NAAHL | National Association of Affordable Housing Lenders

April 7, 2020

Chief Counsel's Office
Attention: Comment Processing
Office of the Comptroller of the Currency
400 7th Street, SW, Suite 3E-218
Washington, DC 20219

Robert E. Feldman, Executive Secretary
Attention: Comments RIN 3064-AF22
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

OCC Docket ID OCC-2018-0008

FDIC Docket ID RIN 3064-AF22

To Whom It May Concern:

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

Introduction

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

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

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

We applaud the Office of the Comptroller of the Currency (OCC) and Federal Deposit Insurance Corporation (FDIC) for publishing a Notice of Proposed Rulemaking (NPR). We share OCC/FDIC's (the Agencies') commitment to modernizing the CRA regulation.

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

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

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

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

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

Regretfully, however, we must oppose the proposed rating framework – centered on the CRA Evaluation Measure – because it: (1) will not fit all banks, communities or economic conditions; (2) subordinates the important and currently central roles of CD and retail lending distribution; and (3) adds substantial new administrative burden. Instead, we believe it will have unintended negative consequences for both communities and banks. We provide greater detail of our concerns and offer practical alternatives for the Agencies' consideration below.

We encourage the Agencies to work with all stakeholders to address these flaws before finalizing the rule. Banks and their community partners will rightly be pre-occupied with responding to the Covid-19 national emergency and its many economic and financial hardships. LMI people and communities are especially vulnerable to the emergency's severe health and economic consequences. Banks, CDFIs and other reinvestment partners are essential economic first responders both in minimizing the immediate financial harm to individuals and businesses and then supporting their recovery. We appreciate that the federal banking agencies have suspended action on other pending banking rules that are not urgently necessary to respond to the crisis. We therefore request that the Agencies postpone further work on finalizing and implementing a final rule until conditions stabilize.

Qualifying Activities Criteria

We greatly appreciate the Agencies' effort to clarify which activities qualify for CRA credit, especially for CD. The lack of adequate clarity has been a significant obstacle to CD. Addressing these uncertainties is a major reason NAAHL has supported additional policy guidance. Banks will provide more financing for activities they are confident will receive CRA credit.

In addition to discussing many of the activities eligible under the NPR, we also recommend retaining four CD activities that the Agencies would disqualify: home mortgages for middle-income borrowers in LMI neighborhoods, letters of credit, neighborhood stabilization and revitalization, and economic development.

More specific comments on a broad range of eligible activities follow.

- Home mortgages for middle-income borrowers (though not to high-income borrowers) in LMI geographies should continue to qualify for CRA credit. We strongly disagree with the Agencies' proposal to disqualify this activity because practitioners and researchers have long recognized that the presence of middle-income homeowners is important to the stability of LMI neighborhoods. In fact, the seminal modern analysis of urban poverty, *The Truly Disadvantaged,* by Harvard University's William Julius Wilson, identified the concentration of poverty and the loss of middle-income families as a fundamental source of inner-city distress.[1] The Agencies should not ignore decades of theory and practice. We believe that the Agencies' stated concern to avoid fostering gentrification and displacement actually applies to a relatively limited number of low-income neighborhoods, mostly in high-growth cities – for most neighborhoods, disinvestment remains the dominant challenge.[2] A more effective way for the Agencies to avoid encouraging gentrification and displacement would be to discredit any Opportunity Zone fund activity that does not primarily benefit LMI people, especially since the design of Opportunity Zone incentives favors gentrification.

- Multifamily housing loans to individuals should be classified as CD activities and not home mortgage loans. The mere fact that the borrower is an individual rather than a corporation, partnership or real estate investment trust does not change the substance of the activity. All multifamily housing loans should be treated consistently. We also note that Call Report Schedule RC-C does not appear to distinguish among multifamily housing loans based on borrower characteristics.

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[1] William Julius Wilson, *The Truly Disadvantaged: The Inner City, the Underclass, and Public Policy*, University of Chicago Press; Second edition (July 10, 2012)

[2] See *inter alia:* Michael Maciag, "Gentrification in America Report", Governing, January 31, 2015, https://www.governing.com/templates/gov_print_article?id=289584741; and Joe Cortwright, "CityLab: Everything You Think You Know About Gentrification Is Wrong," www.cityobservatory.org/citylab-everything-you-think-you-know-about-gentrification-is-wrong/, January 8, 2019;

- Small business/farm loan limits for borrower revenue and loan amounts should remain at their current $1 million levels. The Agencies propose to increase the loan size limit in LMI areas to $2 million and the business revenue and loan size limits elsewhere to $2 million. These increases are not justified, notwithstanding inflation since the $1 million limits were established, because the primary need for small business and farm credit remains the greatest below $1 million. One of our concerns with the CRA Evaluation Measure is that it strongly favors large loans over small loans; increasing the $1 million small business/farm loan and revenue limits would deepen this flaw. Moreover, raising these limits would be administratively burdensome. For example, it will be extremely difficult for banks to identify the revenue of businesses/farms that already have loans but were not identified as CRA-eligible when the loans were made. We also advise against regular inflation adjustments to these limits because banks would have to make costly and burdensome changes to their systems. In addition, there would be significant associated training issues in multiple lines of business each year, further complicated by unwieldy and immaterially small adjustments that result in very odd threshold amounts. Thus, annual adjustments would only lead to additional costs and confusion, clearly running counter to the stated objectives of CRA reform.

- Partial and primary LMI benefit for CD activities. In almost all cases, we support partial (pro-rata) CRA credit – but not full credit – for activities where LMI people and places receive the minority of benefit. In addition, we oppose any credit for activities where LMI people and places receive less than 20 percent of the benefit, since such little benefit is incidental and unsubstantial. The 20 percent threshold is standard for federal affordable housing policies, including Low Income Housing Tax Credits, tax-exempt multifamily housing bonds, and HUD's HOME Investment Partnership program. As such, virtually all CD activities from which LMI people or places receive 20-50 percent of the benefit should qualify for pro-rata credit.

  We are especially concerned about granting full CRA credit for infrastructure projects and projects supported by Opportunity Zone funds.

  - Infrastructure projects would get full credit under the NPR regardless of LMI benefit, provided they do not exclude LMI people and places. For example, an interstate highway or a road in Beverly Hills, CA would qualify for credit, presumably unless LMI people are explicitly prohibited from using them. This standard is *prima facie* inadequate and would divert resources away from genuine CD activities. We believe it would be practical to establish a rubric for allocating LMI benefit. For example, interstate highways should be excluded entirely, and local roads should be included based on the portion located in LMI or other targeted areas.

