (1) for banks to use MBS to fulfill their minimum CD obligations in AAs where other opportunities may be constrained; and (2) to avoid crowding out

[10] The 2015 median income was $37,900 for renters and $70,800 for home owners. Harvard Joint Center for Housing Studies, *State of the Nation's Housing 2017*, p. 26.
http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/harvard_jchs_state_of_the_nations_housing_2017.pdf

other CD activities by excessive reliance on MBS. Accordingly, we propose that U.S. government supported MBS (i.e., MBS guaranteed by Fannie Mae, Freddie Mac, and Ginnie Mae) contribute no more than 20 percent of a bank's CD test activity at the institution level, with no limitation at the AA level. From a business management perspective, U.S. government supported MBS are highly attractive because they: (1) are plentiful (backed by trillions of dollars in LMI mortgages); (2) are globally liquid; (3) require little or no risk-based capital support; and (4) require no CD expertise. Absent some reasonable limitation, MBS could easily crowd out other CD activities that are more important to LMI people and places. At the same time, these other CD activities may not be readily available in every AA, including some rural areas and even urban areas with a high degree of competition among banks. We believe the answer is to provide full flexibility for U.S. government supported MBS at the AA level but limit MBS at the bank level to 20 percent of CD test activity.

Question 53. What data and calculations should the Board use to determine rental affordability? How should the Board determine affordability for single-family developments by for-profit entities?

In all cases, the rent should be affordable to LMI households, determined when the financing is committed and based on a 30-percent-of-income affordability standard. Other federal policy makers have adopted an affordability metric based on the initial rent relative to the local AMI. The Federal Housing Finance Agency, in setting affordable rental housing goals for Fannie Mae and Freddie Mac, determines affordability based solely on initial rents, not incomes, "[b]ecause lenders generally do not collect income information on tenants."[11] Banks and other lenders do routinely require a rent roll or pro-forma rent roll as a basis for underwriting. Property owners do not under-estimate rents (and thereby over-estimate affordability) because that would reduce the financing they can obtain. The 30-percent-of-income affordability metric is the standard for federal housing policies, including Low Income Housing Tax Credits, Section 8 project-based rental assistance, Housing Choice Vouchers, and the HOME Investment Partnerships program.

Banks should have the option to either FFIEC area income data or HUD area income data for purposes of qualifying unsubsidized affordable rental housing. The HUD income data are used for federally subsidized affordable housing. They vary in certain respects from the FFIEC data. First, HUD data are adjusted based on the number of persons in a household. Since the size of an occupying household is not easily verifiable and can change over time, we recommend assuming a three- or four-person household as a convention. Second, an area's income limit may not exceed the U.S. median family income level ($78,500 for FY 2020) except when justified by high housing costs. Third, an area's income limit is adjusted due to high housing costs if 85 percent of the area's annual two-bedroom HUD Fair Market Rent is greater than 35 percent of the U.S. median income. In the context of CRA, Q&A guidance §__.12(g)—3 already allows adjustments for high-cost areas but offers no clear method for making such adjustments. Allowing banks the option to use HUD area income data would provide a clear and simple way

[11] 2015–2017 Enterprise Housing Goals; Final Rule, *Federal Register*, Vol. 80, No. 171, September 3, 2015, p. 53423.

to operationalize the existing policy. Our calculations show that using HUD data would raise income limits by at least 10 percent in 12 percent of metro areas, mostly in Puerto Rico, California, and Texas, owing to either high rents, low incomes, or a combination of the two. The most prominent impact would be for Miami (31 percent), Los Angeles (26 percent), and New York (16 percent). Interestingly, rents would be affected minimally in such high-rent areas as San Francisco (5 percent) and San Diego (3 percent) and HUD rents would be *lower* in Washington DC (-22 percent), San Jose (-14 percent) Boston (-7 percent), and Oakland (-7 percent) because these areas have high median incomes that offset their high rents.[12]

Question 54. Should the Board specify certain activities that could be viewed as particularly responsive to affordable housing needs? If so, which activities?

