



February 16, 2021

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

Regarding: Community Reinvestment Act - Advance Notice of Proposed
Rulemaking; Docket No. R-1723 and RIN 7100-AF94

Dear Ms. Misback:

The Community Bankers Association of Illinois (“CBAI”), which proudly represents 300 Illinois community banks, appreciates the opportunity to provide our observations and recommendations regarding the Board of Governors of the Federal Reserve System’s (“Board” or “Federal Reserve”) Community Reinvestment Act (“CRA” or “Act”) advance notice of proposed rulemaking (“ANPR” or “Proposal”). CBAI acknowledges statements made in the Proposal that “[T]he Board requests feedback on different approaches to modernize the regulatory and supervisory framework” for the CRA “to advance the goal of strengthening the CRA regulation.” CBAI appreciates the Board seeking comments on all aspects of the ANPR from all interested parties and that it is also requesting commenters to identify other issues that the Board should consider.

CBAI is dedicated to exclusively representing the interests of Illinois community banks and thrifts through effective advocacy, outstanding education, and high-quality products. CBAI’s members hold more than \$75 billion in assets, operate 860 locations statewide, and lend to consumers, small businesses, and agriculture. For more information, please visit www.cbai.com.

Questions and Answers

Section I and II – Introduction: Request for Feedback, Objectives, Overview, and CRA Background

Questions 1 and 2

History, Purposes and Challenges

CBAI and its member community bankers support the CRA which was enacted by Congress and intended to encourage depository institutions to meet the needs of the communities in which they operate, including low- and moderate-income (“LMI”) communities consistent with safe and sound operations. The CRA requires that each insured depository institution’s record in helping meet the needs of its entire community is evaluated periodically. That record is taken into account when considering an institution’s application for deposit facilities, including mergers and acquisitions. CRA examinations are conducted by the banking regulators that are responsible for supervising depository institutions - OCC, FDIC, and the Federal Reserve (together “Agencies”). Community banks perform exceptionally well in CRA compliance and examinations because it is the mission of community banks to fairly serve all of their customers and communities.

Community bankers continue to tell us that the CRA makes good business sense and benefits everyone. We believe there is a need to modernize the Act to reflect new technologies, customer preferences in the delivery of banking services, and it is also an opportunity to highlight and retain parts of the Act, identify missed opportunities for additional credit, reduce the regulatory burden on community banks, and include for compliance other financial services providers.

Safety and Soundness

The CRA requires community banks to help meet the credit needs of the communities they serve, including LMI areas, consistent with the bank’s safe and sound operations. Operating in a safe and sound manner is a prudent business practice and a regulatory requirement, the lack of which is sufficient cause for Agency criticism and even enforcement actions. The creditworthiness of the borrower is the key to safe and sound lending (i.e., without it a loan should not be made.) Regulating and examining for compliance with the CRA must never lose sight of or compromise

community banks' ability to operate in a safe and sound manner. **CBAI appreciates the Board acknowledging the need in the Proposal for safety and soundness and encourages the Board to continue to support and reinforce this requirement which must not be minimized or lost in the modernization of the CRA.**

Overwhelmingly Positive Exam Results

The overwhelming majority of banks are community banks which treat their customers and communities fairly and do not discriminate. The fact that the overwhelming majority of banks perform well in CRA compliance and examinations affirms the exemplary behavior of community banks. It is ridiculous for anyone to believe that the current Act is flawed simply because more than 95% of banks receive *Satisfactory* or *Outstanding* CRA ratings. **CBAI urges caution when the Board states that a goal of the Proposal is “strengthening the CRA regulation” for fear of creating a misperception about the modernization effort. There is no reason to make the regulatory compliance requirements more rigorous, or the examination process more difficult, for community banks.**

All Financial Service Providers Must Comply with the CRA

Credit Unions are not currently subject to the CRA because they are not defined as “covered institutions” in the regulation. The modernization of the CRA is a historic opportunity for the Agencies to help level the playing field. CBAI acknowledges that Congress must act to include credit unions, and other financial service providers such as Farm Credit Services, fintechs, the OCC’s Special Purpose National Bank (“SPNB”) charters, and industrial loan companies and banks (“ILCs”), for compliance with the CRA in a comparable manner to community banks. **CBAI strongly urges that all financial service providers which offer the same products and services as community banks be subject to the CRA, and urges the Agencies to strongly advocate to Congress for this change. This regulatory double standard is harming the safety and soundness of the community banks that the Agencies are responsible for regulating.**

Joint Regulator Rulemaking

The Federal Reserve issued its ANPR without the OCC or the FDIC. During the OCC’s CRA rulemaking process, the Agencies reviewed roughly 1,500 comment letters. However, the OCC

and the FDIC proposed rulemaking, but did not include the Federal Reserve, and the OCC alone issued their final rule. The OCC's justification for moving forward was that national banks and thrifts conduct approximately 70% of CRA activity, so a large majority will be covered by its rulemaking.