  - Opportunity Zone fund activities are especially dubious because the capital gains tax benefits are structured to favor activities that primarily benefit upper-income people or promote gentrification and the displacement of LMI people.

Investments likely to generate greater capital gains are those that appreciate in value the most. However, high rates of real property value appreciation depend on rapidly rising rents, which for housing undermines affordability and for commercial real estate generally assumes gentrification.

We would, however, support full CRA credit for:

- Rental housing undertaken in conjunction with an explicit government policy for LMI benefit, provided that LMI residents occupy at least 20 percent of the units. Many governmental affordable housing programs and policies expressly support or accommodate housing in which LMI people occupy at least 20 percent of the units. These policies include Low Income Housing Tax Credits, tax-exempt multifamily housing bonds, the HOME Investment Partnerships program, and various state and local governmental policies. The corresponding current policy (based on an examiner's determination after the fact that an activity was undertaken based on the express, bona fide intent, purpose, or mandate of CD) has proven unworkable. We note that examiners have applied the current standard inconsistently and arbitrarily, to the point where some affordable housing sponsors were compelled to devise costly and burdensome financial and property ownership structures in order to avoid adverse interpretation by examiners.

- Projects in Indian country. Median incomes in Indian country tend to be exceptionally low, so setting benefit standards as a percentage of median income will render most affordable housing financially infeasible. In addition, few high-income people reside in Indian country so the opportunity for abuse is negligible.

- Financial education. It would be impractical to require documentation of participants' incomes. Such a requirement could also be counterproductive if it discourages participation.

- Affordable rental housing. We applaud the Agencies for bringing much needed clarity to the eligibility of affordable rental housing based on the affordability of rents. The current policy standard based on likely LMI occupancy has proven unworkable for unsubsidized properties, which include 80 percent of all affordable rentals. The income of renters of unsubsidized housing cannot be readily documented, generally because lenders do not have access to this information or because specific residents cannot be identified while properties undergo construction or substantial rehabilitation. We especially appreciate the requirement that rent affordability applies to both current/initial rents and to future rents projected at the time of the loan or investment. This standard will protect against qualifying housing that, while currently or initially affordable, is expected to have unaffordable rents in the future, perhaps as a direct result of the financing.

We also support the NPR's inclusion of affordable housing: (1) partially or primarily benefiting LMI renters based on a governmental set-aside; (2) undertaken in conjunction with an explicit governmental policy to serve LMI residents; and (3) in high-cost areas that partially or primarily benefits middle-income renters as demonstrated by a governmental affordable housing set-aside or in conjunction with an explicit government affordable housing program for middle-income families or individuals in high-cost areas.

- Mortgage-backed securities (MBS). The final rule should carefully balance two legitimate needs: (1) for banks to use MBS to fulfill their minimum CD obligations in AAs where other opportunities may be constrained; and (2) to avoid crowding out other CD activities by excessive reliance on MBS. Accordingly, we propose that U.S. government supported MBS (i.e., MBS guaranteed by Fannie Mae, Freddie Mac, and Ginnie Mae) contribute no more than 20 percent of a bank's CD test activity at the institution level, with no limitation at the AA level and with no limitation with respect to the CRA Evaluation Measure. From a business management perspective, U.S. government supported MBS is highly attractive because it: (1) is plentiful (backed by trillions of dollars in LMI mortgages); (2) is globally liquid; (3 requires little or no risk-based capital support; (43) can be easily obtained at scale; and (5) requires no staff with CD expertise. Absent some reasonable limitation, MBS could easily crowd out other CD activities important to LMI people and places. At the same time, these other CD activities may not be readily available in every AA, including some rural areas and even urban areas with a high degree of competition among banks. We believe the answer is to provide full flexibility for U.S. government supported MBS at the AA level but limit MBS at the bank level to 20 percent of CD test activity.

- Essential infrastructure. As noted above, we oppose full CRA credit for infrastructure activities where LMI people and targeted places receive only partial or even incidental benefit. We do recognize the importance of infrastructure to needy communities, including distressed and underserved rural communities. However, the NPR's proposal represents a dangerous dilution of CRA's mission to serve LMI and other targeted places. Although the NPR would require some *de minimus* LMI benefit, this standard is both too vague and so loose as to encompass roads that LMI people may use, such as an interstate highway or Rodeo Drive in Beverly Hills where LMI store clerks may work. We disagree that documentation of LMI benefit is impractical. For example, a road or broadband that partially serves a LMI area could easily qualify for partial or primary benefit.

- Family farms. The NPR provides for counting support for many of the same farms under both a small farm lending distribution analysis and as a CD activity. In such a case, a $1 million limit on loan size and revenue should apply for both purposes. According to the USDA Farm Service Agency, 96 percent of all family farms in the U.S. have revenues under $1 million, so that limit would: (1) be broadly inclusive while still targeting support to the smaller farms that need it; (2) provide consistency with the current small farm limit under the retail loan distribution test, which we recommend retaining; and (3) not impose unnecessary, additional administrative burden on banks.

- Affiliate activities. Under the NPR, the Agencies would count activities that a bank substantively conducts but that are formally executed by an affiliate. However, in the many cases where an affiliate (not the bank) substantially conducts the activity, that activity would not be counted. We oppose this proposal and recommend retaining the current policy, under which a bank may elect to include affiliate activities provided that another affiliate has not already received CRA credit for the activity and the bank does not cherry-pick the loans to be included within the same loan category. There are often good business reasons why the affiliate may substantively conduct CRA-related loans, investments and services, sometimes at the bank's request. The Agencies should not exclude these activities from CRA consideration.

- Another bank's CD loan, CD investment, or CD service. The preamble discusses a large bank that finances a project identified by a community bank. The Agencies should clarify how CRA credit would be recognized in such case. Would the community bank get credit for a loan or investment it identifies but does not make and, if so, what would that consideration be, how would it be documented, and would both banks receive duplicative consideration for the same financing?

- Qualified Opportunity Funds that benefit LMI communities. As previously noted, the Opportunity Zone incentives strongly favor activities unlikely to substantially benefit LMI people, such as high-income housing, land speculation, downtown office buildings, and high-tech business relocations. Banks should not receive CRA credit for such activities. Opportunity Zones are unusual among CD policies in two respects: (1) unlike other targeted tax incentives, Opportunity Zones do not require any LMI benefit or even the reporting of expected or actual LMI benefit; and (2) the incentive amount depends on capital appreciation, which in turn favors areas undergoing the kind of rapid property value appreciation associated with gentrification and perhaps the displacement of LMI residents and small businesses. Accordingly, support for Qualified Opportunity Funds should be limited to activities that serve another identified CD purpose, such as affordable housing or neighborhood stabilization or revitalization.

