November 19, 2018

Legislative and Regulatory Activities Division
Office of the Comptroller of the Currency
400 7th Street, SW, Suite 3E-218
Washington, DC 20219

Via Email: Regs.comments@occ.treas.gov

Re: Docket ID OCC-2018-0008: Reforming the Community Reinvestment Act Regulatory Framework

To Whom It May Concern:

The Consumer Bankers Association (CBA)[1] is pleased to submit these comments to the Office of the Comptroller of the Currency (OCC) on behalf of its members in response to the Advance Notice of Proposed Rulemaking (ANPR) entitled "Reforming the Community Reinvestment Act Regulatory Framework."

CBA commends the OCC for embarking on an exploration of ideas for building a modernized framework for the regulations implementing the Community Reinvestment Act (CRA). The OCC's goal is to help regulated financial institutions more effectively serve the convenience and needs of their communities by encouraging more CRA activities where they are needed most; evaluating CRA activities more consistently; and providing greater clarity regarding CRA-qualifying activities.

As the ANPR states, "A transformed or modernized framework also would facilitate more timely evaluations of bank CRA performance, offer greater transparency regarding ratings, promote a consistent interpretation of the CRA, and encourage increased community and economic development in low- and moderate-income (LMI) areas."

CBA supports the goals of CRA and believes banks have an affirmative obligation to help meet the credit needs of their communities, including low- and moderate-income areas, consistent with safe and sound banking. Since CRA was enacted, billions of dollars have been invested in

[1] The Consumer Bankers Association is the only national trade focused exclusively on retail banking. Established in 1919, the association is now a leading voice in the banking industry and Washington, representing members who employ nearly two million Americans, extend roughly $3 trillion in consumer loans, and provide $270 billion in small business loans.

communities that have demonstrably benefited them. We do not advocate, and would not support, changes to CRA that would undermine its value to the communities our banks serve.

At the same time, CRA is over 40 years old, and the framework of the current regulations is over two decades old. Since then, banking has been undergoing a rapid transformation — which is unlikely to end soon. With that in mind, we are advocating reforms; but we do so with the understanding we do not want to see CRA lose its overall effectiveness. Indeed, the purpose of reforms should be to enhance the effectiveness of CRA and ensures its continued value to the communities banks serve, including low- and moderate-income areas.

Reforms to CRA regulations should try to achieve at least the following goals, thereby increasing the benefits of CRA to the communities served by banks:

- Provide more clarity and certainty in CRA-eligible activities;
- Address digital transformation and the changing preferences of consumers;
- Permit more flexibility to invest where there is need; and
- Provide optionality for different models and strategies.

These changes should also reduce costly and time-consuming technical requirements; expand the value of CRA by ensuring the most appropriate CRA-eligible activities receive consideration; and provide for more timely evaluations.

We support a dialogue among regulators and stakeholders to work through these issues; and more evaluation to determine how changes would impact consumers, communities, and banks of different sizes and models in different markets. Such transformational changes to the regulation call for rigorous testing with a sufficient number of banks with diverse strategies and markets to fully appreciate the impact on banks, businesses and consumers.

We also recommend all three regulatory agencies – the OCC, the Federal Reserve Board, and the Federal Deposit Insurance Corporation (the Agencies) – work together toward a single uniform framework for CRA. CRA is somewhat unique in requiring separate regulations to be adopted by each regulatory agency for the banks over which it has prudential supervision. With few exceptions, the Agencies have maintained substantially similar regulations since CRA's enactment in 1977. It is important that continue to be true.

NEED FOR GREATER CLARITY AND CERTAINTY

The CRA regulations and interpretations are not always clear and often are not applied consistently. This is due both to the inherent subjectivity in much of the evaluation process – as laid out in the current regulations – and the lack of a responsive vehicle for interpretations and guidance.

There are numerous ambiguities in regulation, and examiners frequently interpret them differently.

- Interpretations are provided infrequently and often lack the specificity needed.
- Different agencies interpret the same rules differently.
- Examiners within the same agency will reach different conclusions on the same issues.
- Banks often lack enough information to know what will qualify until after the fact.
- Changes in interpretations can be made that have a retroactive effect on the banks.

Since the last CRA regulatory revision in 1995, the regulators, via the Federal Financial Institutions Examination Council (FFIEC), have jointly provided CRA guidance through "Interagency Questions and Answers Regarding Community Reinvestment" (Q&A). Though the Q&A can be useful, they are often unclear, and have proved to be a poor vehicle for providing clear and uniform interpretations. Examiners often rely instead on a more informal network of questions and answers within the agency, a process which is opaque to the banks that must comply with the same expectations. Coordinated interagency interpretations of the regulations and supervisory guidelines need to be more frequently provided, clearer, and easier to use.[2]

Terms like "innovative," "responsive," or "flexible," for example, often require examiners to make subjective determinations on a case-by-case basis, making advance planning by the bank problematic. Examiners are often challenged by the lack of clear guidance from their agencies; and different examiners can reasonably reach different conclusions from the same evidence. While some level of qualitative analysis is often appropriate given the nature of CRA evaluations, we believe the rules and interpretations can be made more objective, reducing the level of uncertainty by all stakeholders.