CBAI appreciates that the regulatory process for modernizing the CRA is well underway. While it is not unprecedented for Agencies to act independently of one another, this is not the preferred path for the modernization of the CRA. This rulemaking process will greatly benefit from interagency dialogue, collaboration, and joint rulemaking, culminating in a joint final CRA rule ("Final Rule") of high quality and consistency which will command greater respect, support, and legitimacy.

We are also concerned that the lack of Agency unity in CRA rulemaking has resulted in further politicizing this regulation and the very real prospects that future Administrations, Congresses, or Agency leaders will reverse parts or all of separate final rules resulting in a significant swing in the regulatory pendulum. This back and forth change in regulations represent an additional, unnecessary, and unreasonable regulatory burden particularly on community banks. **CBAI encourages the Agencies, even at this stage in the rulemaking process, to engage in joint rulemaking and agree on a Final Rule to modernize the CRA.**

Definitions of LMI Individuals and Communities for CRA Credit

In discussions about the CRA there are references to serving and receiving CRA credit for activity in various geographies (e.g., areas, census tracts, neighborhoods, targeted areas, communities, and assessment areas (together "Assessment Areas")). In addition, these geographies are either LMI or non-LMI and each may contain both LMI and Non-LMI individuals. For the sake of avoiding confusion, and to give appropriate CRA credit, CBAI encourages clarity in rulemaking as to whom and where credit is given or denied in all possible instances.

For the purpose of this comment letter, the narrow terms "area" and "census tract" are interchangeable and are contained within the broad and interchangeable terms "community" and "Assessment Area". There are eight possible combinations of individuals and geographies which should be accounted for in assigning CRA credit.

<u>Individuals</u>	<u>Census Tracts or Areas</u>	<u>Assessment Areas or Community</u>
LMI	LMI	Within
LMI	Non-LMI	Within
LMI	LMI	Outside
LMI	Non-LMI	Outside
Non-LMI	LMI	Within
Non-LMI	Non-LMI	Within
Non-LMI	LMI	Outside
Non-LMI	Non-LMI	Outside

CRA Credit Multiplier

CBAI strongly believes that financial service activity that is directed to LMI individuals and LMI areas be incentivized with sufficient CRA credit to deliver maximum benefit to those in greatest need, while also giving appropriate credit for serving the needs of the entire community including non-LMI individuals and non-LMI areas.

Given their exemplary service, the use of multipliers is a legitimate way to more completely recognize the enormity of the benefits community banks provide – it is not an opportunity for them to “game the system” to their advantage. While certain financial services activity may not be eligible for the highest level or multiplier of CRA credit, and expanding on the graph presented earlier, **CBAI urges the Board to adopt a system where CRA credit is given with additional credit (i.e., a multiplier) for the highest ranking financial services which will provide the most credit for the greatest commitment to LMI individuals and in LMI areas without discounting the value of financial services to certain non-LMI individuals and non-LMI areas or communities.**

<u>Individuals</u>	<u>Census Tracts or Areas</u>	<u>Assessment Areas or Community</u>	<u>CRA Credit</u>	<u>Ranking</u>
LMI	LMI	Within	Yes	Highest multiplier
LMI	Non-LMI	Within	Yes	2 nd highest
LMI	LMI	Outside	Yes	4 th or 5 th
LMI	Non-LMI	Outside	Yes	6 th

<u>Individuals</u>	<u>Census Tracts or Areas</u>	<u>Assessment Areas or Community</u>	<u>CRA Credit</u>	<u>Ranking</u>
Non-LMI	LMI	Within	Yes	3 rd
Non-LMI	Non-LMI	Within	Yes	5 th or 4 th
Non-LMI	LMI	Outside	Yes	7 th
Non-LMI	Non-LMI	Outside	None	8 th

Post Final Rule Review

In the CRA modernization effort, where the changes in the regulation are more significant than minor modifications, there will be both positive and negative unintended consequences. **CBAI recommends the Board commit to a near-term formal review including public comment on the actual versus planned impact of the Final Rule to assess and promptly correct any legitimate problems that are subsequently discovered.**

Section III – Assessment Areas

Questions 4-7

Assessment Areas must accurately reflect the communities within which the bank operates. CBAI questions the belief by some that expanding the Assessment Areas would simply make it easier for banks to get CRA credit. Assessment Areas need to reflect the business realities of banking models in gathering deposits and making loans in traditional ways as well as ways that were not present at the inception of the CRA. **CBAI urges that Assessment Area revisions to the CRA should reflect how modern technology is being used in product design and service delivery while encouraging and promoting the strong community bank physical presence in Assessment Areas.**