- Capital investment, loan participation, or other ventures undertaken by a bank in conjunction with a minority depository institution, women's depository institution, CDFI, or low-income credit union that helps to meet the credit needs of the institution's or credit union's *local* communities. We generally support this approach but have two recommendations. First, the word "local" should be deleted because some CDFIs and perhaps other identified entities operate on a regional or national basis. Support for these regional or national entities deserves favorable consideration too. Second, the list of bank partners should be expanded to include nonprofit organizations that hold a charter from NeighborWorks America – which is federally chartered and whose board is governed by federal banking and other financial regulators. These mission-driven organizations undergo rigorous financial and management assessments prior to receiving their charters and on an ongoing basis thereafter. Furthermore, membership in the NeighborWorks network is only available to organizations that demonstrate a commitment to resident leadership, ensuring that the organization continues to represent the interests of the communities in which it works.

- Legally binding CD investment commitments. We support this provision and recommend that it be extended to include legally binding CD *loan* commitments too. In general, we believe that the eligibility of a CD activity should not depend on whether it takes the form of a loan or investment. Legally binding commitments to lend and invest are both valuable to CD.

- Letters of credit. The NPR would disallow consideration of letters of credit that support CD activities. We urge the Agencies to reconsider this provision. Letters of credit are an important element of affordable housing finance. For example, it is very common for banks to provide letters of credit that are essential to tax-exempt affordable housing bonds issued by HFAs. Letters of credit expose banks to the same credit risk as direct loans and should be treated as equally valuable to LMI people and communities. CRA policies should accommodate efficient market executions that minimize costs and maximize LMI benefits.

- Neighborhood stabilization and revitalization. Neighborhood stabilization and revitalization are among the most basic CD activities. We appreciate that activities consistent with bona fide government plans would specifically be eligible. However, we urge that the Agencies also recognize activities that support the provision of goods and services in LMI and other targeted areas. For example, grocery stores, pharmacies, and professional offices provide essential goods and services as well as jobs; however, they would be eligible under the NPR only if they meet the small business loan or revenue standards, receive public program support, or are deemed consistent with a government plan.

- Economic development. While retaining certain specific economic development activities, the NPR removes more general LMI job creation and retention activities because the Agencies cannot provide a workable definition other than providing "low wage jobs."[3] We urge the Agencies to reconsider this dismissive decision. The Brookings Institution has found that "53 million Americans between the ages of 18 to 64—accounting for 44% of all workers—qualify as 'low-wage.' Their median hourly wages are $10.22, and median annual earnings are about $18,000."[4] While it may be unfortunate

[3] *Federal Register*, Vol. 85, No. 6, January 9, 2020, p. 1213.

[4] Martha Ross and Nicole Bateman, "Low-Wage Work Is More Pervasive Than You Think, and There Aren't Enough 'Good Jobs' To Go Around", Brookings Institution blog, November 21, 2019,

that low-wage work is so widespread in the U.S., these jobs are critically important to LMI people and communities. Moreover, there is considerable room to include LMI jobs that pay substantially higher wages, based on 80 percent of the U.S. median household income of $61,937 in 2018.[5] In our members' experience, the current CRA policy has indeed proven workable and should be retained. However, if the Agencies so desire, it would not be hard to develop a clear and reasonable standard for LMI job creation based on median wages paid by a business, just as the Agencies have proposed a reasonable eligibility standard for affordable rental housing based on median rents.

- CD services and donations. Volunteer services and donations can be important elements of CRA, but they should be limited to supporting organizations with a primary CD purpose. That is not to say that CRA activities must be limited to financial matters. For example, helping nonprofit CD organizations to improve their use of technology or management skills are also valuable.

  In addition to donated services, CRA should recognize other services that banks provide to support CD activities. For example, some banks provide investment banking services, either directly or through an affiliate, such as underwriting bond issuances for CDFIs and HFAs. The value of these services far exceeds $36/hour.

- Distressed middle-income areas. We support extending the concept of distressed middle-income areas to metropolitan areas. Threshold distress determinations should apply at the city, town and county levels, not at the census tract level. If distress is established for a local jurisdiction, then activities in its middle-income census tracts would be eligible. Our recommendation aligns with the policy currently applicable to distressed middle-income nonmetropolitan areas, which determines distress at the county level and then applies to activities in middle-income census tracts within that county. Whether in a metropolitan or non-metropolitan area, the purpose should be to help middle-income census tracts located within local jurisdictions that are broadly suffering economic distress. For example, because cities such as Cleveland, Detroit, Gary and Flint have high overall poverty rates, even their middle-income neighborhoods tend to be fragile and in need of stabilization, even though these neighborhoods themselves may not have poverty rates as high as the citywide rates. Applying the distress designation at the census tract level would exclude these neighborhoods.

- Underserved middle-income areas. The concept of underserved middle-income areas should not be extended to metropolitan areas. The current policy for non-metropolitan

https://www.brookings.edu/blog/the-avenue/2019/11/21/low-wage-work-is-more-pervasive-than-you-think-and-there-arent-enough-good-jobs-to-go-around/

[5] Gloria Guzman, "U.S. Median Household Income Up in 2018 from 2017", U.S. Census Bureau, September 26, 2019, https://www.census.gov/library/stories/2019/09/us-median-household-income-up-in-2018-from-2017.html

areas, which we continue to support, is intended to reach isolated rural communities based on their small population size, low density, and distance from population centers. These concepts are generally not applicable within urban areas, though they should be extended to the rural portions of metropolitan areas, as defined by USDA. The Agencies propose to apply the concept based on the presence of bank branches. However, there are many middle-income suburban communities (and perhaps city neighborhoods) that lack a bank branch but are not underserved, economically fragile, and in need of stabilization to the point where special CRA designation is justified.

- Securities-based lending. Securities-based lending (i.e., where securities held at a bank-affiliated broker-dealer serve as collateral for a personal loan) should not be treated as consumer loans. Banks generally offer these loans as an accommodation to existing clients and not to the general public. LMI consumers are not an appropriate market for such loans because few LMI consumers maintain broker-dealer accounts.