One of the benefits of greater clarity in the rules is to incentivize banks to reach for Outstanding ratings. Some have suggested too many banks are given Satisfactory or better ratings, and the CRA evaluation rating process should operate as an incentive to force banks to do more—that banks are being given too much of a free pass. However, the appropriate measure, as reflected

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[2] All significant changes in exam guidance and policy should have a delayed effective date to provide sufficient time for banks to adjust, and should be published for notice and comment before final issuance. Changes in CRA strategy take time to develop and implement. Just as the regulatory agencies need time to draft and finalize policy updates through vehicles such as Q&As and examination procedures, financial institutions need time to update and implement strategies in response to CRA policy changes from the regulatory agencies. Steps involved in this process may require the following:

- Approval from senior management
- Systems and technology changes
- Development of new policies, products and/or procedures
- Training for employees
- Development of partnerships with community organizations

in the language of the statute, supports the approach taken by the agencies.[3] It is not inconsistent with CRA's statement of purpose if the majority of banks receive Satisfactory ratings, provided they can show they are making a reasonable effort and have achieved some measure of success in helping to meet the needs of the communities they serve, including LMI areas. Further, banks have an incentive to achieve Satisfactory or better ratings, because the failure to do so results in a cost, both to their ability to grow and to their reputations.

However, there is little incentive for banks to reach for Outstanding ratings, and the lack of clarity in the rules, as implemented, makes things worse. If getting an Outstanding rating is too far out-of-reach, banks might actually reduce their investment in CRA. Increased clarity in the rules and guidance, coupled with expectations that are more measurable, provide an environment where more banks will seek to reach for Outstanding ratings.

Additional incentives for Outstanding-rated banks would encourage more effort as well. Such incentives might include streamlined exams or regulatory approval, a safe harbor, or expedited process, for regulatory applications. Merely providing clear performance metrics would help as well.

Clarity and certainty are necessary if for no other reason than that good public policy demands it.

DIGITAL TRANSFORMATION AND CONSUMER BEHAVIOR

CRA was signed into law in 1977, when banking was far different than it is today. Even the current regulatory framework, put into place by the regulatory agencies in 1995, reflects an understanding of the way banks operated in the 1990s, before digital transformation had really begun.

Banking has changed dramatically since then, and is continuing to undergo a rapid transformation. Consumers are no longer visiting branches at the same rate or for the same purposes as they did two decades ago. Banking products and services are competing with offerings from nonbanks to serve similar needs, forcing banks to adopt to the digital ways many consumers prefer to transact business—whether low-, moderate-, middle- or upper-income individuals. These changes, among others, are ongoing, and the trends will eventually make the existing CRA framework less and less relevant to banking.

This digital transformation of banking needs to be more adequately evaluated in the CRA context. In its report on core principles for financial service regulation, the Department of the Treasury stated that "[t]he CRA examination process and rating system needs to reflect the variety of ways banks do business and meet the needs of diverse consumers and communities.

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[3] The congressional findings and statement of purpose says, in part, "regulated financial institutions have a continuing and affirmative obligation ***to help meet the credit needs*** of the local communities in which they are chartered. 12 USC 2901(a)(3) (emphasis added).

Increasingly, banks use technology, such as automated and online offerings, to extend services outside of physical branches."[4] We completely agree.

The current regulation still places inordinate emphasis on physical full-service branches in evaluating a bank's CRA performance. The importance of branches and their location to CRA performance needs to be reassessed, not because branches are not important, but because their role has changed significantly since the CRA regulations were adopted in 1995.

For many banks, traditional branch networks face challenges. The cost of maintaining brick and mortar locations is increasing as consumers use mobile and other channels as a substitute for more traditional branch channels. In an environment of earnings pressure, there is a strong need to reduce the considerable operating expense of the branch, as teller transactions decline and per-transaction labor costs rise.

Meanwhile, the competition from nontraditional financial service providers, unburdened by the same legacy branch network and to a large extent the regulatory framework, encroaches on banks' valuable customer relationships. Most experts predict the branch is not dead, but the total number of branches will decline, and they will take different forms while consumers and businesses employ more digital channels for their banking needs.

The data confirm this. In the 2017 FDIC National Survey of Unbanked and Underbanked Households,[5] the FDIC found that mobile banking plays an increasingly important role in how consumers access their accounts. It found mobile banking was used by 40.4% of banked U.S. households to access their account in 2017 — almost double the 23.2% the survey found four years earlier. The trend lines are easy to see: CB Insights found that 92% of millennials use online banking, 79% use mobile banking, and 66% use branch banking.[6]

An analyst at the FDIC put it this way: "A mobile banking application makes it easy to transfer funds within your bank, perhaps to send money to a child's account there or to confirm if you have enough funds to make a purchase or pay a bill."[7] Mobile banking can also be a huge benefit to consumers by effectively extending banking hours and delivery options, in addition to providing useful account information at critical times. According to a Federal Reserve Board survey, 62 percent of mobile banking users checked their account balance on their phone before making a large purchase in the store, and 50 percent decided not to purchase an item as a result of their account balance or credit limit. This is an extraordinary value for consumers.[8]

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[4] U.S. Department of the Treasury to the President on Financial Regulation. U.S. Department of the Treasury, *A Financial System That Creates Economic Opportunities, Report to President Donald J. Trump, Executive Order 13772 on Core Principles for Regulating the United States Financial System*, pp. 64-65, (June 12, 2017), https://www.treasury.gov/press-center/press-releases/Documents/A%20Financial%20System.pdf.

[5] https://www.fdic.gov/householdsurvey/.

