NEW JERSEY
COMMUNITY
CAPITAL

VIA ELECTRONIC MAIL at **regs.comments@federalreserve.gov.**

RE: **Docket Number R-1723 and RIN Number 7100-AF94**

Community Loan Fund of New Jersey (dba "New Jersey Community Capital) appreciates the opportunity to comment on **Docket Number R-1723 and RIN Number 7100-AF94,** the "Advanced Notice of Proposed Rulemaking (ANPR) on Reforming the Community Reinvestment Act Regulatory Framework".

The Federal Reserve Board (Fed) must strengthen the rigor of CRA exams in order to promote recovery from the COVID-19 pandemic. The Fed has described approaches in its Advance Notice of Proposed Rulemaking (ANPR) on CRA that will make CRA exams more objective and transparent. Yet, questions remain about whether the Fed's approach will reduce the high rate of CRA inflation. If nearly every bank continues to pass their CRA exams, banks will not engage in strenuous efforts to help communities of color and low- and moderate-income (LMI) neighborhoods recover from the pandemic's devastation.

COMMUNITY REINVESTMENT IN NJCC'S DNA

The mission of New Jersey Community Capital (NJCC) is to *create vibrant communities through strategic investments and knowledge.* Driven by equity and opportunity cultivation and building for low-income communities, our integrated 'toolkit' of products and services has resulted in serving as: (1) one of the nation's leaders of capital access and providers for high-impact community & economic development (CED) projects and practitioners; (2) one of the region's largest, nonprofit affordable housing development subsidiaries operating within a vertically-integrated structure; (3) the nation's largest nonprofit purchaser of distressed assets; and (4) CED capacity- and systems-builder for local nonprofit and municipal leaders. As a U.S. Treasury-certified Community Development Financial Institution (CDFI), NJCC has demonstrated an ability to create meaningful impact in underinvested areas, creating opportunity and promoting growth in high-poverty areas for more than three decades. With nearly $900MM in community investments and over $120MM in residential development – leveraging an estimated $2 billion in project financing and investments – NJCC is among the nation's leading state-level CDFIs responding to ever-escalating demand for our 'but for' lending, development and investment through innovation, thought leadership, and strategic collaboration. Our most recent annual report illustrates recent and cumulative impact - https://bit.ly/2RyAnYo.

Responding to Crisis. Sheer numbers only tell a part of the story. NJCC's growth and diversification has been most prominent and impactful in direct response to 'crisis' and serving as our State's most prominent 'financial first-responder'. To offer specific illustrations of our commitment to crisis & recovery response include:

In the immediate aftermath of the 'Great Recession'--our region's most oppressive 'economic' crisis with residual effects that live on today--NJCC formed the *ReStart Home Preservation Program,* a nationally recognized model currently operating in nine separate States. As our principal response to the oppressive foreclosure rates caused by the Great Recession, ReStart has purchased 2,730 non-performing mortgage loans to assist struggling homeowners and create affordable housing opportunities while reducing blight. To date, NJCC has helped over 1,500 families avoid foreclosure while providing nearly $100 million in total debt forgiveness. In addition, NJCC has repurposed hundreds more of the vacant homes as affordable for-sale and rental units. ReStart is driven by two critical, socially-driven factors. First, keeping financially-struggling families in their homes by partnering with local, HUD-certified housing counseling agencies that help families navigate the loan modification process. Second, repurposing abandoned properties as affordable homes that in large part are driven by community-advanced affordable housing strategies.

In response to SuperStorm Sandy--our region's most devastating 'natural' disaster with recurring housing and commercial losses impacting thousands of families and small businesses throughout New Jersey--NJCC launched *REBUILD New Jersey* to provide low-cost capital to businesses recovering from physical damages or business interruption as a result of Hurricane Sandy. REBUILD loans helped businesses reestablish themselves, preserve jobs, and play a meaningful role in the recovery of the communities to which they provide social and economic livelihood. To date, we deployed $4.2 million in 61 loans creating or preserving 305 jobs and 12,200 square feet of commercial space. Despite the substantial higher risk, NJCC has only needed to write off $55,000 (or 1.3%) of the loans deployed.

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Most recently and current--in response to the devastating effects of the ongoing pandemic--NJCC established the *Garden State Relief Fund (GSRF)* to rapidly deploy capital that meets the needs of small businesses experiencing severe revenue losses and nonprofit organizations having to scale back their services. After receiving over 620 applications requesting more than $34.5MM, NJCC has been able to close on 113 loans providing over $5.2MM in relief/recovery financing.

Values & Strategic Alignment. We could have never imagined having not only to combat the continued onslaught of the foreclosure crisis on New Jersey neighborhoods, but also the ravages of a global pandemic and an economic crisis graver than the Great Recession. We could also not have envisioned the national outcry for a long overdue reckoning for our nation's continued systems and structures of racism and racial injustice. Although we have always battled these realities finally brought to our collective consciousness, we realized we needed to be even more intentional, more effective and more creative. The health and social well-being of our most vulnerable communities and populations are under constant siege. Whether the inability to find and maintain a safe, healthy and affordable home; the lack of access to food, healthcare, childcare, and good quality jobs; or the dearth of financial, economic, and social opportunities, the current realities and challenges facing far too many individuals and families can seem daunting.