The current CRA requires that each bank is responsible for delineating its Assessment Areas on which their performance is assessed. **CBAI urges that Assessment Areas must continue to be drawn by community banks and not by the Agencies.**

Any Assessment Area changes in rulemaking, even if they are seemingly insignificant, will have unintended consequences and the impact on CRA compliance cannot be known with certainty for some time. **CBAI recommends that if the Board makes Assessment Area changes, that**

it commits to a formal review including public comment on the actual versus planned impact of the Final Rule to assess and promptly correct any legitimate problems that are subsequently discovered.

Section IV – Tailoring Evaluations Based on Bank Size and Business Model

Objective Method to Measure CRA Performance

The goal of a modernization of the CRA should be to provide a regulatory framework that is objective, consistent, and easy to understand. While CBAI agrees with the need for modernization, we urge caution about how criticisms of the current regime are addressed.

There is an acceptable and positive discretionary middle ground in CRA compliance and examination that needs to be maintained. This opportunity to modernize the CRA should not stifle necessary and beneficial examiner discretion and even joint banker and examiner creativity and constructive cooperation. The important caveat regarding examiner discretion is that it be exercised prudently, and if not, the community bank must be able to challenge and have overruled an examiner's unreasonable use of his/her discretion quickly and decisively.

Metrics-Based Scoring System

A highly prescriptive metrics-based scoring system for CRA ratings remains an intriguing idea for its potential to provide clear and established thresholds and benchmarks but it represents a sea change in how CRA compliance and examinations are currently being conducted and therein lies potential problems. A metrics-based scoring system indicates a very high level of precision with little room for discretion, yet the CRA encompass some activities which are not precisely measurable (particularly dollar versus unit impact) and some deserve greater weight than others (subject to interpretation and disagreement). There will always be dynamic tension between flexibility and prescription in the CRA compliance and examination process because the results are a blend of quantitative and qualitative factors. A prescriptive scoring system may likely have the unintended consequence of an additional regulatory burden without improving the CRA compliance and examination process, and result. **CBAI urges caution in the implementation of a highly prescriptive metrics-based scoring system, and that if adopted, the Board should commit to a formal review including public comment on the actual versus**

planned impact of a Final Rule to assess and promptly correct any legitimate problems that are subsequently discovered.

Asset Threshold and Current Framework, Opt-In to New Regime Requirements – Questions 13 and 11

The current interagency CRA evaluates financial institutions in three separate categories which are determined by an institution's asset size: small bank, intermediate small bank, and large bank. Annually, the asset-size thresholds are adjusted based on the change in the Consumer Price Index for Urban Wage Earners and Clerical Workers. Additionally, intervals between CRA examinations have been established for banks which have attained certain ratings. **CBAI strongly supports asset tiering in the CRA and other regulations.**

Each of the Agencies have acknowledged the need to tailor regulations to an individual bank size and/or business model. Happily, the CRA reflected a tailoring earlier than many regulations by adding the intermediate small bank category to the then existing categories and indexing for inflation. The current asset threshold for small banks is under \$1.322 billion, the threshold for intermediate small banks is between \$330 million and \$1.322 billion, and for large banks the threshold is over \$1.322 billion. Other examples of tiered bank regulations include HMDA reporting thresholds, the Dodd-Frank Acts' enhanced regulations for banks at different asset thresholds, and there are numerous other precedents to adapt regulations for banks of different sizes and business models.

CBAI encourages raising the existing asset thresholds to reflect industry trends, particularly the consolidation among smaller institutions. Notwithstanding our deep and legitimate concerns about financial industry consolidation, these acquiring institutions are typically other community banks with similarly strong histories of service in their communities and positive CRA ratings. Increasing these asset thresholds will provide significant regulatory relief to small and well-rated institutions which are particularly impacted by the increase in regulatory burden while still allowing the Agencies to adequately assess community banks for CRA compliance. Increasing these thresholds will also free-up resources to allow the Agencies to focus their efforts on the largest banks and those that are not performing at least satisfactorily on CRA compliance and examinations.