[6] CB Insights - Banks in Fintech: Digitizing Consumer Banking; https://www.cbinsights.com/research/briefing/fintech-digitizing-consumer-banking/.

[7] FDIC 2/28/2018, https://www.fdic.gov/consumers/consumer/news/cnwin18/mobilebanking.html.

[8] www.federalreserve.gov/publications/default.htm.

Banking digitally – whether mobile or web based – appears to be prominent among so-called "credit invisibles" (those consumers, many of whom are lower income, who lack a credit history). In a recent research report by the Bureau of Consumer Financial Protection, it was found that lack of internet access had a stronger relationship to credit invisibility than did the proximity of a bank branch. [9]

Branches still serve a purpose, and they are not disappearing, but they are declining in number as fewer customers use them, and they are transforming to serve consumers in different ways. Nevertheless, CRA still places a disproportionate emphasis on branch location in assessing banks' performance. This makes it particularly difficult for banks to demonstrate they are meeting community needs through the use of non-branch channels, such as mobile banking. This can be an obstacle when a bank has a limited branch network or is closing a branch in an LMI community due to not meeting profitability thresholds, and when – during a CRA exam – the bank needs to demonstrate the LMI community's needs are being served, at least in part, through other means. Changes in the regulation can go a long way to reflecting this digital transformation by reducing the primacy of brick and mortar locations, and permitting different channels, as appropriate, to get equal consideration.

Digital transformation has also created opportunities for banks to engage in account activity in areas that may be outside the bank's traditional assessment areas, whether opening accounts, transferring money, or lending.

A MODERNIZED CRA[10]

The ANPR invites comments on ways to modernize the current framework for CRA. In particular, it suggests consideration of a metric-based performance measurement system with thresholds or ranges (benchmarks) for measuring performance.

We support the effort to develop a more quantitative approach to CRA, as it could have many advantages over the existing approach.

- It could provide objective goals that can be targeted by the bank, permitting the bank to operate with greater certainty;
- It could be flexible enough to allow banks to address their communities' needs in the manner that is most appropriate to their business model and their customers;

[9] Brevoort & Ficklin, Data Point: The Geography of Credit Invisibility, September 2018; https://www.consumerfinance.gov/about-us/blog/new-research-report-geography-credit-invisibility/
[10] Our comments substantially follow the order of the ANPR questions. Although we have not responded to each question, where we have done so we have numbered the section to correspond to the ANPR numbers. In some cases, we have combined questions from the ANPR and responded to them collectively.

- It could encourage more banks to reach for Outstanding ratings, because there would be greater certainty the investment will be rewarded;
- It could be less subjective and cumbersome than at present; exams would be shorter and more streamlined; and banks would have more resources to invest in their business;
- It could provide clear guidelines that would reduce surprises at exams;

A single corporate-wide numerical measure of CRA activity would not adequately reflect the diversity of bank models, products, services or markets, and adequately express the many ways banks help to meet the needs of their communities, including the low- and moderate-income customers. However, much can be done to improve the current framework through metrics that evaluate components of the total activity on an assessment area level, as part of a larger bank-wide evaluation.

However, as the ANPR questions suggest, there are many challenging issues which would have to be addressed before we can determine whether it would be effective in practice, and not all of them lend themselves to easy solutions.

Different Tests for Different Models

Different banks may prefer to have different tests, depending on their business models or markets. There is precedent for this approach. In addition to the Strategic Plan, there are different evaluations for different size banks (Small Bank, Intermediate Small Bank, and Large Bank) and for different banking models (Wholesale and Limited Purpose banks). We believe these should be retained. It is also possible other options could be available to serve different bank models, so each can most appropriately measure the banks' efforts to help meet the needs of their communities.

Depending on the framework, nontraditional banks (for example, branchless banks) may need to have a separate test, particularly where the absence of a traditional network of physical deposit-taking facilities requires different treatment. At the same time, banks should be able to demonstrate their uniqueness and agree with their regulators to be assessed on somewhat different criteria. Within the Large Bank Test, it may be that the thresholds for ratings should be different for different types of banks, related as much to business models (product mix) as to size, scope, or geography.

Optional CD Test -- Some banks may prefer an optional CD Test, where the CD activities are evaluated separately from retail, employing a ratio metric framework. CD activities do not get the amount of consideration they should. Given their importance, they should always have a strong positive impact evaluation. Yet currently, it is possible for CD lending to have a neutral impact on lending performance. Some banks, therefore, may prefer a separate CD Test, in addition to a measure of their Retail Lending activity.

We also recommend Strategic Plans be retained as a component of any new framework. Strategic Plans provide banks with an opportunity to be examined based on their unique model, and not force them into adopted policies or offering products or services that are not appropriate. We believe the approval process for Strategic Plans can be streamlined to make them more effective and more available than at present.

CRA-Eligible Activities – What Should Qualify

We believe banks should be evaluated on essentially the same set of activities that qualify today under the Large Bank exam methodology, though with some variations as to how they should be assessed. These should at least include:

a. Mortgage loans to LMI borrowers (retaining the existing definition of LMI);
b. Mortgage loans in LMI census tracts;
c. Small businesses/small farm loans to borrowers in LMI census tracts;
d. Small business/small farm loans to borrowers with gross annual revenues up to $1 million;
e. Community Development (CD) loans and qualified investments targeted to LMI or that broadly benefit the community without excluding LMI;
f. Consumer loans (at the option of the bank); and
g. CD and retail services targeted to LMI or that broadly benefit the community without excluding LMI.