We are supportive of this prospect but are the list must be illustrative rather than exclusive. Examples of candidates for inclusion: (1) equity investments, including those in both LIHTC and unsubsidized affordable housing; (2) preservation of affordable housing, especially in high-cost geographies; (3) affordable housing that provides affirmative opportunities to desegregate racially excluded communities; (4) small-balance multifamily housing loans; (5) affordable housing in conjunction with a governmental neighborhood stabilization or revitalization plan; (6) affordable housing sponsored by nonprofit organizations; (7) owner-occupied home rehabilitation financing; (8) affordable housing that supports climate resiliency, e.g., by improving energy efficiency; and (9) affordable housing that also provides supportive services to vulnerable populations, such as the homeless, the disabled, or the frail elderly.

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

Affordable rental housing undertaken in conjunction with an explicit federal, state, or local government affordable housing policy or program should receive full CRA credit if at least 20 percent of the units will be affordable for the term of the bank's financing. The primary federal affordable housing production policies – LIHTC, tax-exempt multifamily housing bonds, and the HOME Investment Partnerships program – all use 20 percent as their eligibility thresholds. More states and localities are supporting affordable housing through direct funding, tax relief, and inclusionary zoning requirements. Aligning CRA with other governmental policies would promote consistency, clarity, simplicity, and efficiency. In any case, LIHTC investments in mixed-income projects are already pro rata, as only the low-income units qualify for the credit.

Unsubsidized affordable rental housing activity should receive full credit if the property's median rent is affordable. Pro-rata credit should be available if 20-50 percent of the units are affordable.

Regarding the determination of affordability for single-family developments by for-profit entities, the Board should consider the following approach.

[12] NAAHL research available on request.

- For developments within an LMI census tract, a home should qualify as affordable (1) as an *ex ante* safe harbor if its price does not exceed 3.5 times the area median income (AMI) ; or (2) upon sale if the homebuyer's income does not exceed 120 percent of AMI. Federal policy has long recognized the importance of supporting middle-income homeownership in LMI neighborhoods to support revitalization and income diversity.
- For developments in other areas, a home should qualify as affordable if the homebuyer's income does not exceed 80 percent of AMI.

As discussed in our response to Question 63, a different standard should apply to the rehabilitation or construction of owner-occupied homes in association with neighborhood stabilization and revitalization activities.

<u>Question 56</u>. How should the Board determine whether a community services activity is targeted to low- or moderate- income individuals? Should a geographic proxy be considered for all community services or should there be additional criteria? Could other proxies be used?

A community services activity should be presumed to qualify if it is located in an LMI geography. This presumption could be challenged in rare cases where there is evidence that LMI people are not the primary beneficiaries – for example, a private school that charges high tuition. Activities outside LMI areas should also qualify if: provided through organizations that primarily serve LMI people; based on proxies (e.g., qualification for public benefits targeted to LMI people); or primarily LMI benefit is otherwise demonstrated.

<u>Question 58</u>. How could the Board establish clearer standards for economic development activities to "demonstrate LMI job creation, retention, or improvement"?

Job creation could be defined to include new businesses and existing businesses that add significantly to their workforce within an LMI community. Job retention is harder to define. We believe it is generally too burdensome for a bank to prove the business would otherwise contract, close, or leave a community absent new financing. However, working capital and financing for new capital investment, e.g., in real estate, equipment or intangible property should qualify under job retention even if no new jobs are created, since such financing is often vital to keeping businesses strong.

<u>Question 59</u>. Should the Board consider workforce development that meets the definition of "promoting economic development" without a direct connection to the "size" test?

Yes, provided that the activity is located in LMI communities or the workers are residents of LMI communities or are themselves LMI.

<u>Question 60</u>. Should the Board codify the types of activities that will be considered to help attract and retain existing and new residents and businesses? How should the Board ensure that these activities benefit LMI individuals and communities, as well as other underserved communities?