The work of fighting injustice has always been hard. Entrenched systems of inequity are as stubborn as they are oppressive. But the mission of community development financial institutions (CDFIs) like New Jersey Community Capital (NJCC) and the nonprofit sector is to fight structural racism, empower communities, and bring opportunity to individuals and families. We firmly believe that though our movement and sector may now be particularly strained, we must rely on each other, work together and harder, and innovate. We must continue to fill the gaps left by the private and public sectors. We must rally old and new partners to side with us in our critical work to bring justice and equity to underserved communities. *It is squarely within this context that we draft and submit our response here.*

CDFIS AND THE COMMUNITY REINVESTMENT ACT

Part of the 1977 Housing and Community Development Act, the CRA is a landmark civil rights accomplishment, rooted — along with the Voting Rights and Fair Housing Acts — in the Civil Rights Act of 1964. Together, these laws have taken us closer to being a nation that lives up to its stated founding principles of equality for all. Inspired by the civil rights movement, the very first CDFIs set out to prove that access to affordable, responsible credit can transform a community. There are now more than 1,100 CDFIs certified by the Department of Treasury's Community Development Financial Institutions (CDFI) Fund with more than $222 billion in total assets. CDFIs have demonstrated that when you remove access to credit as a systemic barrier, communities in decline can begin to come back, and even thrive. Today, CDFIs provide financing where it is needed most—marginalized people in every community in the United States, as well as persistently poor inner cities, the Delta, Appalachia, Indian Country, and in other struggling communities. Banks often partner with CDFIs to enter new markets that were previously ignored or "redlined." These communities have reaped benefits, not only from the growth in CRA-motivated capital, but also from the partnerships between banks and CDFIs. Both banks and CDFIs have realized that working in partnership can enhance both institutions' effectiveness in reaching underserved markets. The Community Reinvestment Act has played a key role in this effective collaboration, fostering millions of new homeowners, thriving businesses, and accountholders. Any reform should build on this successful record, not reverse or pull back.

From the context stated here, our response is organized into three sections here: (1) strengthening CRA as a direct correlation to racial equity and economic recovery and the most corresponding critical factors; (2) responses to specific ANPR questions; and (3) broader factors for Fed consideration.

STRENGTHENING CRA IS A CRITICAL COMPONENT OF A JUST RECOVERY

The National Community Reinvestment Coalition (NCRC) recently released a major report finding significant correlations between redlining and susceptibility to COVID. In the 1930s, the Home Owners Loan Corporation (HOLC) commissioned the production of maps that rated neighborhoods based on the risk of lending in them. Working class and minority neighborhoods usually received the riskiest designation of hazardous. The designations subsequently facilitated redlining and discrimination against these neighborhoods, which remain starved of credit and are predominantly lower-income and minority. These neighborhoods also have the highest incidence of health conditions such as asthma, diabetes, kidney disease and stroke, which make residents more susceptible to COVID-19. Life expectancy is almost four years lower in the redlined communities than the neighborhoods not designated as hazardous by HOLC.

Since the start of the pandemic, more than 440,000 African American businesses have been closed or 41% compared to just 17% of White-owned small businesses. Discrimination in lending contributes significantly to racial disparities in small business survival rates. A NCRC investigation found that African American testers applying for Paycheck Protection Program (PPP) loans for their small businesses during the pandemic were likely to receive less information or encouragement to apply than White testers. CRA must be strengthened considerably in order to combat discrimination and help our communities recover from the pandemic.

THE FEDERAL RESERVE PROPOSAL MUST BE STRENGTHENED TO PREVENT GRADE INFLATION. However, it is unclear if the Fed's ANPR proposals will address CRA ratings inflation. The Fed emphasizes improving the performance measures on CRA exams including those used on the lending test that compare a bank's percent of loans to LMI borrowers and communities to other lenders. However, the Fed proposes thresholds that appear to replicate the high ratings on CRA exams. The Fed does not describe in any detail the impact of its initial thresholds on CRA ratings and hints the thresholds replicate the current CRA ratings distribution.

Moreover, the Fed is proposing to reduce the number of ratings on a state level and on subtests from five to four. This proposal would result in fewer distinctions in performance whereas a new CRA exam system must reveal more distinctions in performance in order to motivate banks to be more responsive to COVID-19 recovery needs. Five ratings must be retained on the state level and on subtests.

THE FEDERAL RESERVE PROPOSAL SHOULD BE STRENGTHENED TO INCREASE LENDING TO PEOPLE OF COLOR. The Fed recognizes the importance of addressing racial inequities. It asks the public whether underserved areas should be designated based on high levels of poverty or low levels of retail lending. We support NCRC's designation of underserved census tracts based on low levels of lending which would effectively target neighborhoods redlined because of the HOLC classifications. We also ask the Fed to consider explicitly including race on CRA exams. The agencies have hesitated to do so but we believe that the CRA statute allows this since the law emphasizes banks meeting credit needs in all communities, but particularly underserved ones. CRA exams could include performance measures assessing lending, investing, branching and services to people of color and communities of color. In addition, CRA exams can include racial and ethnic demographic data in performance context analysis and require banks to affirmatively include communities of color in their assessment areas (geographical areas on CRA exams). The Fed could also provide CRA consideration for lending and investing in majority minority census tracts outside of assessment areas just as the Fed is considering for Indian reservations and other underserved areas.