In the discussion of CRA-eligible Activities, below, we provide more detail regarding the coverage of these activities.

8. How could benchmarks be established?

The most workable approach to benchmarking may be to rely on CRA-eligible activities assessed against FDIC-insured deposits. The loan-to-deposit (LTD) ratio is one that is both reasonably easy to calculate, publicly available, and relies on precedent. The Small Bank CRA Test, for instance, uses a basic LTD test already, as does the Riegle-Neal host state metric. A similar approach, relying on CRA lending and investment activities may be an effective way to evaluate bank performance.

As noted above, we do not believe a single metric, which would create a single corporate-wide numerical measure of CRA activity, would be a workable approach. However, several benchmarks can be aggregated to create a bank rating. These could be composed of:

1. Ratio benchmarks within the bank's assessment areas for CRA-eligible activities (loans and investments) as a percent of insured deposits within the assessment areas;
2. Retail and CD Services within the assessment areas, evaluated in a manner to be determined;
3. Bank-wide activities-to-deposits ratio benchmark.

The bank's FDIC-insured domestic deposits has several obvious advantages: It is most closely associated with the statutory focus—assessing the activity of the bank in providing credit against the deposit-taking by the bank; and it is relatively stable over time, unlike capital, which can change more rapidly.

A few points to note:

--By focusing on insured deposits, it would be limited to amounts under the FDIC threshold for insurance, more closely aligned with retail bank activity that is the concern of CRA.

--By focusing on domestic deposits, it would eliminate foreign accounts, which would not be relevant to the CRA consideration.

However, a deposit-based denominator may not be appropriate for banks of all sizes and all business models. Different business models require different CRA options while ensuring the CRA intent is not diluted. Knowing what approach is preferable will require an in-depth analysis of the impact on banks and their communities. Therefore, we are not in a position to advocate for any one approach until we can better assess their impact through testing. A ratio that depends on thresholds cannot be evaluated in the abstract, without knowing what the thresholds may be. Further, there may be different approaches that are better suited to different bank models.

9. Performance Context

Context remains important to CRA. Different markets require banks to address different needs under different conditions; economic changes over the course of exam cycles can markedly change the bank's performance opportunities. Some context should continue to be a consideration at the time of the evaluation, even if a more metric-based approach is adopted. Metrics on a periodic (e.g. annual) basis can still give the bank more information about its ongoing performance to assess progress toward its performance goals. However, it is important the metrics would not result in a periodic rating, since they would not have the benefit of the performance context until the full evaluation.

Several situations can arise that call for performance context to be employed. National and broad regional economic and competitive factors can affect a number of banks, and limit their ability to achieve their targeted goal. Individual banks' performance can also be affected by local market considerations and business strategy over the course of the evaluation period. The smaller the markets involved, the more need there would be for performance context. Criteria for how agencies will use performance context to adjust metrics when calculating ratings should be uniform and transparent.

10. Weighting Factors/Multipliers

One of the most challenging issues that arises when attempting to create a single metric is whether or not to create a framework that gives extra weight to some activities. The argument

for weighting ("multipliers") is that activities which are more challenging or difficult will not be undertaken by banks if they can get CRA consideration for easier activities. Multipliers therefore, increase the consideration for certain activities and provide additional incentive for engaging in them. But, weighting some activities more than others creates a significant level of complexity to what is intended to be a fairly straightforward calculation. The multiplier for one investment over another, or an investment over a loan, requires a consideration of the impact of each which is itself somewhat subjective. Further, it would probably have to be done on uniform national level that would not necessarily take into consideration local differences, which can be considerable. In the alternative, locally different multipliers would create an almost intolerable level of complexity and subject the regulation to considerable criticism and second-guessing.

Multipliers could be used on a selective basis to encourage activity within certain markets that are in greater need or that should be getting more attention from a bank investing outside its assessment area. Opportunity zones, federal- or state-designated disaster areas, persistent poverty counties, underserved rural areas, and the like, could be recognized as getting extra consideration, though the use of multipliers.[11]

Any consideration of multipliers should assess the benefits against the costs. Weighting some activities more than others puts the government's finger on the scale in a way that may be too easy to manipulate, too subject to changes in policy, and not sufficiently transparent. It also may result in favoring particular business models or communities over others. Therefore, we urge multipliers, if adopted, to be used sparingly, and in a way that ensures transparency and consistency.

Compliance downgrades

CRA should not be used as a compliance regulation. Downgrades for compliance should be applied only in the narrow circumstances where the violations of consumer regulations directly impact the activities under consideration and mitigating circumstances are considered; and the manner of their application should be transparent.

In most cases, if there is evidence of violations of fair lending or other consumer protection laws, the regulator will enter into a memorandum of understanding (MOU) or a public Consent Order with an institution to pay a penalty, make restitution to injured customers and implement changes to its policies and procedures to prevent future violations. The CRA rating downgrades are released after – sometimes many years after – the violations are already resolved and corrective actions have been taken.