Because neighborhood stabilization and revitalization activities depend significantly on local context, the Board should publish and regularly update an illustrative list (rather than a definitive list) and provide timely responses regarding other prospective activities so banks can have advance certainty regarding other activities. Retail and professional services businesses that generally serve local residents should qualify. A chain grocery store, pharmacy, fitness center, restaurant, or urgent medical care business meets important community stabilization and revitalization needs even if it is part of a large business. Similarly, cultural activities, such as performance arts facilities, and neighborhood-serving transportation services, including parking and transit facilities, should also qualify. More broadly, activities that are aligned with state or local revitalization plans, should qualify.

Question 62. Should the Board include disaster preparedness and climate resilience as qualifying activities in certain targeted geographies?

Yes, to the extent of their LMI benefit.

What types of activities should require association with a federal, state, local, or tribal government plan to demonstrate eligibility for the revitalization or stabilization of an area? What standards should apply for activities not requiring association with a federal, state, local, or tribal government plan?

The development and sale of owner-owned homes (as well as the rehabilitation of homes for current owner-occupants) in association with a government plan, policy or program should qualify as neighborhood stabilization or revitalization: (1) if the homebuyer's income does not exceed 140 percent of AMI; or (2) as an *ex ante* safe harbor, the price of a home to be to be sold does not exceed four times the AMI. Federal policy has long recognized the importance of supporting middle-income homeownership in LMI neighborhoods to support revitalization and diversity. Tax-exempt mortgage revenue bonds for homeownership apply the 140 percent of AMI ceiling in targeted areas.[13] The proposed Neighborhood Homes Investment Act would also use the 140 percent of AMI ceiling as well as a sale price limit of four times the AMI.[14] For such activities *not* in association with a government plan, policy, or program, (1) as an *ex ante* safe harbor if its price does not exceed 3.5 times the area median income (AMI) ; or (2) upon sale if the homebuyer's income does not exceed 120 percent of AMI. The development of commercial property and businesses should qualify if reasonably expected to serve primarily LMI people. As a safe harbor, retail services (e.g., grocery stores) should be presumed to benefit primarily LMI people, except in such cases (e.g., luxury car dealerships) that are clearly not expected to serve a primarily LMI clientele.

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-

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[13] Section 143(f) of the Internal Revenue Code.

[14] See H.R. 2 (116th Congress) and S. 98 (117th Congress).

oriented institutions? Would designating these investments as a factor for an "outstanding" rating provide appropriate incentives?

Consistent with our response to Question 8, we support CRA credit for all CD activities outside AAs, including but not limited to partnerships with these institutions. There is no compelling reason to exclude CD activities outside AAs, provided that AA needs are being met. Moreover, as banks increasingly operate outside AAs, and as CD partner organizations operate beyond AA boundaries, such exclusions fail to reflect current and future realities and stifle needed financing that genuinely benefits LMI people and places whether they happen to be located within or outside a bank's AAs.

In this context, investments in MDIs, women-owned financial institutions, low-income credit unions – as well as in CDFIs and NeighborWorks affiliates – should be a positive factor, along with other worthy CD activities, but not mandatory to achieving an "outstanding" rating. Please see our response to Question 47.

<u>Question 65</u>. Should MDIs and women-owned financial institutions receive CRA credit for investing in other MDIs, women-owned financial institutions, and low-income credit unions? Should they receive CRA credit for investing in their own institutions, and if so, for which activities?

MDIs and women-owned financial institutions should receive CRA credit for investing in such institutions, low-income credit unions, as well as CDFIs – as should other banks.

<u>Question 66</u>. What additional policies should the Board consider to provide incentives for additional investment in and partnership with MDIs?

As discussed in response to Question 8, banks should get CRA credit for undertaking CD activities anywhere in the U.S. Banks should receive additional consideration for financing and providing services to MDIs, women-owned financial institutions, low-income credit unions, as well as CDFIs and NeighborWorks affiliates.

<u>Question 67</u>. Should banks receive CRA consideration for loans, investments, or services in conjunction with a CDFI operating anywhere in the country?

Yes. CDFIs provide important resources for LMI people and communities. Many CDFIs work in partnership with banks, often beyond AA boundaries. As discussed in response to Question 8, banks should get CRA credit for undertaking CD activities anywhere in the U.S. Banks should receive additional consideration for investing in CDFIs.