The Proposal recommends setting the asset threshold for small banks at \$750 million (or \$1 billion), there is no intermediate small bank asset category, but rather an immediate leap to a

large bank. CBAI has two primary concerns with this element of the Proposal. First, a lack of a transitional tier from small bank to large bank effectively requires a community bank of \$751 million in assets to be subject to the same CRA regulatory structure, requirements, and burdens as CHASE Bank with assets of \$2.87 trillion – or 3,826 times larger than the three-quarter of a billion in asset community bank. It is an indisputable fact that regulatory burden falls disproportionately hard on community banks with their lack of resources and fewer customers to spread the cost of compliance. The low small bank asset threshold in the Proposal, and the lack of an intermediate small bank asset category, which is a necessary transitional phase to the large bank category, places a significantly increased regulatory burden on even more community banks than the current existing framework.

CBAI urges that the Board increase the asset thresholds to less than \$5 billion, between \$1.5 and \$5 billion, and greater than \$5 billion respectively for small banks, intermediate small banks, and large banks. If the Board is unwilling to approve these increases, and is determined to remove the intermediate small bank category, CBAI urges, at a minimum, an increase in the small bank asset threshold to where it is right now (\$1.322 billion) and for the asset threshold to continue to be indexed to inflation, both for consistency reasons.

In addition, CBAI urges the Board to permit small banks to remain with the current CRA requirements if they so choose, and be required to opt-in to any new CRA compliance and examination requirements.

The current asset thresholds are determined at either (or both) of the two prior calendar year-ends. **CBAI urges the Board to propose using the immediate three prior calendar year-ends and to not include year-end 2020 because the asset size of many community banks was temporarily distorted because of the impact of COVID-19 related relief measures.** This additional time to implement any changes in the CRA will allow community banks to be better prepare for any new requirements.

Currently there are interagency requirements to examine banks for CRA compliance at certain intervals. When a bank achieves an “Outstanding” rating it has “an outstanding record of, and is a leader in, ascertaining and helping to meet the credit needs of its entire delineated community, including low- and moderate-income neighborhoods, in a manner consistent with its resources and capabilities.” When a bank achieves a “Satisfactory” rating it has, “a satisfactory record of ascertaining and helping to meet the credit needs of its delineated community, including low-

and moderate-income neighborhoods, in a manner consistent with its resources and capabilities.” The successful fulfillment of both of these regulatory expectations warrants reasonably long intervals between examinations. **CBAI urges the Board to include in a Final Rule an examination interval of a minimum of four years for community banks that achieve a “Satisfactory” CRA rating and a minimum of five years for those community banks that achieve an “Outstanding” CRA rating.**

Section V – Retail Test: Evaluation of Retail Lending and Retail Services Performance

Delivery of Financial Services – Questions 24-28

Community banks have traditionally defined their footprint around their brick and mortar home office and branch locations, including automated teller machines (“ATMs”) for the convenience of their customers and to augment their ability to serve their communities. A digital footprint or only ATMs, however, is a significantly different and lesser commitment to an area or community than the more traditional methods of delivering the full range of banking services.

A modernization of the CRA should increase and not diminish the importance and value of face-to-face interaction with individuals and small businesses which is a hallmark of community banks and how they serve their communities. When addressing this issue, **CBAI recommends that the Board view the non-traditional delivery of financial services as an additional (incremental) but not superior method versus brick and mortar home office and branch locations.** Digital access and ATM machines are a way to conveniently deliver banking services but they do not provide a full range of services, they are not a substitute for brick and mortar home offices or branch locations, and should not receive CRA credit that is anywhere near to that received for facilities that do provide a full range of banking services. **CBAI recommends the weighting of a financial institution’s presence in an area or community with a home office receiving the greatest CRA credit, branches should be next, following that – ATMs, and then a digital-only presence which should receive the least amount of CRA credit.**

Deposit Products – Question 29-32

The mission of the CRA is for banks to serve their entire community including LMI individuals and areas. The financial service needs of a community include the full range of services not just lending. The offering of a comprehensive number of consumer and commercial / deposit and

lending service (either directly or in some cases with the assistance of a vendor) will be indicative of a financial institution that is truly serving its entire community.

An example of a consumer deposit product specifically targeted to an LMI individual would be a low cost or no-minimum balance checking account, and an example of a commercial deposit product would be an account specifically designed to be attractive to small businesses. Other financial related products and services which should receive CRA include youth savings accounts to encourage savings beginning at a young age, college savings plans to advance higher education, health savings accounts to promote health and wellbeing, and 401K or retirement accounts to encourage planning and savings for retirement. **CBAI urges the use of a CRA credit multiplier to give greater weight to basic financial services and those that are targeted to LMI individuals and areas.**