The OCC's recently adopted policy (PPM 5000-43; Oct. 12, 2017) should be the foundation for treatment by all the agencies. According to the release the OCC will be guided by two

[11] Multipliers could also be used to enhance the value of activities that are innovative, complex, flexible, or involve leadership, as noted below. However, these would need to be defined clearly and employed consistently.

principles: (a) there must be a logical nexus between the assigned rating(s) and evidence of discriminatory or other illegal credit practices in the bank's CRA lending activities to ensure alignment between the rating(s) and the bank's actual CRA performance; and (b) full consideration will be given to the remedial actions taken by the bank. We believe the OCC's approach to downgrades should be adopted by all the agencies.

12. CD Services

Community Development Services are valuable to the needs of communities. Whether volunteerism or financial literacy efforts, the efforts of the banks in these areas should be rewarded. Banks will always provide such services to their LMI communities whether or not they are included in the CRA evaluations.

However, services are a challenge in a more metric-based framework. The value of CD services is not easy to quantify, because service hours alone may not adequately measure the impact of the services to the community. Although a metric evaluation of CD services based on the actual value could be included in the aggregate measure of activities to be evaluated, it is worth considering whether to apply a multiplier to the total of hours in order to enhance its impact on the total. An alternative approach that might be appealing would be to include Services as part of the evaluation at the time of the exam, rather than include them in the annual metrics. Banks would rely on the annual metrics to evaluate their ongoing performance, but could use services at the time of the exam to enhance their rating. They would be a positive, only, and may be valuable to bank that is close to the next highest performance rating.

One point to note about service activity and service hours: Volunteer and other such service activities should be included as CD services whether or not they use the employees' *financial* knowledge and experience. This is a limitation often applied under the current regulation, which can create illogical outcomes. Activities that help with community development are not less important if the volunteers are using other skills and talents than their financial expertise.

QUESTIONS 13-14: REDEFINING COMMUNITIES AND ASSESSMENT AREAS

Generally

Under the current regulation, consideration of CD activity outside the assessment area is geographically restricted to a broader statewide or regional area ("BSRA"), and only after the bank first demonstrates it has been responsive to the community development needs and opportunities in its assessment area. This is far too restrictive due to limited geographic opportunity and the difficulty of knowing with any certainty whether the bank has met those needs. The bank has no guarantee that any activity outside its assessment area will get CRA consideration at the time it makes the loan or investment.

It also fails to address the changing nature of banking, both for the banks that are increasingly adding digital capability for their customers and for the banks that are exclusively or largely

digital in their business models. CRA still expects banks to meet the needs of their local communities, as required by statute, but the nature of community has changed and will continue to change. CRA needs to change with it.

We have considered a number of approaches, and each has its advantages and issues.

Whatever approach is adopted it should accomplish three goals:

1. ***It should expand consideration for CRA activities even if they are outside the banks' traditional assessment areas – not limited to broader statewide or regional areas;***
2. ***It should eliminate the artificial competition for limited investments in 'hot spots';***
3. ***It should continue to ensure that banks help meet the needs of their local communities.***

Determining the approach requires a more in-depth analysis of the impact on banks and their communities; but whatever approach is adopted needs to allow for CRA-eligible activities outside a bank's assessment areas without geographic restriction, *provided the bank still meets – or has previously met – some threshold of activity within its traditional assessment areas.* This approach would require banks to be responsive to the needs and opportunities in their communities; and provided there is a more metric CRA evaluation, they would know, with greater certainty, whether their activities outside the assessment areas will receive CRA consideration. Even greater certainty could be provided by allowing CRA consideration for activities anywhere in the country in a subsequent exam cycle if the bank has achieved a Satisfactory or Outstanding on the prior exam.

This would not necessarily require a change in the way assessment areas are designated, but by permitting greater activity outside the assessment areas, may make such a change unnecessary. It would free up CRA-eligible activity where it is needed, while continuing to ensure banks are helping to meet local community needs, as mandated by the statute.

It would eliminate the artificial BSRA restriction, and permit CD activities anywhere nationwide. It would also allow banks to know in advance whether or not activities outside the assessment areas will be given CRA consideration. Greater certainty will lead to more investment and greater benefit to LMI and underserved communities nationwide. However, no bank would be required to engage in activities outside its assessment areas.

Internet-only banks, though they have no physical deposit-taking facilities, have been required by the regulation to first meet the needs of the local assessment area around their headquarters. This has created an unhealthy competition for CRA-eligible activity within limited markets where a number of these institution are based. Expanding the flexibility to engage in CD activities outside the assessment areas would also help to mitigate this 'hot spot' effect, particularly if the measure of meeting needs of their assessment area is tied to deposits from local customers.

There may be other viable approaches, either in the alternative or as options for different bank models, and we would be open to considering how they could be made to serve the needs of the banks' communities.

Activities in Designated Geographies

Regardless of the rules adopted for activity inside or outside the bank's assessment areas, we recommend banks be permitted, or possibly incentivized, to engage in activities within geographic areas designated as particularly in need of investment. These distressed geographies can be identified by the regulators in a formal way – such as federally designated disaster areas, Opportunity Zones, or areas identified as underserved.

Small Presence in Branch-based Assessment Areas

Large banks may at times find CRA to be an impediment to opening a small number of branches or deposit-taking ATMs in a geography, or remaining in a geography with only a limited physical presence. This problem could be ameliorated if large banks, at their option, could choose to be evaluated under the small bank methodology in any state or assessment area where they have a limited physical presence. For instance, if a large bank's presence in a given assessment area or state in which it has a branch or deposit-taking ATM is similar to that of a small bank (i.e., deposits less than $313 million[12]), then the small bank examination process (i.e., streamlined lending test only) should apply to that assessment area or state. The large bank examination structure would continue to apply at the institution level, as well as to any assessment area or state where the bank's deposits exceed $313 million. However, this should be only at the option of the bank, as some may find community development activities better tailored to their business model and the communities they are serving.