Qualifying Activities Confirmation and Illustrative List

- Qualifying activities illustrative list. We support the Agencies' proposal to publish and regularly update an illustrative list of eligible activities, but this list should be updated annually, not at least every three years as proposed. Three years is too long to wait for such updates, especially since the Agencies will be responding to individual bank requests for qualifying activities confirmation on an ongoing basis. Waiting too long to update the illustrative list will cause some banks to miss helpful opportunities and other banks to request confirmation of the same qualifying activities, unnecessarily creating more work for Agencies' staff.

- Qualifying activities confirmation. We support the Agencies' proposal to confirm that an activity is eligible in response to a bank's request, but the activity should be treated as eligible if not rejected within 30 days, not the six months period proposed. Banks must have clarity on a timely basis so they can respond to loan or investment proposals.

Qualifying Activities Quantification

- Primary Benefit. We oppose recognizing primary benefit (and thereby awarding full CRA credit) for activities where LMI people and places receive the minority of benefit if the express, bona fide intent, purpose, or mandate of the activity is CD. This concept appears to come from current policy, where it is typically associated with affordable rental housing undertaken with governmental support. As noted earlier, examiners have applied the current policy inconsistently and arbitrarily. However, since governmentally supported affordable rental housing separately qualifies for primary benefit, extending the concept to purely private activities would be confusing and prone to abuse.

- Loans originated and sold. The NPR establishes a CRA Evaluation Measure based on the number of months a loan is held on a bank's balance sheet. A retail loan that is originated and sold within 90 days is treated as if it were on the balance sheet for 90 days. However, this approach is seriously flawed and will have adverse unintended consequences for consumers, communities, and banks.

The primary business execution for home mortgages (as well as a common and growing practice for multifamily rental housing mortgages) is for the originating lender to sell the loan into the secondary market, typically through Fannie Mae, Freddie Mac, or Ginnie Mae. (A similar practice also applies to SBA Section 7(a) guaranteed small business loans, although not through the same intermediaries.) This execution is advantageous to originators because it: (1) provides liquidity to lenders so they can use the proceeds from the loan sale to make additional loans; (2) transfers credit risk; (3) transfers interest-rate risk; and (4) releases capital reserve requirements. It is advantageous to consumers and communities because it: (1) enables long-term, fixed-rate mortgage structures that borrowers strongly prefer; (2) reduces interest rates, thereby reducing monthly payments; and (3) enables LMI people and communities to participate in and benefit from the American mainstream financial system. The deep and globally liquid secondary mortgage market includes trillions of dollars in LMI mortgages within MBS guaranteed by Fannie Mae, Freddie Mac, and Ginnie Mae.

Since the expected life of a 30-year home mortgage loan is seven to eight years – or about 90 months – a bank would have to originate and sell about 30 home mortgages to get the same CRA credit as for holding a single home mortgage it originates for its expected life. This perverse reward structure pits maximizing CRA credit against the shared interests of banks, borrowers, and communities in accessing the secondary market. In our discussion of performance measurement below, we offer an alternative approach that addresses this serious problem. In short, we argue that the CRA Evaluation Measure should consider originations of retail loans rather than monthly balance sheet amounts.

- <u>Legally binding CD investment commitments</u>. The NPR would value legally binding commitments to invest based on their average month-end amount. In our discussion of performance measurement below, we recommend that CD investment commitments – and CD loan commitments as well – should be counted when and in the amount made.

- <u>Legally binding CD loan commitments</u>. The NPR would value legally binding CD loan commitments based on the allowance for credit losses – far less than for CD investment commitments. We recommend that commitments to lend and invest should be valued the same way – i.e., when and in the amount made. Valuation should not differ based on the form of financing that is committed.

- <u>CD services and donations</u>. The NPR's proposal to value volunteer CD services based on a uniform wage rate, such as $36, or more detailed Bureau of Labor Statistics wage rates based on job categories. A uniform rate would be much easier to implement, but an hourly rate of $36 is far too low to be meaningful. It would take 55,000 hours of volunteer activity to generate the same credit as a $1 million loan that is repaid after two years. At this rate, CRA will motivate few if any banks to provide volunteer services. The Agencies should consider applying a high multiplier and/or make the tracking and reporting of CRA-qualified volunteer services optional because the small CRA credit will not justify the administrative burden.

Similarly, cash and in-kind donations to nonprofit CD organizations are far more important than their size indicates. Because most banks have limited donation budgets, it is imperative that the Agencies apply a high multiplier – such as 10 times – otherwise, CRA recognition for grants and in-kind donations will be virtually negligible. As we discuss in the performance measurement section, a fully rated CD test that integrally reflects the substance and impact of activities such as volunteer activities, grants and in-kind donations – and not just their dollar value – would help to address this concern.

Qualifying Activities Valuation

- <u>Multipliers</u>. The Agencies propose to apply a multiplier of two for activities supporting affordable housing, CDFIs, and investments except for MBS and municipal bonds. We agree that these activities merit additional consideration. We do not oppose multipliers in principle, but we are concerned that they will be ineffective or counter-productive in the context of a pass-fail CD test. Instead of stimulating targeted activity, banks might diminish these activities either because: (1) it will be easier to meet their CD requirement through MBS, infrastructure or less impactful CD activities that are larger or easier to execute or may consume less capital; or (2) the multiplier reduces the overall amount of CD activity needed to reach the 2 percent target. To encourage banks to exceed a CD minimum amount, in the performance measurement section below we propose a fully rated CD test that would expressly reflect qualitative factors, such as responsiveness to community needs, in addition to dollar volume. Finally, the Agencies should explain the analysis they used to choose a multiplier factor of two instead of another number.

  We also recommend a multiplier for activities that primarily benefit people and places that are low-income (as distinguished from moderate-income). It is significantly harder for banks to reach low-income people and places than those of moderate-income, and such activities tend to be smaller. As such, a CRA Evaluation Measure driven by dollar amounts will diminish attention to low-income people and places.

Assessment Areas (AAs)

- <u>Facility-based AAs</u>. We support the retention of facility-based AAs as well as the boundaries proposed in the NPR. We especially support a bank's option to designate a non-metropolitan statewide AA, for several reasons. First, such AAs will increase attention to rural communities by aggregating their deposit bases. Second, in many cases a smaller rural AA, such as a county, will not generate significant opportunities for CD activities every year, unfairly causing banks to fail their 2 percent CD test. Third, in a small rural AA some banks pass over large CD activities as excessive for what a bank needs in that AA. Fourth, reducing the number of small AAs will greatly streamline the examination process. We appreciate that the OCC has recently examined non-metropolitan AAs on an aggregated statewide basis. We hope that approach becomes the norm.