ASSESSMENT AREAS MUST SUPPORT AND REFLECT A COMMITMENT TO LOCAL LENDING, INVESTMENTS AND SERVICES. We support the Fed's proposals to expand assessment areas on CRA exams. In addition to areas around branches, assessment areas must also include areas outside of branches with significant amounts of bank lending or deposit-taking. We do not support the idea of a national assessment area for internet banks that the Fed discusses. Instead, we believe that data analysis can designate areas where high numbers of retail loans or deposits are located.

We applaud the Fed proposal to eliminate distinctions between full-scope and limited-scope assessment areas. Full-scope assessment areas, which are usually the largest cities, count more on current CRA exams than limited-scope areas that generally are smaller cities and rural counties. Often, communities of color, Native American reservations and other underserved communities continue to receive less CRA-related loans and investments because they are in limited-scope areas.

CRA MODERNIZATION MUST MAINTAIN ITS FOCUS ON LOWER-INCOME COMMUNITIES AND COMMUNITIES OF COLOR. Unlike the Office of the Comptroller (OCC), the Fed generally does not stray away from the focus on LMI communities in its ANPR proposals. However, we do not support expanding financial education to any income since LMI consumers and people of color are most likely to be unbanked or underbanked as revealed by surveys conducted by the Federal Deposit Insurance Corporation (FDIC). The Fed can designate additional subgroups in the population such as people of color, people with disabilities or older adults for whom CRA credit for financial education or other community development activity can be earned instead of opening it up to everyone regardless of need. Likewise, the Fed should further develop its procedures for awarding CRA credit for financing affordable housing that is not subsidized so that such financing actually serves LMI tenants.

COLLECTING IMPROVED COMMUNITY DEVELOPMENT AND DEPOSIT DATA. Finally, the Fed should pursue its proposals to collect improved community development and deposit data. Community development and deposit data should be collected on a census tract level or at least on a county level so that CRA exams can better target community development financing to areas of need.

CRA MUST BE ENFORCED THROUGH A JOINT REGULATORY FRAMEWORK. Since the law's inception, bank regulators have enforced CRA through a joint regulatory framework. Under this proposal, there could be multiple regulatory regimes to enforce the same law. This might encourage regulatory arbitrage, with banks "flipping" their charters from one agency to another to find

the most advantageous regulations. NJCC strongly encourages the Federal Reserve, FDIC, and OCC to continue to enforce CRA through a shared regulatory framework. The Federal Reserve's ANPR is an important step but its impact will be limited if all three regulators are not working under the same rule. NJCC urges the bank regulators work together on commonsense reforms to the rule that will drive greater investment into marginalized communities. In general, NJCC is supportive of the direction of many aspects of the Federal Reserve's reform proposal but there is room for improvement.

COMMENTS ON THE ANPR

NJCC would like to provide the following comments on the ANPR:

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

NJCC agrees with the Board that "more effectively meet the needs of LMI communities and address inequities in credit access" is the core purpose of the CRA statute and must remain the focus of reform efforts. However, increasing lending, investing and services in communities of color and LMI communities should be listed as an explicit objective of the reform effort. One of the most important ways to determine the success of the efforts should be meaningful increases in bank lending, investing and services in LMI communities and communities of color. NJCC supports reforms to increase certainty and transparency for banks but not at the expense of community impact. The new evaluation framework must be meaningful enough to encourage additional investments in low-wealth communities. The Federal Reserve's proposal is a step in the right direction, but some aspects must be strengthened to encourage the investment needed to meet our nation's challenges.

Section II. 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? Question 2

NJCC appreciates the Board seeking feedback on this critical aspect of CRA. The law's history as civil rights legislation to address the impacts of racial discrimination in banking should not be downplayed. The CRA is rooted in addressing systemic inequity, and it is important that the Board's proposal focus on increasing lending and investment in communities of color. A focus on race is well within the statutory focus of CRA. There are explicit references to race in the legislation including allowing investments with Minority Depository Institutions (MDIs), women-owned financial institutions, or low-income credit unions in minority communities to count for CRA credit. The law also requires reporting to Congress comparing depository institutions' lending in "minority neighborhoods" as well as other distressed areas.

Further, as the National Association of Affordable Housing Lenders (NAAHL) notes, CRA's establishment of a "continuing and affirmative obligation" by banks to serve their entire communities implies more proactivity than just meeting a fair lending mandate not to discriminate. While CRA does examine service to low- and moderate-income (LMI) people and communities, "LMI" and "minority" are far from the same; most LMI people are White and many Black and Latinx people are not LMI. 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.

Efforts to truly address the racial wealth gap requires regulators to meaningfully assess how banks are meeting the financial needs of communities of color. The inclusion of race in the CRA evaluation should not be relegated to "extra credit" or optional as the current proposal largely has it structured. The proposed remedies of considering underserved areas on exams and encouraging more financing to minority depository institutions are insufficient to address systemic inequities. NJCC agrees with Hope Enterprise Corporation and the National Community Reinvestment Coalition (NCRC) that a bank should not be able to even reach a presumption of satisfactory without demonstrated accountability of lending to people and communities of color in its assessment areas.