QUESTIONS 15-28: CRA-ELIGIBLE ACTIVITIES

Generally

We do not wish to see a reduction in the activities that are considered CRA-eligible. Indeed, we believe the coverage is too narrow in some cases, because it requires community development to be the primary purpose of the activity. Thus, a large number of LMI individuals are excluded from benefiting because they do not live, work or go to school in a majority LMI geography or with a majority of others who are also LMI. Mixed-use developments in urban areas, for example, are often unable to be considered for CRA because of this restriction. Schools with fewer than 50% of students receiving free or reduced lunches cannot qualify for community development for the same reason.

[12] $313 million in deposits would be a proxy for the Small Bank asset threshold.

Community development activities that are geographically not limited or earmarked to the bank's assessment areas may also be precluded from consideration. Overly restrictive requirements of this type are detrimental to the communities served by the banks, including LMI areas and LMI consumers.

Specific CRA-eligible Activities

As noted in the discussion of ways to modernize CRA, above, we believe banks should be evaluated on the same set of activities that qualify today (with several exceptions noted below). The activities counted in the "numerator" should at least include:

a. Mortgage loans to LMI borrowers (retaining the existing definition of LMI);
b. Mortgage loans in LMI census tracts;
c. Small businesses/small farm loans to borrowers in LMI census tracts;
d. Small business/small farm loans to borrowers with gross annual revenues up to $1 million;
e. Community Development (CD) loans and qualified investments targeted to LMI or that broadly benefit the community without excluding LMI;
f. Consumer loans (at the option of the bank); and
g. CD and retail services targeted to LMI or that broadly benefit the community without excluding LMI.

Qualitative Factors

Extra consideration (multipliers) should be employed for some qualitative considerations, such as:

- Innovation – E.g. New activity – first time a bank did a New Markets Tax Credit would be considered innovative for that bank.
- Leadership – E.g. first at table. Involved from beginning to end. Taking the lead role in the activity.
- Flexible loan terms – E.g. interest rate 25% below market, or term of loan is extended beyond conventional loan terms.
- Complexity – E.g. requires specialized underwriting or multiple (3 or more) funding sources.

As noted elsewhere in this letter, multipliers would add complexity to CRA. Therefore, they must implemented in a uniform and transparent manner. Furthermore, as currently used, these terms are not sufficiently clear or consistent in application; therefore, they must be clearly defined and consistently employed, so banks and other stakeholders understand what they mean and how they affect outcomes.

Mortgage Loans

Under the current regulation, mortgage loans reflect the HMDA Loan Application Register (LAR) as reported. With the changes to HMDA, the Agencies have determined home equity lines of credit (HELOCs) are now included as mortgage loans for CRA purposes as well. Regardless of the merits for HMDA reporting, we believe HELOCs are an entirely different product than mortgage loans, and they should not be included in consideration of mortgages for CRA purposes. This is particularly a concern to the extent regulators consider the distribution and lending patterns of each bank's mortgages. HELOCs are not as common in LMI communities as they are in communities where consumers have more equity in their homes. Relying on performance context to explain these differences places the burden on banks to justify outcomes unnecessarily and increases uncertainty.

Letters of Credit

We recommend letters of credit receive the same consideration as loans made for the same activity. Some agencies have adopted a distinction between the two that is not warranted by their usage, and we recommend the Agencies adopt a consistent policy of treating them the same as loans.

18. Should any activities that may otherwise qualify as CD be limited or excluded?

Consideration should be given whenever a bank provides access to capital that qualifies as CD. Any 'churning' can be addressed other ways. If some CD activities add extra value to communities, extra consideration is possible, but we do not recommend reducing consideration for any activity.

20. Should the use of small or disadvantaged service providers receive consideration?

As a general matter, we are very supportive of the use of vendors representing a diverse population. However, the inclusion of supplier diversity for consideration as CRA CD activity would significantly dilute the focus of CRA.

22. Treatment of Consumer Loans

Generally

CRA has long treated consumer lending as secondary to mortgage, small business, small farm and community development lending. However, the regulation does provide that consumer lending may be evaluated in certain circumstances; that is, if it constitutes a "substantial majority" of the bank's lending,[13] or if the bank wishes it to be considered at its option and has collected and maintained the consumer data. This is appropriate and should remain the case.

[13] The agencies interpret ''substantial majority'' to be so significant a portion of the institution's lending activity that the lending test evaluation would not meaningfully reflect its lending performance if consumer loans were excluded. CRA Q&A, 75 FR 11655, March 11, 2010.

Mandating consumer loan inclusion would create a new set of data collection and reporting requirements, with expanded data integrity requirements.