A definition of “deposits” must also include “brokered deposits” and “municipal deposits”. In many instances, brokered deposits can be specifically identifiable to individuals and communities. Reciprocal deposits for example are often misperceived as brokered deposits yet these deposits are gathered from the area and community. Through an established exchange process with other financial institutions to maintain deposit insurance, the entire amount of that remains with the bank, and is available for the bank to use to serve the needs of the area and community. **CBAI urges the Board to include brokered deposits in the definition of domestic deposits if the bank can justify that the deposit comes from (or are enabled to stay in) the area and community they serve.** For a community bank, the local municipalities may be among its largest customers, and along with the community bank is at the very heart of the area and the community. **CBAI urges the Board to include municipal deposits in the definition of domestic deposits.**

Section VI – Retail Lending Subset Definitions and Qualifying Activity

Types and Value of Retail Loans

At the risk of generalizing about the loans needed most by LMI individuals, and of the greatest benefit to areas and the community, perhaps those services that provide basic and lasting benefits which help lower unemployment, increase the standard of living, promote higher education, and lower crime rates should receive the greatest CRA credit. Examples of these types of loans would include residential mortgage loans which support homeownership, vehicle loans which

support transportation to and from employment, responsible debt consolidation to reduce the interest rate and accelerate paying-off of consumer debt, student loans to promote education, entry level credit cards to help build a positive credit history. These are several but not an exhaustive list of retail loans to consider for a multiple of CRA credit.

While the types of retail loans identified above deserve CRA credit, they may not be eligible for the highest level or multiplier of CRA credit. **CBAI urged the Board to use this raking and multiple of CRA credit with additional credit (i.e., a multiplier) for the highest ranking loans which provide the most credit for the greatest commitment to LMI individuals and in LMI areas, without discounting the value of lending to non-LMI individuals in non-LMI areas, or the community.**

<u>Individuals</u>	<u>Census Tracts or Areas</u>	<u>Assessment Areas or Community</u>	<u>CRA Credit</u>	<u>Ranking</u>
LMI	LMI	Within	Yes	Highest multiplier
LMI	Non-LMI	Within	Yes	2 nd highest
LMI	LMI	Outside	Yes	4 th or 5 th
LMI	Non-LMI	Outside	Yes	6 th
Non-LMI	LMI	Within	Yes	3 rd
Non-LMI	Non-LMI	Within	Yes	5 th or 4 th
Non-LMI	LMI	Outside	Yes	7 th
Non-LMI	Non-LMI	Outside	None	8 th

Concern has been expressed by some about loans to a non-LMI individual in a LMI area within the bank’s community qualifying for CRA credit. The justification for this belief is that it fosters “gentrification”. There is a concern by others that if these loans do not qualify for CRA credit it will create a disincentive to lend in some areas and communities, and that may limit favorable development. **CBAI encourages the Board to seek an acceptable compromise on this sensitive subject that provides reasonable CRA credit for all loans in LMI areas.**

There is also a concern that loans to non-LMI individuals in a non-LMI area within the bank’s community do not qualify for CRA credit. The justification for this belief that this lending may not fulfill the mission of the CRA. The Act states a bank is required to serve its entire community. There is no reason to exclude non-LMI individuals and loans in a non-LMI area within the community. **CBAI urges the Board to give CRA credit for loans that serve the**

bank's entire community, regardless of the LMI status of the borrower or area, as required by the Act.

Small Business and Small Farm Thresholds – Question 37

The importance of community banks in small business and small farm lending, and their honest and fair treatment of small business and small farmer borrowers, is undeniable. The FDIC published a report on the findings of its Small Business Lending Survey on October 1, 2018. In the press release the FDIC noted that “Small banks, defined in the report as those with assets of less than \$10 billion, are more likely to focus on relationship-based practices to conduct small business lending, while large banks are more likely to rely on transaction-based methods.” FDIC Chairman McWilliams stated that, “Despite holding only 13% of banking industry assets, our data shows that community banks hold 42% of small business loans.” Some would reasonably contend that percentage is actually higher.

History has proven that community banks do not need an incentive to make small business and small farm loans – it is what they do, they do it very well, every day. Rather, the issue is their receiving the appropriate amount of credit for the vast amount of small business and small farm lending they do now and will continue to do. Unfortunately, the ability to receive appropriate CRA credit is currently limited because of outdated qualification threshold caps. The caps for CRA credit for small business and small farm lending were established more than 25 years ago at \$1 million/\$500K, respectively. These thresholds were not indexed and have become outdated because of inflation. The result is a loss of the originally-intended opportunity for CRA credit for community bank small business and small farm lending. Even the Board's proposed \$1.65 million/\$800K loan thresholds are insufficient because they are not properly adjusted for 25 years of inflation. **CBAI urges the Board to expand CRA credit for small business and small farm lending by increasing in the loan thresholds to a minimum of \$5 million/\$2.5 million and that these thresholds be indexed to inflation so they remain at the appropriate levels. Also, CBAI urges the Board to increase the gross annual revenue threshold to a minimum based on inflation and that they also be indexed to inflation.**

In addition, and similar to the use of ranking or multipliers suggested above for consumer financial products and loans, a version of the multiplier should be incorporated in the Final Rule for small business and small farm loans as recommended below.