To ensure capital is flowing to communities of color, at a minimum, lending to people and communities of color should be included in the quantitative evaluation for both the retail and community development financing subtests. On the retail lending subtest, performance measures could include the percent of loans to people of color and the percent of loans in communities of color. On the community development subtest, a performance measure could be the number and percent of community development loans and investments in communities of color. NJCC has additional recommendations throughout our comments for ways CRA can better address the capital needs in communities of color.

Section III - Assessment Areas and Defining Local Communities for CRA Evaluations. Questions 3-10. **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 ANPR considers whether small banks should be required to serve whole counties in their assessment areas due to branch or ATM locations, or whether they can "carve out" by census tract. NJCC does not support allowing small banks to exclude parts of counties where it has a does not have a physical presence and where it has de minimus lending or there is substantial competition. This could have a negative impact on larger rural counties where a bank might not have a physical presence but still conducts substantial business in the community. Market share should be considered when determining a bank's assessment areas – banks with significant market share that are taking deposits or making loans throughout a county should have CRA obligations throughout that county.

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?

NJCC recommends creating new assessment areas in addition to facility-based assessment areas for banks with significant activity outside of their assessment areas. These additional assessment areas should be based on a hybrid approach of where banks lend and take deposits from consumers. As NJCC noted in our comments to the OCC, "deposit-based" assessment areas, a reform is aimed at addressing how the banking industry has evolved to include banks with no or limited "bricks & mortar" presence, are unlikely to do enough to address the "CRA deserts" problem facing rural, Native and other low-wealth markets today.4 Communities with high concentrations of low-income residents are unlikely to generate the level of bank deposits to trigger the creation of a deposit-based assessment area. Similarly, low population communities are also likely to be missed.

NJCC agrees with NCRC that the delineation of deposit or lending-based assessment areas should apply to both internet banks and other large hybrid banks that engage in significant lending or deposit-taking outside of their physical footprint. Banks must have an obligation to serve LMI and communities of color in all the areas in which they engage in significant amount of business, not only in areas with their branches. If they are not held accountable for making loans, investments and services to underserved communities in areas beyond their branches, racial and income disparities in access to credit will widen.

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?

NJCC is concerned that a national assessment area for online banks might leave communities of color or severely economically distressed areas underserved. As NCRC notes, this would allow internet banks to cherry pick which areas to serve in their retail and community development activities. In other words, internet banks would gravitate towards serving those areas in which it is easiest to conduct CRA activities rather than areas most in needs of credit and capital. Using a hybrid deposit or lending based assessment area approach to create local assessment areas for internet banks is a better approach.

Section IV - Overview of Evaluation Framework. Questions 11-13. **Question 13. Is $750 million or $1 billion an appropriate asset threshold to distinguish between small and large retail banks? Or should this threshold be lower so that it is closer to the current small bank threshold of $326 million? Should the regulation contain an automatic mechanism for allowing that threshold to adjust with aggregate national inflation over time?**

NJCC strongly opposes the ANPR's proposal to increase the threshold for small banks from those under $326 million in assets to either $750 million or $1 billion. The increase in small bank threshold could exempt many more banks from a community development test, which could impact community development investment in CDFIs and rural areas. Rural areas are more likely to be served by small banks, and already receive less community development investment than urban areas. As NJCC's sister CDFI HOPE Enterprise Corporation notes, the Fed's justification making some of these changes is lack of capacity for community development in rural areas – yet the proposed solution is to reduce community development requirements in these communities. The Fed should be moving to strengthen, not exempt, banks' meaningful investments in rural communities, particularly communities of color and persistent poverty communities. While New Jersey is largely a high-dense, urbanized State, we do have distinct rural portions located in the northwest and southern region of the State who are largely disinvested.

Section V - Retail Test. Questions 14-32. **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?**

Bank retail lending should be reported separately for low-income and moderate-income categories. This will allow full analysis of a bank's lending in low income communities and help determine if banks are focusing on serving moderate income households while leaving low-income households underserved and underbanked.

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

The presumption of "satisfactory" approach is reasonable if the performance measures and thresholds are high enough to be meaningful and encourage additional investment and lending.

Section VI – Retail Test Qualifying Activities. Questions 33-41. **Question 35. 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?**

Consumer lending should be evaluated routinely on CRA exams if the lending exceeds the thresholds for a major product category.

Question 36. 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?

When evaluating a bank's consumer lending for CRA purposes, the quality of the consumer product is extremely relevant. High-cost credit card, car and student loans which may be detrimental to the financial health of the borrower should not receive CRA credit.

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?

Yes, the Board should continue to define small business and small farm loans based on Call Report definitions of $1 million or less. This is aligned with the well documented need for smaller dollar lending for business owners. The Federal Reserve's 2021 Small Business Credit Survey found that 90 percent of business owners seeking capital sought financing of less than $1 million, with 48 percent seeking less than $100,000 in financing. This is especially the case while we remain in pandemic crisis mode and to effectively pivot to recovery mode. Of the 113 loans closed within our aforementioned Garden State Relief Fund, the average loan size has only been $46,000. This is further pronounced among Black- and Brown-owned enterprises who largely overlooked by the PPP program.