Small Dollar Consumer Credit

As with other consumer lending, we support the inclusion of small dollar lending products among those that receive consideration for CRA, at the option of the institution. Evidence strongly supports the value of small dollar loans for low- and moderate-income consumers, to help meet gaps in credit availability from pay check to pay check. The most recent report on the unbanked and underbanked by the FDIC states, "Access to small-dollar credit is important for weathering financial setbacks, particularly for households with fluctuating income or lack of savings."[14] There is also growing recognition that small dollar credit by mainstream financial institutions can reduce the use of more costly nonbank payday loan companies, and provide consumers with a means of growing a valuable credit history that can permit them to graduate into more mainstream credit products. As the FDIC notes in the same study, "Almost a quarter of banked households with unmet demand for mainstream small-dollar credit likely have insufficient credit history to have a credit score. [Footnote omitted.] Providing small-dollar bank loans to these households may help strengthen their relationships with banks and allow them to begin building credit."

23. Small business/Small Farm loans

The definition of small business loans was intended to be fairly straightforward and easy to calculate. Banks typically treat small business lending differently from their commercial loans and often employ a separate department that focuses on small business lending. Their thresholds for the product varies to suit their business model and their product offerings. Therefore, rather than forcing banks to adopt a uniform definition, the CRA regulation employs a proxy that is modeled on the call reports, and treats loans of under $1 million as small business loans (loans under $0.5 million small farms). The bank is also required to provide subcategories to designate where these loans are located and how many of these loans are to borrowers with less than or greater than $1 million in revenue (or no information is available). We would advocate retaining this basic reporting framework.

We would not oppose an increase in the threshold for reporting small business loans, but we believe the metric is still a reasonable proxy for small business lending, notwithstanding the passage of time since it was adopted. Increasing the loan amount much above $1 million would also create a greater conflict with the CD lending, if the loan otherwise qualifies. Assuming loans would not be able to be reported under both rubrics or in the alternative, as we have proposed below, banks would prefer to treat most such loans as CD loans rather than small business loans.

[14] https://www.fdic.gov/householdsurvey/

In regard to what should get consideration under a metric analysis, we would propose banks report the same information on the loan register for small loans originated or purchased to businesses and farms in the bank's assessment area. Among those reported loans, banks would receive consideration for the total dollars originated or purchased in the following categories:

- Small business and small farm loans in LMI tracts; and
- All loans to businesses under the revenue limit ($1 million) anywhere in the assessment areas.

24. Small business loans with CD purpose

Currently, small business/small farm loans (under $1 million) that may also qualify as CD purpose must be included with small business loan reporting, though the treatment has been inconsistent. The category of "Other loan data" has at times been used to give some consideration as CD purpose. In some cases, however, banks have been permitted to treat small business loans under $1 million as CD loans, at their option. We believe giving banks that option is the better alternative, and should be adopted *consistently* in all cases, as it allows recognition for these activities in the manner best suited to each bank. Alternatively, these could be treated the same as HMDA multifamily loans, that are reportable under HMDA and also as CD loans.

25. Should loan purchases and originations receive equal weight?

Yes. Loan purchases free up capital to permit more lending, so we believe they should generally receive equal weight in the evaluation.

26. Should loans originated to be held in portfolio get equal consideration with loans originated for sale?

Generally, different weights for different activities adds complexity and should be avoided if possible. In addition, it can create unintended and unforeseen outcomes by introducing artificial incentives. For example, moving assets off the balance sheet can be good risk management in some cases, and an incentive to make more portfolio loans may create a counter-incentive. For these reasons, we recommend they be treated the same.

27. Branches

Branches – that is, the record of opening and closing branches and their geographic distribution – are currently evaluated as a significant component of the Service Test – one of the three primary tests that comprise the Large Bank evaluation. Yet branches themselves are essentially a channel, serving the needs of customers by providing a means for the customer to access the bank's products and services. Increasingly, banks are employing other channels – in addition to or instead of branches – to provide access for their customers. The use of digital access has expanded dramatically in recent years, and is likely to continue.

Branches continue to play an important role in the way most banks interface with their communities, in both tangible and intangible ways. We expect that will always be true. Branches are not going away, but their role is changing to meet the 21st century needs of customers. Consumers simply do not visit as often and their needs are different when they do. Banks need to keep pace with their customers' needs and expectations. As noted elsewhere, LMI customers are no different. They too use digital channels for many banking services, via mobile devices and otherwise. Indeed, newer technology often provides a better way to serve many of the day-to-day needs of customers, since the bank can come to the customers at their location and at their convenience and provide them with valuable financial tools.

Nevertheless, bank models differ, ranging from those with large and growing branch networks to those with none. When it comes to branches, one size does not fit all. CRA needs to be open to these differences and allow for continuing changes.

Ideally, any framework for CRA should primarily focus on what products and services are being provided and to whom, not the particular channel being used by different banks. If the regulators emphasize branches over other channels, they would be incentivizing a single model, and a single channel, rather than allowing banks to creatively employ new technology to best meet their customers' needs. Therefore, it is important for both branch and nonbranch channels to be given equal weight, and that banks be able to demonstrate they are serving the needs of their entire communities, including low- and moderate-income customers, by employing channels that fit their model and their market.

To the extent the regulations continue to consider branch location, we would encourage consideration be given for branches not located in LMI census tracts based on other factors. For instance:

- All branches located in an LMI tract or near to it (for example, up to 2 miles in urban areas and up to 5 miles in rural areas) are presumed to be included without need of further demonstration; and
- Other branches, to the extent they can be demonstrated to be serving LMI customers or LMI tracts.