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

As discussed in our response to Question 8, we believe that retaining or building on the BSRA concept is ill-advised. Ensuring that CD needs within AAs are addressed would be achieved by limiting AA credit to activities that benefit the AA. It is also important both to reflect the work of banks outside AAs and to facilitate CD activities (including third-party CD financing funds) that operate across AA or state boundaries. For this reason, it would be preferable, as well more straight-forward, to fully recognize all CD activities both inside and outside AAs at the institution level, based on benchmarks that reflect a bank's overall deposits. As we discussed in response to Question 47, we would also be supportive of conferring additional consideration, such as through an impact score, for CD activities in designated areas of need.

Question 69. Should the Board expand the geographic areas for community development activities to include designated areas of need? Should activities within designated areas of need that are also in a bank's assessment area(s) or eligible states and territories be considered particularly responsive?

Please see our response to Questions 8, 47 and 68. We support additional credit for CD activities within designated areas of need (and for other impactful CD activities) both within and outside a bank's AAs.

Question 70. In addition to the potential designated areas of need identified above, are there other areas that should be designated to encourage access to credit for underserved or economically distressed minority communities?

Please see our response to Questions 8, 47, 68 and 69.

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

Yes. It would be beneficial to seek stakeholder input and to update the list every two or three years.

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

A pre-approval process would be helpful for both general categories and specific proposed transactions. For specific transactions, the key factors needed to confirm approval should be provided to the extent practicable.

Question 73. In fulfilling the requirement to share CRA strategic plans with the public to ensure transparency, should banks be required to publish them on the regulatory agency's website, their own website, or both? Would it be helpful to clarify the type of consultation banks could engage in with the Board for a strategic plan?

Posting strategic plans on the regulatory agency's website would facilitate public awareness. Interested parties could easily be notified when strategic plans are planned and published.

It would be helpful to clarify the type of consultation banks could engage with the Board on strategic plans. Since the Board will have to approve or reject a proposed strategic plan, it would be helpful and more efficient for banks to understand in advance how the Board would likely regard a proposed plan.

The Board should also clarify that, while community engagement is important, entering into a community benefits agreement would not be required as a condition of approving a plan.

Question 74. How should banks demonstrate that they have had meaningful engagement with their community in developing their plan, and once the plan is completed?

The current guidance has worked well.

Question 75. In providing greater flexibility for banks to delineate additional assessment areas through CRA strategic plans, are there new criteria that should be required to prevent redlining?

A bank with a Strategic Plan should have the flexibility of delineating additional AAs in a manner that is different than otherwise provided in the main part of the regs, but the burden should be on the bank to establish that the AA would be appropriate. AAs should not arbitrarily exclude areas with high concentrations of racial and ethnic minority populations.

Question 76. Would guidelines regarding what constitutes a material change provide more clarity as to when a bank should amend their strategic plan?

Guidance would be helpful, including timeframes for bank submissions and agency reviews, recognizing that more material changes might involve longer timeframes.

Question 77. Would a template with illustrative instructions be helpful in streamlining the strategic plan approval process?

Yes, a template would be helpful for some banks, but it should not be mandatory. The Board should retain the current provision (in 12 CFR 228.21(b)) that the Board continue to "consider whether to approve a proposed strategic plan in the context of" the factors listed in Section 228.21(b) (1)-(7), commonly referred to as the "performance context" factors.

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

Yes. NAAHL strongly supports eliminating limited-scope area examinations, which excluded performance context and important qualitative factors. These factors are integral to understanding a bank's responsiveness. Qualitative factors are especially important to CD. Smaller AAs were systematically disadvantaged because they were more likely to have limited-scope examinations.

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

A bank should have at least a "satisfactory" rating in a majority of the AAs within a state and for AAs comprising a majority of total AA deposits within the state.

<u>Question 80</u>. Barring legitimate performance context reasons, should a "needs to improve" conclusion for an assessment area be downgraded to "substantial non-compliance" if there is no appreciable improvement at the next examination?