<u>Census Tracts</u> or <u>Areas</u>	<u>Assessment Areas</u> or <u>Community</u>	<u>CRA Credit</u>	<u>Ranking</u>
LMI	Yes	Yes	Highest multiplier
LMI	No	Yes	3 rd highest
Non-LMI	Yes	Yes	2 nd highest
Non-LMI	No	Yes	4 th highest

CBAI urges the Board give the highest CRA credit to small business/farm loans in LMI areas within the bank’s community, yet not discount the value of small business/farm loans not in either an LMI area or the banks community in recognition of the importance of this type of lending which is predominantly done by community banks and which are critically important to the nation’s economy. Evidence of this importance is that 72% of all jobs are created by small businesses!

Treatment of Purchased Loans – Question 38

Many community banks have been forced to stop making residential mortgages because of the increased regulations required under the Dodd-Frank Act. One bank may have the expertise to originate residential mortgages while another may not. Unless the bank which has the expertise, and is active in that mortgage product, is able to sell those loans it will soon be loaned-up and have concentrations in those lending areas. By selling the loans, the originating bank can generate liquidity and do more residential mortgage lending.

The residential mortgage market has created an efficient way to originate, aggregate, securitize and sell loans of varying types including residential mortgage-backed securities that are eligible for CRA credit. CBAI believes that a modernization of the CRA should not inhibit that efficient market but rather should acknowledge the value of this process in generating more CRA loans that would not be possible without the market having been developed, in place and working efficiently. **CBAI urges the Board to retain as a CRA-qualifying activity investing in (and holding) Mortgage Backed Securities which contain residential mortgages from LMI individuals and areas, and receive a multiple of CRA credit for those loans within the banks’ Assessment Area.**

Section VII and VIII– Community Development Test: Evaluation of Community Development Financing and Community Development Service Performance, and Qualifying Activities and Geographies

Affordable Housing and Community Investment – Questions 52-54

Federal Home Loan Bank Membership and Activity

CBAI appreciates the Board’s increasing support to provide incentives for affordable housing and community development. CBAI has consistently advocated for additional CRA credit for membership in and all activity with a Federal Home Loan Bank (collectively “FHLBanks”) because of the FHLBanks commitment to and support for affordable housing and community development. CBAI renews this recommendation and additionally recommends a method to calculate the appropriate CRA credit.

The Federal Home Loan Bank System (“FHLBSystem”) and its individual banks are government sponsored entities that were created by Congress in 1932 with a mission to provide reliable sources of funding for housing finance and community investment. The FHLBSystem contains 11 districts. The FHLB-Chicago serves Illinois and Wisconsin and its membership includes approximately 465 banks and 70 thrifts.

The FHLBanks’ membership nexus is a commitment to housing and helping to realize the dream of home ownership. The FHLBanks provide asset liability management, liquidity for members’ short-term needs, technical assistance, and access to special affordable housing and community development programs. It is essential to note that the FHLBanks are required to contribute 10% of their income before assessments to affordable housing and community development within their districts.

Currently, members may receive CRA credit for very specific activities conducted with their FHLBank. These activities include mortgage lending through the Mortgage Partnership Finance and Mortgage Purchase (“MPF” and “MPP”) programs, letters of credit – the beneficiaries of which can be local municipalities, and participation in affordable housing (“AHP”) and community investment (“CIP”) programs.

An expansion of CRA credit will require reconsideration and an exception to be made, in that the *primary purpose* of the FHLBanks’ activities is serving the needs of its members and not on affordable housing and community development. None-the-less, **CBAI strongly believes an exception is warranted and banks should receive CRA credit for membership and all activity in their FHLBanks.**

By simply belonging to their FHLBank, members must purchase capital stock, the proceeds of which together with retained earnings are invested by the FHLBanks to generate profits, a portion of which are devoted to AHP and CIP. To the extent members use any of the FHLBank products, such as advances, letters of credit or the MPF/MPP, they are also helping to generate income for the FHLBanks, and 10% of that profitability also goes towards housing and investment programs. Finally, community bank members may use any of the FHLBs' affordable housing, down payment assistance, or community development programs to help their customers and communities.

It is inconceivable, for example, that a bank's involvement with a small community development provider that would qualify under the *primary purpose* requirement, and produces \$1,000 of community development benefit, would receive CRA credit; but that same bank's FHLBank membership and activities that collectively contributes billions of dollars in benefits, to hundreds of thousands of individuals (as detailed below), does not qualify simply because the *primary purpose* requirement was not met by the FHLBanks.