- Deposit-based AAs. We appreciate that facility-based AAs will inadequately capture the activity of banks that operate predominately outside their branch footprints or have no branches at all. However, we oppose the establishment of deposit-based AAs for these banks and instead propose an alternative that more accurately and completely reflects their business model. (For convenience, we call these "internet" banks even though some may have one or a few branches.)

    - The deposit-based AA concept misconstrues internet banks as a string of local community banks instead of as nationwide banks that draw deposits and provide services without regard to local markets or local physical presence. This old paradigm is just as misguided as conceiving of Netflix as a series of local Blockbuster Video stores or Amazon.com as a series of local brick-and-mortar retailers. Trying to fit internet banks into a traditional branch-based bank framework will not succeed.

    - Because internet banks have no local presence, it will be very hard for them to have specific and multifaceted responsibilities within specific markets. This is not to suggest that internet banks should not be expected to meet their full, fair share of responsibility under CRA. Rather, internet banks that operate nationwide should have nationwide responsibilities that are evaluated on a nationwide basis.

    - Rather than encouraging internet banks to reach into underserved markets, including rural areas, deposit-based AAs are most likely to be the most populous markets for the simple reason that areas with the most people are likely to generate the most deposits. The most common deposit-based AAs would be California, New York (city and state), Florida, Texas, Illinois, and Los Angeles. These are the same markets where large concentrations of banks with CRA responsibilities already exist.

    - While activities in a few deposit-based AAs would get more scrutiny, they would not cover most of an internet bank's overall deposit activity, which occurs across the many more markets that generate less than 5 percent of a bank's deposits.

Instead, we propose a different way to evaluate internet banks, which might be defined as those deriving less than 20 percent of their deposits from facility-based AAs. (In practice, most of these banks obtain a far smaller share of their deposits from facility-based AAs.) Our approach would treat internet banks as essentially nationwide institutions, fully accountable without establishing deposit-based AAs. It would be simpler and more flexible than deposit-based AAs. Under our alternative:

- Retail loan distribution would be compared with national distribution benchmarks. For example, if LMI households receive 20 percent of all home mortgages made by banks nationwide, an internet bank would be compared against that benchmark. If a mortgage is LMI in its local market, it would count as such for this purpose. Although median incomes and the LMI share of mortgages will vary across markets, national benchmarks should work well because the preponderance of an internet bank's activity occurs outside its facility-based AA. This approach would treat internet banks differently from more traditional banks, which would have a retail distribution test only for their facility-based AAs but not at the bank level. However, as discussed in greater detail below, any retail lending distribution test should include both "originated and purchased loans," as is currently the case under the "lending test".[6]

- CD activity outside an internet bank's facility-based AA would be considered on a nationwide basis. In this regard, internet banks would be treated the same as other banks under the NPR, since in either case CD activity nationwide would be measured at the bank level (assuming the bank performs satisfactorily in most of its AAs and in AAs where a bank receives most of its deposits).

- <u>Use of depositors' physical address to determine deposit location</u>. We support this proposal. It should cool certain CRA hot spots and set a more accurate benchmark for evaluating AA performance.

- <u>Activities outside AAs would count for evaluation of bank-level performance</u>. We support this proposal. It will encourage and reward banks that serve LMI people and places nationwide, including underserved markets. It will also reduce administrative burdens, not just for banks but also for their partners.

- <u>Broader statewide and regional areas (BSRAs) for CD activities</u>. We support retaining BSRAs (with modifications provided below) because they give banks more flexibility to address regional needs. Although we also support counting CD activity outside AAs at the bank level, for very large banks the bank-level deposit totals are so large that it is difficult for CD activity outside the AAs to affect a rating. Because AAs are smaller, BSRAs provide a more powerful incentive. In addition, if deposit-based AAs are implemented, some may be in a single city or county where CD requirements would be hard to achieve unless activities within the BSRA can be included. To improve the effectiveness of BSRAs, the Agencies should provide that:

[6] See 12 CFR 25.22(a)(2) and 12 CFR 345.22(a)(2).

- BSRA boundaries should follow the U.S. Census regional definition[7] plus any state adjacent to a state that includes an AA. Lack of clear BSRA boundaries has chilled the use of BSRAs.

- Use of BSRAs should be available only to banks whose most recent published rating was satisfactory or outstanding. The current policy creates confusion because it recognizes BSRAs only if a bank is adequately responsive to its AA's needs, but that is determination is unhelpfully made during an examination years after financing decisions must be made.
- If more than one AA is located within a BSRA, credit for an activity should be assigned: (1) based on the activity's location within an AA or (2) otherwise, among AAs based on their relative share of the bank's deposits.

Performance Measurement

As its name indicates, the CRA Evaluation Measure (CRA-EM) is the predominate basis for a bank's presumptive CRA rating. It is a ratio in which: (1) the numerator is the annual dollar volume of a bank's total CRA qualified activity on the bank's balance sheet; and (2) the denominator is the bank's domestic retail deposits with certain adjustments. This CRA-EM may be enhanced up to one percentage point based on the share of a bank's branches in LMI census tracts. The CRA-EM is applied at both the AA and bank levels. The CRA-EM is the only test that is fully rated (i.e., from outstanding to substantially noncompliant). In addition, a bank must also meet minimum thresholds on a pass-fail basis for retail lending distribution (AA-level only) and CD activity (both AA- and bank-level). A bank must have a satisfactory or outstanding rating in most of its AAs and in AAs generating most of the bank's deposits to achieve the corresponding rating at the bank level. Finally, the bank-level rating may be adjusted downward based on certain discriminatory or other illegal practices and a bank's performance context may affect a rating. The same performance measurements and thresholds apply to all but the smallest banks (unless they opt in).

Regrettably, we must oppose this structure, particularly because it rests so heavily on the CRA-EM. The Agencies acknowledge that most respondents to OCC's advance notice of proposed rulemaking also opposed an earlier but substantially similar CRA-EM. Accordingly, we urge the Agencies to work with all stakeholders to address widely held concerns before publishing a final rule. If the Agencies persist in pursuing the CRA-EM, we propose constructive changes that can mitigate its shortcomings.

- The CRA-EM is flawed. The CRA-EM is too flawed to be the predominate basis for a rating for several reasons:

    - One size will not fit all banks, communities, phases of the economic cycle, or structural changes in the U.S. financial system.

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[7] https://www2.census.gov/geo/pdfs/maps-data/maps/reference/us_regdiv.pdf

    - Banks have very different business models and sizes. A $1 billion community bank, a $1 trillion multiregional bank, an internet bank, a wholesale bank and a limited purpose bank are too fundamentally different for the same yardstick. Even banks of similar size, location, product mix and lending activity would fare very differently if one bank retains mortgages on its balance sheet and another sells the mortgages it makes on the secondary market.