Yes.

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

This is a very important question because eliminating the distinction between high and low "satisfactory" ratings would risk a race to the bottom. Absent this distinction, banks will have little clear incentive for a bank to strive harder when a lesser effort will achieve the same "satisfactory" rating. The result would be less community reinvestment. NAAHL strongly urges the Board to retain the distinction.

While we recognize the statutory requirement that a bank's *final rating* cannot differentiate within "satisfactory", the component ratings have split into high and low "satisfactory" categories since 1995. "High satisfactory" ratings have encouraged banks to strive for "outstanding" ratings; even if a bank falls just short of "outstanding" in a given component, a "high satisfactory" component rating can combine with "outstanding" ratings on other components to achieve an overall "outstanding" rating. In our members' experience, the result has been more reinvestment activity. As described in our response to Question 47, we also support additional consideration for activities that are especially impactful and responsive as ways to encourage "outstanding" performance. As a related matter, we further encourage the Board to explore incentives for banks to achieve "outstanding" ratings.

<u>Question 82</u>. Does the use of a standardized approach, such as the weighted average approach and matrices presented above, increase transparency in developing the Retail and Community Development Test assessment area conclusions? Should examiners have discretion to adjust the weighting of the Retail and Community Development subtests in deriving assessment area conclusions?

In general, we support the kinds of standardized approaches the Board has suggested to increase ratings transparency.

Within the Retail Test, we do support some discretion with respect to weighting to reflect local and institutional contexts. For example: branch-related factors should weigh more within the services subtest for banks that are more branch-based relative to the level of their deposits; and lending for a given product line (e.g., home mortgages or small business loans) should weigh more heavily within the lending subtest for a bank that make more loans in that product line relative to the level of their deposits.

Within the CD Test, we recommend against a separate CD services subtest. CD services are much less important than CD financing; and opportunities to provide CD services tend to depend on a bank's local presence, disadvantaging banks that do much of their work outside AAs, including wholesale, limited purpose, and internet banks. In addition and as discussed in response to Question 99, many banks have found that volunteer service activities receive too little recognition under CRA to justify the administrative burden of data collection and reporting. Instead, we recommend that CD services be treated as extra credit within a CD test that emphasizes financing.

Question 83. For large banks, is the proposed approach sufficiently transparent for combining and weighting the Retail Test and Community Development Test scores to derive the overall rating at the state and institution levels?

To promote tailoring of CRA to different banks, the weighting between the Retail Test and Community Development Test should vary between 60-40 percent and 40-60 percent, respectively, depending on the importance of retail lending and branches to a bank's business model. The Retail Test should weigh more heavily for banks that make more retail loans and have more branches relative to their overall level of domestic deposits.

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

We strongly support the full recognition of all CD activities outside AAs in a bank's CD metric at the institution level. We believe it would be a mistake to disregard CD activities nationwide, provided that AA ratings reflect only the CD activities that occur within AAs. A primary purpose of financial intermediation is to help move capital to where it can be used productively; CRA must harness this power to benefit CD.

Consistent with our response to Question 8, a bank's total domestic deposits should be used to set benchmark CD performance at the institution level. A bank should not be required to provide CD financing outside its AAs; rather, it should be able to fulfill its institution-level CD responsibilities entirely within its AAs or through a combination of activities within and outside its AAs. Consistent with our response to Questions 47 and 88, additional consideration is important to encourage activities that benefit certain underserved regions such as Indian Country, involve partnerships with certain institutions such as CDFIs, MDIs, and NeighborWorks affiliates, and involve equity investments such as LIHTCs and NMTCs, but these activities should not be mandatory to achieve an "outstanding" rating.

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

Consistent with our response to Questions 8 and 84, we generally advise that the state-level CD rating be based on CD activities only in AAs within the state, in order to reinforce the importance of CD within AAs. If activities outside AAs were to be included within a state rating area, would total state deposits be the basis for the rating? If so, that would create new obligations at the state level that would add complexity and rigidity. If not, then the focus on AA activities would be diluted. Instead, we reiterate our proposal that banks should receive full credit for activities outside AAs at the institution level.