- The FHLBanks' AHP contributions are among the largest private sources of funding for affordable housing activities in the United States. From inception of the AHP program, the FHLBanks have awarded \$6.6 billion for the acquisition, development, or preservation of over 957,000 units of affordable owner-occupied and rental housing.
 - Of those totals, the FHLB-Chicago awarded \$697 million for 124,196 units across Illinois and Wisconsin.
- In 2019, the contribution to the AHP was \$362 million dollars.
- Also, in 2019, the FHLBanks funded nearly \$3.4 billion in affordable housing and economic development advances in local communities through the CIP.
- The Community Investment Cash Advance Program funding totaled \$2.9 billion in 2019 for local development.
- Sixty non-depository Community Development Financial Institutions ("CDFI") were FHLBank members in 2019.
- Outstanding advances to non-depository CDFI's rose in 2019, totaling \$262 million. A year prior, nonbank CDFI advances totaled \$222 million.

CBAI recommends using the average capital stock percent owned by the member multiplied by the annual AHP contribution in determining CRA credit for FHLBank members. Using hypothetical member banks of different asset sizes, and the typical FHLBank's

annual AHP contribution of \$33 million, the chart below demonstrates the dollar amount of CRA credit that should reasonably be earned.

<u>Example Bank</u>	<u>Asset Size</u>	<u>Average Stock Holding</u>	<u>% of Total Average Holding</u>	<u>Allocation of Annual AHP Contribution</u>
Member A	\$150 Mil	\$260,000	0.013%	\$ 6,050
Member B	\$250 Mil	\$427,000	0.021%	\$ 9,960
Member C	\$500 Mil	\$888,000	0.044%	\$20,685
Member D	\$1 Billion	\$1,520,000	0.075%	\$35,400

The enormous positive impact of the FHLBanks (in either a bank's area, community, or in the broader state or region [FHLBank district]), and contributions to these beneficial programs are so significant, and made possible by all of the FHLBanks' members, that CBAI urges the Board to a reconsider and make an exception so that community banks may receive CRA credit for membership and all activity with their FHLBanks.

Community Services – Question 56

CBAI supports community service receiving CRA credit and encourages a wide variety of beneficial activities be included in the definition of community services. There will likely be some disconnect between the value of the individual rendering the service and the value of that service being performed to the community development organization. For example, should an executive's service hours be valued at a food service worker's salary for volunteering at a food kitchen, or should a clerical worker's service hours be valued at an executive salary for heading a community service organization?

There is also going to be a record keeping burden in tracking and calculating the service hours in addition to potential for disagreement on the appropriate value of the service hours even if the standard used is a recognized one such as the Bureau of Labor Statistics calculation of the hourly wage for that type of work. For simplicity purposes, and because it is a reasonable measure of community development services, **CBAI recommends the Board use standard dollar rate per hour (\$36.00) be used to calculate the value of community development services and that an appropriate multiplier is needed to reflect the value of the services within the Proposal. In addition, CBAI urges that all banks' community services hours should be eligible**

for CRA credit if they are performed in the Assessment Area regardless of whether the service was performed in an LMI area or not.

Minority Depository Institutions and Community Development Financial Institutions
Question 64-70

Minority Depository Institutions (“MDIs”) and Community Development Financial Institutions (“CDFIs”) serve an important role in providing credit and financial services to LMI individuals and areas in both urban and rural communities. **CBAI supports activities which assist MDIs and CDFIs, including addressing their capital challenges, and recommends they be eligible for a multiplier of CRA credit to maximize their benefit and the impact of services on their customers and communities.**

There are several activities where majority-owned financial institutions receive CRA credit for cooperation with minority- and women-owned financial institutions (“MWLI”). **CBAI supports all of the current eligible activities, the exploration of credit for additional activities, and recommends that deposits in MWLIs by financial institutions (of any asset size) should be retained and be eligible for a multiplier of CRA credit.**

Certainty About Eligible Activity – Question 71 and 72

A list of pre-approved qualifying activity is important for guidance, planning and transparency purposes for community banks, in their exploration of creative alternatives to qualify for CRA credit. The process for seeking confirmation for CRA credit should be uncomplicated, the response by the Board should be timely, and the results consistent. **CBAI urges the responsibility for consideration and those decisions (ultimately) be assigned to a diverse but workable-sized joint Agency group to include - on a case-by-case basis - a representative from the originating district or regional office. Such a group will assure timeliness and consistency in approvals/denials, and local representation. This process should also include a way for an applicant to promptly appeal a denial of CRA qualifying activity.**