NJCC also urges the Board to coordinate with other federal data collection requirements. CDFIs currently report to numerous federal agencies on their small business lending activity including the Small Business Administration (SBA) and CDFI Fund. The implementation of Dodd-Frank Section 1071 will also require reporting on small business lending to the Consumer Financial Protection Bureau. Section 1071 data will create a public database with data on race, gender and other demographics of small business applicants for credit that may be comprehensive enough to replace the small business data collection required by bank regulators for CRA, as well as at SBA and CDFI Fund. Since Section 1071 requires more detailed reporting than the CRA regulation in addition to the data elements that CRA now requires, Section 1071 data could become the data source that CRA exams use in the future. Banks and CDFIs would find it more efficient to submit data in one format as Section 1071 data than to have one or possibly two more annual data submission requirements.

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

As NCRC notes, current CRA exams rarely discuss whether banks are purchasing loans from CDFIs that are particularly responsive to local needs. Examiners should review purchased loans separately from loan originations on CRA exams to determine the

concentration of bank activity in loan purchases. This method of examination would allow banks to offer greater detail on their loan purchases. Activities that provide liquidity to CDFIs or other mission lenders could be considered particularly responsive or impactful and receive additional consideration.

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)?

Yes. The CDFI Fund's 2016 report "Access to Capital and Credit in Native Communities" stated "the Community Reinvestment Act of 1977 (CRA) is intended to encourage depository institutions to help meet the credit needs of the communities in which they operate, including low- and moderate-income neighborhoods, consistent with safe and sound operations…Nonetheless, it is possible for banks to satisfy their requirements under the CRA without working with a Native Community located on Native lands (communities which otherwise meet CRA criteria). The CRA was not intended to exclude Native Communities living on tribal lands, but in practice it often does. Addressing the centuries of disinvestment and discrimination in Native communities requires focused efforts to drive capital into Indian Country. CRA has been an underutilized tool and NJCC encourages the Board to redouble efforts to support lending and investment in Native communities, regardless of whether these activities occur in a bank's assessment area. Activities undertaken with Native CDFIs should be considered especially impactful and responsive.

Section VII. Community Development Test. Questions 42-51. **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?**

NJCC supports evaluating all community development financing under one test. However, it is critical banks report and be evaluated on community development lending and investment activities separately to avoid banks shifting more activity into lending at the expense of critical community development investments that support activities like Low Income Housing Tax Credit and New Markets Tax Credits projects.

Question 43. 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?

Yes, this is the appropriate ratio to assess a bank's capacity to finance community development. Using this ratio would provide consistency and objectivity when measuring a bank's community development activities.

Question 44. For wholesale and limited purpose banks, is there an appropriate measure of financial capacity for these banks, as an alternative to using deposits?

NJCC recommends the Board continue to use assets to measure the capacity of wholesale and limited purpose banks to finance community development, as currently used on CRA exams.

Question 45. 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?

Yes. Using local and national benchmarks will provide important context for examiners to determine if a bank is engaging in adequate amount of financing while also taking into account local conditions that may impact community development like capacity constraints. NJCC also supports using different national benchmarks for metropolitan areas and one for rural areas since rural areas have average community development ratios that are lower than for urban ones. However, we caution not to allow the lower benchmarks in rural communities create a "race to the bottom", whereby banks aim only to achieve the same low levels of investment that has been the historical standard, especially in CRA deserts. Similarly, benchmarks may be very high in CRA hotspots but not reflective of the actual community development needs. The performance context will be key in determining the weight given to local benchmarks.

Question 46. How should thresholds for the community development financing metric be calibrated to local conditions? What additional analysis should the Board conduct to set thresholds for the community development financing metric using the local and national benchmarks? How should those thresholds be used in determining conclusions for the Community Development Financing Subtest?

As noted in the ANPR, there is currently little information on prior period community development loans, on financing activities in broader statewide and regional areas, or on activities in many smaller cities and rural areas. It is difficult to determine how to develop those thresholds without additional data and analysis. NJCC agrees with the Board that it is necessary at least initially to treat the thresholds as a general guideline to help evaluate a bank's community development financing metric until more data is available.

Question 47. 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?

NJCC supports the use of impact scores a part of the qualitative evaluation of a bank's community development activities. In particular, we support providing an impact score for each community development loan and investment individually, as some activities are far more impactful than others. Impact scores can be used to account for responsiveness, innovation and complexity. The proposal recommends a scale of one to three to measure impact but does not provide sufficient detail about which activities would qualify for a one, two, or three as an impact score. The Board should provide examples and more detail about the types of projects that would be considered at each level of impact.

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

No. Community development services are difficult to quantify but are important and should receive qualitative consideration on the community development test.

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?

No. Banks should only receive credit for volunteer activities directly related to the provision of financial services or that have a community development purpose. Community development services should be related to financial services or the regulatory definition of community development (including affordable housing and economic development). The Board is considering making an exception for rural areas and allowing activities such as volunteering in homeless shelters. While NJCC understands that opportunities for offering community development are limited in rural areas, NJCC agrees with NCRC's recommendation that the Board should use the current definition of community development services in rural areas to encourage banks to offer services such as financial education directly through its branch network if the area lacks a nonprofit organization or other established means of offering community development services. Examiners can use performance context to adjust for any specific local challenges to delivering community development services.