    - Similarly, local communities vary so greatly in size, character, condition, and needs that an aggregate dollar volume measure cannot capture a bank's responsiveness. CRA is more than just a numbers game for LMI communities; it is their economic lifeblood. The CRA-EM's indifference to the specific needs of local communities would defy the purpose of CRA.

    - Lending and investing opportunities rise and fall substantially with economic conditions. For example, LMI mortgage originations were about three times higher in 2005 than in 2011.[8] The same CRA-EM ratio could reflect poor performance in 2005 and excellent performance in 2011. In addition, in economic downturns it is common for investors to shift more of their holdings into bank deposits, thereby increasing the CRA-EM's denominator and making it harder to maintain a satisfactory or outstanding ratio. For communities, a CRA-EM would provide banks little motivation to lend in good times when more borrowers are most creditworthy and would push lenders to make risky loans in bad times. We are already seeing significant economic dislocation from the current Covid-19 crisis.

    - Home mortgage and small business lending have been shifting from banks to other lenders. Other lenders now originate most home mortgages and are increasing their share of small business lending. Fixed performance thresholds do not reflect this secular or long-term structural change, especially since banks have different product mixes.

- Balance sheet only. The CRA-EM represents a fundamental shift away from CRA's core purpose of encouraging banks to make loans and investments in favor of measuring the stock of loans and investments a bank holds on its balance sheet.

    - This change provides perverse incentives with adverse consequences for LMI people and communities. Since a bank would have to originate and immediately sell about 30 home mortgages to get the same CRA credit as

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[8] Lael Brainard, "Strengthening the Community Reinvestment Act by
Staying True to Its Core Purpose", Federal Reserve Board of Governors, January 8, 2020, Figure 5.

for holding a single home mortgage for its expected duration,[9] the obvious incentive is for banks to forego the origination of mortgages in favor of retaining the loan (or, alternatively, purchasing and holding MBS). Originating home mortgages is already far more costly than buying MBS, an imbalance for which CRA policy should provide some counterweight. More broadly, once a bank attains its targeted amount of balance sheet holdings, it can reduce its new lending and investment activity to what is needed to replace run-off. The result will be less new access to new capital for LMI people and places.

- The Agencies justify the CRA-EM's sole focus on balance sheet assets because it "would help to eliminate the apparent inflation of the level of a bank's CRA activity that results from banks purchasing loans or investments just prior to a CRA evaluation and then selling those loans and investments when the evaluation is complete."[10] However, this objective can be easily accomplished through simple and far less drastic changes. For example: (1) full CRA credit could be awarded for originating any qualified loan or investment or for purchasing it from an unrelated originator, as under current CRA policy; and (2) prior period CD loans and investments should be credited consistent with current policy for investments.

- Building and maintaining complex new systems to identify which retail loan assets will qualify for CRA credit and tracking them on a monthly basis will add substantial administrative disruption and cost, as well as ongoing burden for banks. Banks will have to make numerous additions and changes to multiple core systems and processes. For a major bank, each line of the call report has numerous – sometimes dozens – of general ledger accounts across several systems that feed into it. As new general ledger accounts are added, the CRA requirements will have to be identified and addressed. Moreover, instead of the current practice of documenting a loan origination once, it will be necessary under the NPR to track balance sheet activities every month, often for several years, with geometric increases in data integrity burden and cost. As just one example, even assuming that an activity in an LMI census tract will continue to qualify even if the tract subsequently loses its LMI status or the tract's boundaries change, calibrating data systems to account for

[9] As noted earlier, a typical home mortgage has a life of seven to eight years (i.e., about 90 months), generating about 30 times as much CRA credit as the three months credit the NPR would provide for originating and selling a mortgage into the secondary market.

[10] *Federal Register*, Vol. 85, No. 6, January 9, 2020, p. 1213.

these changes will be difficult and subject to error. Continuing to use existing data reporting for retail lending would avoid these problems.

- Although the retail lending distribution test will track the originations by loan count (vs. dollar volume), that test is pass-fail (vs. fully rated) so it provides little incentive for banks to exceed minimum thresholds. Moreover, because a bank can pass the test by lending at only 65 percent of its peers' performance, the pass-fail structure invites a race to the bottom, with ominous consequences for LMI people and communities.

- No clear basis for thresholds. The Agencies have not provided clear justification for setting initial performance thresholds (i.e., 11 percent for outstanding, 6 percent for satisfactory, and 3 percent for needs-to-improve). In fact, the Agencies requested information on banks' current balance sheet activity only after publishing the NPR and it is not clear whether enough banks of various types were able to provide enough data to form a solid basis for these thresholds. As such, we cannot assess their appropriateness. However, it is fair to expect that any fixed performance threshold will be too high in some circumstances and too low in others. Although the Agencies could adjust the initial performance benchmarks by as much as 50-100 percent over time, it would be impractical to make all the adjustments needed to capture all dimensions of variability. Moreover, such adjustments would undermine the objectives of predictability, transparency and fairness.

- Small activities discouraged. The focus on dollar volume strongly discourages small loans and investments. The fastest and easiest way for a rational bank to meet its CRA-EM targets will be to make the largest loans and investments possible. However, this incentive structure disadvantages the many LMI families who need low-balance home mortgages, the many small businesses and farms that need low-balance loans, and the communities where the size of a CD loan or investment may not reflect its significance. Rural communities and metropolitan markets with low housing prices would be especially disadvantaged. Obtaining smaller loans and investments is a serious and chronic challenge for communities because making them is inherently less profitable for banks. CRA policy should offset this disincentive, not exacerbate it. In contrast, current CRA policy recognizes this concern by focusing on the number of loans, not the volume of loans, and by differentiating among small business loans based on their size.

- An Alternative Rating Structure. If the Agencies are nevertheless committed to pursuing the CRA-EM, we propose changes to the overall rating structure to minimize its flaws. Three fully rated tests should contribute to a bank's CRA rating at both the AA and bank levels: (1) the CRA-EM; (2) retail lending distribution; and (3) CD.

- <u>Each test would have five rating levels</u>: outstanding, high satisfactory, low satisfactory, needs to improve, and substantial noncompliance. Fully rated tests for retail lending distribution and CD would provide incentives for more than minimally acceptable performance. They would also discourage a race to the bottom for retail lending, where each bank must perform at only 65 percent of the level of its peers, gradually pulling down industry-wide performance. We urge the Agencies to include both a high satisfactory and low satisfactory rating because it is important to differentiate among the 75-80 percent of all current ratings that are satisfactory. For a bank's final rating, we recognize that the statute does not permit distinguishing between high and low satisfactory performance.