The more current the list, and timelier the decisions, the better. Delaying this information would unnecessarily deprive community bankers with important information that would give them direction in their compliance with the CRA. **CBAI urges the list of activities be updated and posted on the Federal Reserve’s website as new opportunities for CRA credit are approved or denied.**

Section X – Ratings

Overwhelmingly Positive Exam Results

As stated earlier, CBAI questions the belief held by some that because more than 95% of banks receive *Satisfactory* or *Outstanding* CRA ratings that the Act is flawed. The overwhelming majority of the number of banks are community banks which treat their customers and communities fairly and do not discriminate. The fact that the overwhelming majority of the number of banks perform well in CRA compliance and examinations affirms the exemplary behavior of community banks. **CBAI urges caution when the Board states that a goal in the Proposal is “strengthening the CRA regulation” for fear of creating a misperception about the modernization effort. There is no reason to make the regulatory compliance requirements more rigorous, or the examination process more difficult, for community banks.**

Improving the timeliness of CRA Rating Assignments and Performance Evaluations

The lack of timeliness between the end of the examination and receipt of the Performance Evaluation has been an issue raised by some, but this generally has not been stated as a significant issue by community bankers. However, the April 3, 2018 Memorandum from the U.S. Department of the Treasury cites in its’ June 2017 report to the President, a timeliness issue – a process that has sometimes taken regulators years to complete.

Notwithstanding the positive experience of community banks, CBAI highlights a glaringly apparent flaw in the system regarding a Wells Fargo CRA examination. The final release of Wells Fargo’s 2012 CRA examination result (a significant downgrade for reportedly committing fraud against more than 5,000,000 of its customers) was delayed for four years until 2016. It is inconceivable how this decision could have been delayed for that length of time. We are not aware of any similarly long delays for community banks – nor should there be delays for that length of time for any bank. **CBAI recommends changes in an examination and appeals process to not allow for a lengthy delay in an examination rating, particularly an unfavorable CRA rating for the largest banks in the United States.**

Section XI – Data Collection, Recordkeeping, and Reporting

Regulatory Burden on Small Banks

It bears repeating that it is an indisputable fact that regulatory burden falls disproportionately hard on community banks with their lack of resources and fewer customers to spread the cost of compliance. The requirement for a \$751 million asset bank to perform the similar data collection, record keeping and reporting as CHASE Bank with assets of \$3.87 trillion – or 3,826 times larger than the three quarter of a billion in asset community bank – is not a reasonable requirement. Perhaps the largest institutions will experience a modest (for them) upfront and reduced ongoing costs and which (for them) the benefits will outweigh the costs. However, for community banks which are much less automated, that will not be the case and the unreasonable burden will be upfront and ongoing. **CBAI believe that for small banks the information that is currently being collected is sufficient for all concerned parties (i.e., Agencies and communities) to successfully evaluate their CRA performance.**

Public File Availability

We are hearing from community bankers that the current method of delivering the CRA public file, namely a printed version available to hand someone when they visit the bank to request a copy, is outdated and an unnecessary regulatory burden. **CBAI recommends (at a community a bank's option) that it be allowed to provide access to the public file containing the required information electronically on the bank's website, so that customers do not have to visit the bank or wait for a copy to be delivered.** If a customer does come into the bank to request the public file, then it can be printed at any of the bank's locations.

Effective Date and Compliance Date

CBAI acknowledges that effective and compliance dates will need to be incorporated in a Final Rule. CBAI urges caution in setting too short of a period for implementation for community banks especially in light of the added challenges they face in dealing with the many and continuing disruptions caused by the COVID-19 pandemic. **CBAI urges the Board to set reasonable compliance timelines and incorporate sufficient flexibility in the Final Rule to extend the timelines if the original ones prove not to be practical and reasonable for community banks.**

Federal Reserve Board
February 16, 2021
Page 21

Summary and Conclusion

CBAI strongly encourages the Board to consider these observations and recommendations, and to proceed, even at this late date, in joint CRA rulemaking with the other Agencies. This is a historic opportunity to modernize the CRA in a manner that makes it relevant and properly focused without increasing the regulatory burden on community banks. It has been proven time and time again that community reinvestment is what community banks do best. Fairly and honestly serving their customers and communities is their mission and is paramount to their ability to survive and thrive. The first goal of Agencies should be to do no harm to community banks while modernizing a clearly outdated CRA that should include all financial service providers in its compliance requirements.

Thank you for considering our observations and recommendations on the modernization of the CRA. If you have any questions or require any additional information, please contact me at davids@cbai.com or (847) 909-8341.

Sincerely,

/s/

David G. Schroeder
Senior Vice President
Federal Governmental Relations