Section VIII. Community Development Test Qualifying Activities. Questions 52-72. **Question 56. 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 geographical proxy (such as whether the facility or activity is in a LMI census tract) is appropriate for determining whether a community facility such as a homeless shelter or a health care facility supports LMI communities. In addition, the current guidelines stipulating that 50% or more of the recipients of a federal or non-federal government program are LMI individuals is appropriate to determine if the community service benefits LMI people. NJCC also supports the Board's proposal to also use Pell Grants and federal disability programs to measure whether community services benefit LMI and underserved populations.

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

NJCC agrees with the Board that community development activities that support minority-owned, women-owned and other small businesses with revenues of less than $1 million should receive CRA credit. To encourage additional activity with the smallest businesses, the Board should remove requirements that the businesses create jobs for LMI people. Sole proprietorships make up more than three quarters of all small businesses – and businesses owned by people of color are more likely to be sole proprietors.

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

NJCC recommends the Board consult with other federal agencies, in particular the CDFI Fund, on documentation of job creation, retention or improvement. CDFI recipients of financial assistance from the CDFI Fund are required to document and report on job creation associated with their small business loans. The CDFI Fund's Transaction Level reporting provides guidance on how to calculate job-related data points – including permanent jobs, temporary jobs, and construction jobs.

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

Yes, definitely. The Board should also consider the impact of environmental racism on and provide additional consideration for activities that support communities of color at risk of severe impacts of climate change.

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

The proposed evaluation framework – providing qualitative consideration for moving from satisfactory presumption to outstanding rating - is insufficient to motivate investments into these institutions. Figuring out how best to incorporate support for MDIs, women-owned financial institutions and CDFIs as part of the structure of CRA exams and assessment areas would be a more rigorous and objective way to support these institutions and elevate their importance. NJCC recommends consideration of support for CDFIs and MDIs in the quantitative evaluation of banks in their assessment areas if activity occurs within the assessment area. Activities occurring outside of a bank's assessment area should be incorporated into institutional or state-level community development evaluations.

Question 65. 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?

Yes. MDIs, women-owned financial institutions, low-income credit unions and CDFI banks should receive CRA credit for investments in other MDIs, women-owned financial institutions, and low-income credit unions and CDFIs, especially those located in and/or serving communities of color.

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

NJCC agrees with NCRC's recommendation that the Board should highlight and disseminate best practices and innovative examples of support for MDIs, women-owned financial institutions, low-income credit unions and CDFIs. The Board should make publications and other tools available on its website and those of the Federal Reserve Banks.

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

NJCC strongly supports the Federal Reserve's proposal to allow automatic CRA credit for qualified activities in conjunction with certified CDFIs located anywhere in the country, even outside of the bank's assessment area. However, the current placement in the evaluation framework is not necessarily sufficient to motivate investment. Activities undertaken in conjunction with a CDFI

should count as part of the Community Development Test – not just receive qualitative consideration for moving from satisfactory presumption to outstanding rating. Similar to the recommendations for MDIs, investments into CDFIs must be meaningful to ensure they reach historically overlooked communities. Banks should get additional credit for working with CDFIs based in or serving designated areas of need and CDFIs serving communities of color, and for providing equity or equity equivalent products, particularly those investment products that are especially patient and low-cost.

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?

NJCC supports the Board's proposal that banks get CRA credit for community development activities in a newly created designation of Designated Areas of Need, without regard for a bank's assessment areas. However, the Fed must do more to ensure these investments reach the intended communities. The CRA credit provided for investments in "designated areas of need" must be given enough weight to incent investments and the designated areas of need must be correctly defined. More specifically:

- *Evaluation Framework* – The evaluation framework must create enough incentive for banks to conduct activities in areas of designated need. In addition, the evaluation must take into account both people and place – ensuring the investments actually reach low-income people and people of color living in these designated areas. Activities that are deeply targeted or highly impactful should receive additional consideration or higher impact scores.

- *Defining Areas of Designated Need* – While the list of criteria proposed is a good start, there are still concerns that the broad definitions will result in CRA activity will remain concentrated in more populous or urban areas, leaving rural and Native communities without investment. Reaching communities of color as an area of designated need must be a priority. The Board should also annually publish and update a list of designated areas of need and make public the criteria for adding and removing areas from the list.

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?

NJCC agrees that inconsistent decisions on the part of examiners and a lack of transparency can leave bankers and stakeholders guessing about what qualifies for CRA credit and how much credit an activity will receive. We appreciate the attempt to add more consistency to CRA rules by being clearer about what counts for CRA. The transparency embraced by providing and updating an illustrative list of CRA qualifying activities is welcome. A public list of CRA eligible activities provides clarity and certainty, helping banks make better investment decisions without waiting years after engaging in a transaction to find out if an activity qualifies for CRA credit. The list of CRA eligible activities can also provide additional guidance impact scores and how certain activities might be scored by examiners and encourage banks to engage in responsive and innovative activities.

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?

Both. The Board should provide guidance on broad categories of eligible activities but also, where possible, include examples of specific transactions within those categories. For example, the Board could pre-approve pandemic related small business lending activities as eligible for CRA credit, and then provide the specific example of banks providing lines of credit to CDFIs to make Paycheck Protection Program loans as an eligible community development activity.