- <u>Excellent performance on one test should compensate for weak performance on another test, as well as within the retail lending distribution test</u>. Here again, banks should be motivated to perform as well as possible on each test. The NPR would create counterproductive and unnecessary cliff effects at both the AA and bank levels by requiring banks to pass each of several measures. This inflexible requirement will be especially challenging at the AA level because conditions, opportunities and circumstances vary so greatly among AAs while performance thresholds would remain constant everywhere. For example, a bank that finances auto loans for a luxury car dealership would likely fail CRA in an AA entirely because LMI people buy few luxury cars. With that understanding, that bank might rationally give up trying to make other LMI retail or CD loans in an AA where it cannot hope to achieve a satisfactory rating.

- <u>CD test</u>. The CD test should fully incorporate such factors as performance context, responsiveness to local needs, innovativeness, complexity and leadership. We generally support reducing subjectivity in the CRA exam process where practical, and we believe that defining the *eligibility* of CD activities more clearly is the critical avenue for improvement; it would be a mistake to over-simplify how the *significance* of eligible activities is assessed. It may be possible to quantify some of these elements – for example, a transaction with more than three or four sources of financing might be deemed "complex" – but some judgment should remain integral to evaluating CD properly. We strongly affirm the need for longer-term CD financing, especially since secondary market outlets for CD financing are limited. It is important to balance this concern with the over-riding and continuing imperative to encourage new CD financing. Accordingly, we propose that: (1) CD loans and investments, including legally binding commitments to lend and invest, should generate full CRA credit in the exam period made or acquired; and (2) prior period CD loans and investments should be credited consistent with current policy for investments.

- <u>Retail lending distribution test</u>. The retail loan distribution test should apply at the bank level, not only at the AA level. For most banks, the bank-level distribution should reflect a weighted average of activity within their AAs. For "internet banks", as described above in the discussion of deposit-based AAs, bank-level retail lending distribution analysis should reflect both AA and nationwide activity. In addition, the proposed retail lending distribution test should count both originations and purchases of loans, as provided in the current lending test. Purchasing loans made by CDFIs and HFAs can be particularly beneficial.

  - Connecting AA-level and bank-level performance. Having a full range of ratings for the CD test and retail lending distribution test, combined with the ability to offset weak performance on one measure with excellent performance on another measure, should inform the appropriate share of AAs where a bank must have outstanding or satisfactory performance to achieve a similar rating at the bank level. A rigid structure, as presented in the NPR, favors having a lower threshold for the share of AAs with outstanding or satisfactory ratings; a more flexible structure, as we recommend, would be consistent with requiring outstanding or satisfactory ratings in a greater share of AAs.

- Defining domestic retail deposits. We recommend that domestic retail deposits should include only those intended primarily for personal, household or family use, as reported on Call Report Schedule RC-E, items 6.a., 6.b., 7.a(1), and 7.b(1). Corporate deposits can be large, lumpy and arbitrarily associated with a single AA, especially when received from major corporations that operate regionally, nationally or even globally. In addition, corporate treasury accounts are easily moved from one bank to another and their balances are highly volatile, so the deposits are not readily available for lending. We recognize that banks with assets under $1 billion do not report deposits intended primarily for personal, household or family use. However, most small banks have a limited number of corporate accounts whose deposits they could choose to subtract. In addition, banks with assets under $500 million do not have to opt into the new regime.

- Retail lending in the CRA-EM. For the CRA-EM, retail lending should track the dollar volume of retail loans originated plus loans purchased from an unrelated originator and not re-sold for at least a year, not the balance sheet holdings of retail loans. We recognize that dollar volumes are the essential common measure across all financing categories under the CRA-EM. However, the dollar volume of loan originations and purchases would be a better and less burdensome metric for retail lending than balance sheet holdings. Tracking balance sheets would substantially increase administrative costs for little or no additional benefit, since banks already track the volume of retail loan originations and purchases under both the current system and the proposed retail lending distribution test. The Agencies proposed a balance sheet metric for the CRA-EM primarily to discourage the churning of MBS and similar instruments. However, MBS would be treated as CD investments, not as retail lending. To prevent churning of retail loans that are purchased, we propose CRA credit only for purchases from an unrelated loan originator. A purchased loan should receive CRA credit only once, as under current CRA policy, thereby eliminating incentives for churning. Finally, it is not necessary to promote long-term retail lending, since a robust secondary market exists for home mortgages and because small business/farm loans appropriately tend to have shorter terms.

- Balance sheet activity measured monthly. Measuring balance sheet activity monthly would be administratively burdensome. Fortunately, our alternative approach would consider balance sheet holdings only once at the end of the exam period and only for CD activity, for which longer-term loans and investments are both important and secondary markets are not broadly available. Accordingly, balance sheet reporting would be greatly reduced.

- Consumer lending consideration. Consumer lending and related data collection/reporting requirements should apply only at a bank's option or if consumer loans comprise the substantial majority of a bank's lending, as provided under current policy. In addition, retail lending distribution analysis should not apply to consumer lending because industry-wide data would not be available and because LMI consumers are not an appropriate market for certain loan categories, such as luxury car loans. Access to consumer loans, such as credit cards and auto loans, is abundantly available to LMI and other consumers, even with CRA's current limited coverage. In addition, requiring all banks to meet consumer lending distribution metrics could have the adverse consequence that banks may be compelled to offer and aggressively market credit products to LMI consumers on unfavorable terms. Accordingly, any marginal benefit to LMI people from greatly expanding CRA coverage would be outweighed by the substantial resource burden on banks of collecting and reporting consumer lending data.

- Performance benchmarks for CD and retail lending distribution. As with CRA-EM performance thresholds, we cannot assess the appropriateness of the 2 percent CD benchmark and 55 percent and 65 percent retail lending distribution demographic and peer benchmarks, respectively. The Agencies should provide more analysis to justify them. However, we believe it is highly unlikely that such thresholds will fit all product types, banks, communities and economic conditions.

- Home mortgage demographic benchmark. The Agencies propose a demographic benchmark that compares LMI home mortgage lending against the LMI share of *families* within each AA. However, home prices vary greatly among markets – the median home value in San Jose is $1,265,000, 10 times higher than Peoria's $120,700.[11] As such, the opportunities for LMI homeownership are not comparable across markets. A better benchmark would be the LMI share of *homeowners* within each AA.