Activities undertaken through third-party financing funds, such as CDFIs and LIHTC funds that intend to serve a broader area that includes a bank's AAs but have not yet fully deployed their capital, could be provisionally allocated among a bank's AAs or at the institution level on any reasonable basis. The location of those activities would be adjusted as capital is deployed – in many cases in time for a CRA examination. A key point here is that the full amount would be recognized; the only, temporary, uncertainty would be how the credit would be distributed at the AA and institution levels.

Question 87. Should the Board specify in Regulation BB that violations of the Military Lending Act, the Servicemembers Civil Relief Act, and UDAAP are considered when reviewing discriminatory or other illegal credit practices to determine CRA ratings? Are there other laws or practices that the Board should take into account in assessing evidence of discriminatory or other illegal credit practices?

Those laws and practices that relate to CRA activities – retail lending and services and CD financing and services – should be considered in determining CRA ratings. Unrelated laws and practices should not be considered.

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

Consistent with our response to Question 47, we support additional credit for bank partnerships with these institutions, as well as CDFIs and NeighborWorks affiliates, but we do not believe they should be the only factors eligible for additional credit, nor that they should be mandatory to achieve an "outstanding" rating.

We do not believe that extra credit for worthy CD activities should be able to pull an otherwise less than "satisfactory" rating (currently the 2-3 percent worst CRA performers) up to an "outstanding" rating.

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

Consistent with our response to Question 47, we support additional credit for bank partnerships with these institutions, as well as CDFIs and NeighborWorks affiliates, but we do not believe they should be the only factors eligible for additional credit or that they should be mandatory to achieve an "outstanding" rating.

Extra credit for such institutional partnerships should be a qualitative factor, perhaps through an "impact score" or similar mechanism that converts credit for that activity into a quantitative form. Accordingly, the nature of the partnership, its size, its impact, and its responsive to needs should all be considered. Details should matter, if only to avoid overvaluing superficial and "paper" partnerships.

<u>Question 90</u>. Is it appropriate to rely on SOD data for all banks, a subset of large banks with multiple assessment areas based on business model or the share of deposits taking place outside of assessment areas, or only for small banks and large banks with one assessment area? What standards would be appropriate to set for business models or the appropriate share of deposits taking place outside of assessment areas, if such an approach is chosen?

Reliance on SOD data should apply only to small banks and perhaps to large banks with a single AA. Large banks with more than one AA should collect and report deposit data based on depositor addresses. The Board should also consider requiring a large bank with a single AA to use depositor addresses if it takes significant deposits through the internet and does significant retail lending outside its AA. In some such cases, it is possible or even likely that a significant share of its depositors is located outside its AA. Using SOD data in such cases would distort the analysis of CRA performance – not just for that bank, but also for other banks to which it will be compared. More consistency in measuring CRA performance is desirable. Allowing too many exceptions reduces the accuracy and transparency of ratings. Using depositor addresses is technically achievable and integral to modernizing CRA as the banking industry continues to evolve beyond a traditional branch-based business model.

<u>Question 91</u>. Is the certainty of accurate community development financing measures using bank collected retail deposits data a worthwhile tradeoff for the burden associated with collecting and reporting this data for all large banks with two or more assessment areas?

Yes. The location of deposits will be foundational to accurate CD performance measurement.

<u>Question 94</u>. What are the benefits and drawbacks of relying on examiners to sample home mortgage data for non-HMDA reporters and consumer loan data for all large banks, requiring

banks to collect data in their own format, or requiring banks to collect data in a common Board prescribed format?

All large banks that are not HMDA reporters should be required to collect and report home mortgage lending data consistent with HMDA. Such data are important to facilitate CRA mortgage performance.

With respect to consumer loans, consistent with our response to Question 36, analysis should apply only to those banks for which consumer lending (excluding credit card and auto loans) comprise the substantial majority of their business. It would be excessively burdensome to require banks that do not meet this threshold to collect and report these data. For those banks that would be required to collect and report consumer loans, the Board should specify a common format for data collection and reporting.