Section X. Ratings. Questions 79-99. **Question 79. 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?**

Yes. A bank that underperforms across multiple assessment areas in the state should not be able to receive a high rating at the state or MSA level. The appropriate threshold (e.g. weak performance in 20 percent of assessment areas) should be determined based on local conditions and performance context.

Question 80. 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. Banks that consistently fail to improve performance on CRA exams should be downgraded.

Question 81. 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?

No. The "high" and "low" satisfactory threshold should remain in place. This is particularly important as 98 percent of banks currently score "Satisfactory" on their exams, yet clearly there is wide variance in their levels of activity and its effectiveness. These additional categories help differentiate bank performance.

Question 82. 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?

The proposal to assign a bank's overall rating on the Retail Test and Community Development Test by using a weighted average of each of the bank's assessment area-level conclusions is a good reform. NJCC strongly supports eliminating the designation of full- and limited-scope assessment areas in the evaluation process and agrees that a bank's overall rating should reflect its performance in all of its local communities. This change may also increase investments in rural communities that previously may have only received a limited scope exam. Examiners should still retain some flexibility to adjust weighting based on local market conditions and performance context, including evaluating the role a bank plays in a market. A bank may make only a small volume of loans in a particular assessment area as a portion of its total activity, but that lending could be the overwhelming source of financial services in that area.

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?

Community development and retail activities should be evenly weighted. While mortgages, consumer loans, small business and small farm loans are of critical importance, community development activities are also pivotal in addressing the credit needs of low and moderate income communities. Further, as nonbank mortgage and small business lending companies without CRA obligations continue to capture more market share from banks, it can limit market opportunity for banks in those sectors. Allowing equal weighting for retail and community development activities may spur additional investments in activities addressing workforce development, economic development, and affordable housing needs.

Question 86. For small banks, should community development and retail services activities augment only ''satisfactory'' performance, or should they augment performance at any level, and if at any level, should enhancement be limited to small institutions that serve primarily rural areas, or small banks with a few assessment areas or below a certain asset threshold?

Retail and community development services are important, but banks must also be focused on lending activities. Services activities should be able to augment satisfactory lending performance, but a bank that is not performing well in its lending should not be able to receive a satisfactory or outstanding rating based off services.

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?

Yes, as well as activities undertaken with CDFIs. A bank should not be considered for an outstanding rating without at least reaching satisfactory performance, regardless of the activities undertaken with MDIs, women-owned financial institutions, and low-income credit unions and CDFIs. However as noted earlier, NJCC recommends these activities receive quantitative consideration.

Question 89. 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''?

Yes, similar to the list of CRA qualifying activities, it would be helpful to have illustrative examples. However, it is important to clarify that the activities are examples and not the only activities that might qualify, and to live some flexibility for banks to develop partnerships that meet the needs of communities.

Section XI. Data Collection and Reporting. Question 91. 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 community development data available now is extremely limited, making it difficult to determine the appropriate metrics for the community development test benchmarks. The short term burden banks might experience in adjusting to new data collections is far outweighed by the public benefit of having more accurate community development data.

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

NJCC supports NCRC's recommendation that similar to HMDA and small business data, the community development lending and investment data must be submitted annually and publicly by banks on a census tract, county level, and assessment areas level. Banks should also have to provide more granular data on their community development activities. For example, banks are currently not required to report on the community development lending or investments undertaken in concert with a CDFI. This makes it difficult to track, measure and assess this activity. The community development data should also be reported separately for the major categories of community development including affordable housing, small business, community facilities, etc.

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?

NJCC recommends collecting loan and investment community development data at the census tract level.

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?

The existing CRA reporting system makes it difficult for the public to analyze CRA performance data and assess how well banks are meeting the needs of communities. CRA reports on an individual bank's performance are very complex and rarely timely, limiting their usefulness. NJCC supports providing greater public access to CRA data, exams and timely publication of bank evaluations in a user-friendly format, as well as the enhanced reporting on community development activities. The data collection and reporting would not be too burdensome for banks as many banks are already reporting some data for public welfare investments on a loan or investment level. Other large banks are also reporting aggregate community development lending, so loan or investment level data should be relatively accessible.

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?

Yes, these are the appropriate data points for evaluation of community development services. NJCC agrees with NCRC that a template would be valuable for collecting this information because CRA exams are currently inconsistent regarding which of these data points are included on exam tables. The community development purpose is critical because it would help an examiner use impact scores to evaluate the quality and responsiveness of the services.

BROADER FACTORS FOR FED CONSIDERATION

Recommendation: Include creative placemaking as a qualifying activity

According to the National Endowment for the Arts (NEA), "*in creative placemaking, partners from public, private, non-profit, and community sectors strategically shape the physical and social character of a neighborhood, town, city, or region around arts and cultural activities. Creative placemaking animates public and private spaces, rejuvenates structures and streetscapes, improves local business viability and public safety, and brings diverse people together to celebrate, inspire, and be inspired."* NEA further states that community development strategies that integrate arts and culture are better equipped to draw upon and support existing community assets, preserve and enhance the authentic character of place, and ensure equitable outcomes for local stakeholders. According to an article published in the San Francisco Federal Reserve by Laura Callanan and Ward Wolff, founder and senior associate of Upstart Co-Lab, "*The creative economy includes fashion, food, media, entertainment, design as well as the performing arts, the visual arts, and more. Investment opportunities include real estate projects supporting creative economy*

activity such as artist housing, studio and workspace, retail space, cultural institutions, and community cultural facilities." The arts sector, just like housing, education, and economic development, is vital to ensuring communities' health and stability.