[11] National Association of REALTORS, "Median Sales Price of Existing Single-Family Homes for Metropolitan Areas," https://www.nar.realtor/sites/default/files/documents/metro-home-prices-q4-2019-ranked-median-single-family-2020-02-12.pdf

- Home mortgage lending in LMI neighborhoods. The retail lending distribution analysis should include a measure of home mortgage lending in LMI neighborhoods. The need for this lending was the original reason CRA was enacted and access to this lending remains important today. It would be ironic – and mistaken – for CRA "modernization" to remove the explicit focus on LMI neighborhood mortgage lending. As discussed earlier, we also strongly recommend that home mortgage lending to middle-income borrowers (though not to high-income borrowers) in LMI neighborhoods should continue to be an eligible activity.

- Minimum loan volumes for retail lending distribution analysis. The minimum threshold of 20 loans within a retail loan category over an examination period is far too low to be statistically valid. Twenty loans over a three- or five-year examination period means an average of five to seven loans per year and even fewer in any given year. To inform a meaningful annual analysis, a more appropriate threshold would be an average of 50 loans per year.

- State-level ratings. The Agencies propose that a bank will receive an outstanding or satisfactory rating at the state level if it achieves such ratings in a "significant" share of its AAs within that state. The Agencies should define "significant" more clearly. In addition, at least some level of activity should be required in each AA within the state. A bank should not completely disregard the needs of any AA.

- Performance context. We are concerned that the NPR's framing of performance context appears to significantly diminish its role. Consideration only once a presumptive rating is set relegates performance context literally to an after-thought. Further, the "innovativeness, complexity, and flexibility of the bank's qualifying activities"[12] are significant for reasons beyond their effect on a bank's capacity to meet performance standards. Indeed, properly assessing a bank's CD activities requires a prior understanding of community needs and opportunities, as well as how the bank uses its capacities to respond to them within its competitive context. The many banks that make the effort to understand and effectively address community needs deserve additional recognition for fulfilling the true spirit of CRA. Unfortunately, the NPR's framing suggests that the primary use of performance context in the future will be to excuse a bank that performs below normal expectations.

- Wholesale and limited purpose designations. We urge the Agencies to retain designations for wholesale and limited purpose banks and establish separate performance standards for them because the range of their product offerings is not comparable to full-service banks. It is important that CRA rules take account of different business models and should tailor exams accordingly, a time-tested approach there is no compelling reason to change. In particular, a wholesale bank, which by definition does not offer retail products such as mortgage or small business loans (except on an accommodation basis), would need to meet its entire CRA performance benchmarks through community development activity. Limited purpose banks would face similar challenges.

[12] NPR §25.14(b)(1) and §345.14(b)(1).

- Strategic plans. We support the NPR's retention of a strategic plan option, especially for banks, such as internet banks, whose business model is not suited to the general performance standards. We recommend that the Agencies: (1) be required to act within 60 days of an initial submission of, or an amendment to, a strategic plan; (2) clarify the role of community input, especially for banks whose strategic plan will cover a broad geographic area, including multiple AAs or the entire nation; and (3) allow amendments to a plan if bank or economic conditions change. The regulation should also explicitly give banks the option to use different performance benchmarks. Under the current regulations, a bank may design a CRA program that responds to the needs of the community and fits the bank's business model. The current Q&A guidance notes that institutions are provided flexibility in specifying goals. That flexibility should be maintained.

Data Collection, Recordkeeping and Reporting

New data collection, recordkeeping and reporting will be expensive and burdensome. Existing data requirements should be used to the extent possible and new requirements should be imposed only where necessary.

- Balance sheet data should not be required for retail lending. In the above discussion of performance measurement, we recommend using data on loan originations and purchases for the CRA-EM, since existing systems already capture most of the data also needed for retail lending distribution analysis. For example, Home Mortgage Disclosure Act data capture home mortgage loans that are CRA-qualified as well as the non-qualified loans that are important to loan distribution analysis.

- Monthly balances. Collecting and maintaining data every month would be excessively burdensome and unnecessary. In our discussion of performance measurement, we recommend that the CRA-EM use retail loan originations and purchases, rather than balance sheet data, so annual reporting should be adequate.

- Consumer loan data collection, recordkeeping and reporting should be required only of banks that elect to count such loans and banks for which consumer loans comprise the substantial majority of the bank's total retail lending. For those banks, consumer lending data would contribute to the CRA-EM. We recognize that a distributional analysis of consumer loans would not be possible without industry-wide reporting of both LMI and all other consumers, but we believe that the benefits of such analysis do not justify the administrative burden. Accordingly, no bank should not be required to collect, keep or report data on consumer loans made to middle- and higher-income borrowers.

- Retail deposits. Retail deposit data should be reported annually, not quarterly.

- Physical addresses. Banks should use the most recent mailing address on file for depositors and consumer loan borrowers. Banks may not always know when a customer moves due to increasing numbers of paperless communications.

- Public disclosure of CD loans and investments. Data for all banks combined at the county level should include the number and dollar volume of CD loans and investments as well as totals for each of the eligibility criteria met per §25.04 (OCC) or §345.04 (FDIC).

- Implementation timing. Setting up and testing new data collection and reporting will be difficult and require significant time. Data collection and recordkeeping should begin with the start of the calendar year at least two years after publication of the final rule. Data reporting should begin one year after data collection and recordkeeping requirements begin. In addition, attending to recovery from the emerging Covid-19 crisis is likely to make it harder for banks to devote the requisite resources to implementing a radically new CRA rule.

Additional Comments

We also offer a few comments that do not directly address issues in the NPR.

- The OCC, FDIC and Federal Reserve Board should make CRA policy jointly. Inconsistent rules create an unlevel playing field for banks and will be confusing, especially for bank partners who will need to understand two sets of CRA rules and which one applies to each bank it works with.

- The effective administration of the CRA requires well-trained examiners. The Agencies should jointly develop comprehensive examiner training to ensure consistency and support well-informed judgments about topics such as performance context, innovation, and community needs, as well as CD practices.

- Performance evaluations should be published within 12 months after the close of an examination period. Long-delayed performance evaluations serve neither communities nor banks well. An ongoing non-CRA compliance examination that could affect a bank's CRA rating should not unduly delay publication of the rating.

Conclusion

Thank you for considering our comments. We would be happy to provide any additional information or views that would be helpful to you.

Sincerely,

Benson F. Roberts
President and CEO

NAAHL | National Association of **Affordable Housing Lenders**

Member Organizations

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