Question 95. *Are the community development financing data points proposed for collection and reporting appropriate? Should others be considered?*

This level of additional detail is critically important to analyzing CD performance. The Board should also include data regarding partnerships with MDIs and other partners that primarily serve minority populations and communities.

Question 96. *Is collecting community development data at the loan or investment level and reporting that data at the county level or MSA level an appropriate way to gather and make information available to the public?*

Yes. Collection and reporting of CD data at the county level will be necessary to provide data to the public, especially since levels of CD activity will, appropriately, vary among counties within an MSA. However, it is important to note that many large banks should be allowed to delineate MSA-wide AAs. Performance for multi-county AAs should be evaluated for the entire AA and not individual counties within the AA.

As noted in our response to Question 85, activities undertaken through third-party financing funds, such as CDFIs and LIHTC funds, that intend to serve a broader area that includes a bank's AAs but have not yet fully deployed their capital could be provisionally allocated among a bank's AAs on any reasonable basis. The location of those activities would be adjusted as capital is deployed – in many cases in time for a CRA examination. A key point here is that the full amount would be recognized; the only, temporary, uncertainty would be how the credit would be distributed at the AA and institution levels.

Question 97. *Is the burden associated with data collection and reporting justified to gain consistency in evaluations and provide greater certainty for banks in how their community development financing activity will be evaluated?*

Yes. The absence of such data has severely limited examination of CD performance as well as public information and research.

Question 99. Possible data points for community development services may include the number and hours of community development services, the community development purpose, and the counties impacted by the activity. Are there other data points that should be included? Would a Board-provided template improve the consistency of the data collection or are there other options for data collection that should be considered?

A Board-provided reporting template would be helpful. We note that reporting on the number of hours volunteered has been burdensome and not very productive. We support the flexibility of current Q&A guidance that allows banks to report the hours, number of events, or number of people served. Banks should also be permitted to identify other information, such as participation as board members of or advisors to nonprofit CD organizations, for additional consideration.

Thank you for considering our views.

Sincerely,

Benson F. Roberts
President and CEO

NAAHL Member Organizations

Affordable Housing Tax Credit Coalition
Alabama Multifamily Loan Consortium
Ally Bank
American Bankers Association Foundation
American Express
America's Federal Home Loan Banks
Bank of America
Bank of New York Mellon
BMO Harris Bank
Boston Private Bank and Trust Company
California Community Reinvestment Corporation
California Housing Finance Agency
Capital One
Centrant Community Capital
Century Housing
Cinnaire
Citi
Coastal Enterprises, Inc.
Comerica Bank
The Community Development Trust
Community Housing Capital
Community Investment Corporation
The Community Preservation Corporation
CSR Associates
Deutsche Bank / Deutsche Bank Americas Foundation
Enterprise Community Partners
Fifth Third Bank
Goldman Sachs
Housing Partnership Equity Trust
Housing Partnership Network
Illinois Housing Development Authority
JBG Smith Washington Housing Initiative
JPMorgan Chase
KeyBank
LISC / National Equity Fund
Low Income Investment Fund
Massachusetts Housing Investment Corporation
Massachusetts Housing Partnership
MassHousing
Mizuho Americas
Morgan Stanley
MUFG Union Bank, N.A.
National Housing Trust

NCALL Loan Fund
Neighborhood Lending Partners, Inc.
NeighborWorks America
Network for Oregon Affordable Housing
New York City Housing Development Corporation
Northern Trust
Ohio Capital Corporation for Housing
Opportunity Finance Network
Pembrook Capital Management, LLC
PNC Community Development Banking
Raza Development Fund
RBC Global Asset Management, Inc.
RIHousing
Rocky Mountain Community Reinvestment Corporation
Silicon Valley Bank
Specialty Mortgage Product Solutions, LLC
TD Bank, Community Development
Truist Bank
United Bank
U.S. Bank
Washington Community Reinvestment Association
Wells Fargo
Woodforest National Bank
X-Caliber Capital