At New Jersey Community Capital (NJCC), we believe that arts and culture are pivotal pillars of sustainable community development, helping to transform neighborhoods, create jobs, improve economic activity, and shape cultural identity. The creative community is a prominent driver of social and economic growth, relying on private sector and philanthropic investments to support creative placemaking activities. Artistic spaces bring value to New Jersey's communities by providing opportunities for education, social cohesion, and economic growth built on assets distinct to each neighborhood.

In 2015, with seed investment from the Kresge Foundation and other funders, we launched the *Creative Placemaking Fund* (CPF), a revolving loan fund to support the integration of arts and cultural activities into holistic revitalization efforts, with the goals of targeting localities with higher concentrations of poverty and stimulating place-based economic activity. In nearly six years, CPF has become a proven, replicable model for developing local, creative economies and revitalizing neighborhoods. With CPF as the primary vehicle, NJCC has been able to drive nearly $70 million in our own lending combined with private and public investments for 38 separate projects. This has resulted in generating nearly 500,000 square feet of new commercial space and generating/preserving over 1,600 jobs. Across the country, there are many example of CRA related creative placemaking projects that catalyzed economic development for low to moderate income communities.

In our experience, we have received reluctance from banks to support creative placemaking lending because of the lack of clarity if they qualify for CRA credits. However, we, along with Americans for the Arts and Upstart Co-lab, believe that these investments in the creative economy are allowable under current CRA regulations. Investments into creative placemaking should be listed explicitly as part of the "Expanded Qualifying activities" under CRA to ensure that it is clear to both banks and examiners.

CONCLUSION

Over the past 40 years, CRA has helped bring affordable housing, small businesses, jobs, and banking services to underserved communities. While greater clarity and consistency for banks and other stakeholders is valuable, reforms to the regulatory framework of the Community Reinvestment Act (CRA) must advance the primary purpose of the statute: *assuring that banks provide appropriate access to capital and credit to low- and moderate-income (LMI) people and places.* The economic impact of the COVID-19 pandemic further underscores the need for a CRA regulatory structure that encourages banks to do more to support low- and moderate-income communities, not less. We appreciate the direction the Fed has embarked in its ANPR but caution that it must not end up with a set of proposals that replicate existing CRA ratings inflation as this will not help our communities devastated by COVID-19. We believe that this proposal serves as an important starting point for an interagency rulemaking that will strengthen CRA and take a critical step towards more financially resilient communities and an equitable recovery.

Thank you for considering these recommendations.

Sincerely,

Wayne Meyer
President, New Jersey Community Capital

Enclosures: Literature Review

ENDNOTES – LIST OF REFERENCE SOURCES

The response provided herein utilized the following literature review for data, regulatory, and other relevant reference purposes:

- *CDFI Fund FY 2019 Annual Certification Report database.*
- *U.S. Code Title 12. BANKS AND BANKING Chapter 30. COMMUNITY REINVESTMENT*
- *OFN Comments to the FDIC and OCC on Proposed Changes to the Community Reinvestment Act, April 8, 2020*
- *Small Business Credit Survey: 2021 Report on Employer Firms", Federal Reserve Banks, Accessed February 7, 2021. https://www.fedsmallbusiness.org/survey/2021/report-on-employer-firms*
- *Native Nations Institute, "Access to Capital and Credit in Native Communities", Published 2015. Accessed February 6, 2021. http://nni.arizona.edu/application/files/6315/2822/4505/Accessing_Capital_and_Credit_in_Native_Communities.pdf*
- *CDFI Transactional Level Report Data Point Guidance September 2020, https://www.cdfifund.gov/sites/cdfi/files/documents/8.-cdfi-tlr-guidance-sept-2020.pdf*
- *Federal Financial Institutions Examination Council, "A Guide to CRA Data Collection and Reporting", Published 2015. Accessed October 30, 2018. https://www.ffiec.gov/cra/pdf/2015_cra_guide.pdf*
- *Federal Financial Institutions Examination Council, "Call Report Instructions Schedule RC-C, Part II. Loans to Small Businesses and Small Farms", Published June 2015. Accessed October 30, 2018. https://www.fdic.gov/regulations/resources/call/crinst/2015-06/615rc-c2_063015.pdf*
- *"2017 Small Business Credit Survey: Report on Employer Firms", Federal Reserve System, https://www.fedsmallbusiness.org/medialibrary/fedsmallbusiness/files/2018/sbcs-employer-firms-report.pdf*
- *Ann Markusen and Anne Gadwa, "Creative Placemaking", National Endowment For The Arts, 20010. Accessed November 14, 2018. https://www.arts.gov/sites/default/files/CreativePlacemaking-Paper.pdf*
- *Laura Callanan and Ward Wolff, "The Community Reinvestment Act and the Creative Economy", Open Source Solutions, 2018. Accessed November 19, 2018. https://www.frbsf.org/community-development/files/The-Community-Reinvestment-Act-and-the-Creative-Economy.pdf*