CD Activities

One goal of the reform of the activities that receive consideration is to provide more certainty about what qualifies and simplify documentation. Therefore, we recommend:

1. A clear – but non-exclusive – list of activities that automatically qualify for CRA consideration as CD loans and investment that support LMI or revitalize

or stabilize neighborhoods.[15] Other activities may qualify if they can be shown to meet the definition;

2. Simplified requirements to prove qualification for all types of CD activities, by reducing the burden of proof for qualification and expanding the types of qualifying activities; and
3. Expanded access to more activities benefitting LMI, provided they benefit a significant number and are not targeted to higher income. Requiring a majority of LMI to benefit is so restrictive that many activities that are beneficial to LMI fail to receive consideration.

The following CD activities should automatically receive CRA consideration on the basis they either benefit LMI or have a revitalizing or stabilizing effect on neighborhoods. Other activities should be permissible to receive consideration provided they qualify.

- CD activities in partnership with federal, tribal, state or local government, or agency thereof. These would include activities that are jointly undertaken with organizations or government entities and targeted to lower income populations, whether or not they align with the precise LMI targets of CRA.

  Examples could include: special loan programs, such as LIHTC and NMTC, designated SBA programs, federal or state disaster relief programs.

- CD activities in partnership with CRA-qualified public service or social service organizations. For similar reasons as the above, activities done in partnership with social service organizations that have been qualified should automatically receive consideration.

  Regulatory agencies could create and maintain a list of organizations that would presumptively qualify for consideration, and provide for a regular, periodic revision. A simple form could be provided for nonprofits to apply for inclusion on the list. Others would also qualify as appropriate.

- CD Activities in partnership with Community Development Financial Institutions (CDFI) and Community Development Enterprises.

[15] In the alternative, agencies could publish rulings on activities that qualify for CD loans and investments in order to provide certainty for other banks.

The following CD activities should qualify as CRA-eligible <u>if they are in LMI communities, targeted to LMI or likely to benefit a substantial number of LMI individuals:</u>

- Financial education activities[16]

  Examples could include first time homebuyer seminars, small business technical assistance, FDIC Money Smart programs, digital literacy and financial or credit counseling.

- "Naturally occurring" affordable housing loans and investment

  To qualify, the affordability of the units should be the sole determinant, not income of the tenants. There is currently a lack of consistent treatment and an over-emphasis on qualifying details.

- Digital access activities -- Activities that expand digital services to improve access to financial products and services for LMI or underserved individuals or communities, such as loans and investments for broadband infrastructure.

- Economic and workforce development activities -- Economic and workforce development activities that create, retain, or improve jobs for LMI individuals should qualify for CRA consideration, whether or not they are in LMI census tracts.

  The qualification for job retention should not require proof that jobs retained were at risk of loss, as this is overly restrictive and difficult to establish.

- Rural and underserved market activities -- CD activities in rural an underserved markets that benefit LMI individuals and geographies, such as rural broadband projects, or water projects and other infrastructure investment, should receive consideration.

  Many rural and underserved markets are middle income, even though many LMI persons also live in the

[16] It would be reasonable to consider some activities for financial education as automatically eligible for CRA consideration, such as small business technical assistance, FDIC Money Smart programs, or other similar activities, which could be designated as such.

communities. CD activities in these markets, such as broadband and infrastructure, which are broadly beneficial, are likely to benefit many LMI individuals.

- Volunteerism -- All volunteer CD activities that are likely to benefit LMI, underserved/distressed areas, state- or federally-designated disaster areas, or small businesses, should receive consideration, regardless of whether the service provided relates to the provision of financial services.

  In a metric framework, a multiplier may be needed to ensure volunteerism receives appropriate consideration. Hours spent may not adequately measure the impact volunteer services have on the community.

- Activities that benefit schools in LMI areas or that benefit a substantial population of LMI students -- including financial literacy, tutoring, and job readiness activities, among others.

  Currently, banks much demonstrate over 50% of the students are LMI. This creates an unnecessary hurdle for the banks, and unfairly eliminates schools where fewer than 50%, but still a substantial number of students, would otherwise benefit. In some rural markets, for example, middle or high schools get students from lower schools with majority LMI students, but the upper schools do not themselves have majority LMI students. Therefore, activities that benefit schools with a substantial number of LMI students – albeit less than 50% – should be CRA eligible.

  In order to reduce the need burden of demonstrating that some threshold of students is LMI – e.g. by demonstrating they are eligible for free or reduced lunches – banks should be able to rely at their option on the school's obtaining Title I funding.[17]

[17] Title I funding is given to schools where at least 35% of the children in the school attendance area come from low-income families or to schools where 35% of the student population is low-income. To determine the percentage of low-income families, school districts may select a poverty measure from among the following data sources: (1) the number of children ages 5–17 in poverty counted in the most recent census; (2) the number of children eligible for free and reduced price lunches under the National School Lunch Program; (3) the number of children in families receiving Temporary Assistance for Needy Families; (4) the number of children eligible to

QUESTIONS 29-31: RECORDKEEPING AND REPORTING

For most financial institutions, their CRA programs are deeply embedded within their organization and greatly influence their culture as it pertains to community engagement and responding to credit needs. The CRA structures are as varied as the institutions; but in all cases, CRA professionals work closely with a wide range of lines of business (e.g. mortgage lending, small business lending, commercial lending divisions, affordable housing teams, specialized community development lending and investing functions, etc.) as well as staff functions (e.g. volunteerism and philanthropy).

For many, responsibilities are decentralized with first line areas playing critical roles in fulfilling, identifying and reporting CRA-related activities. And for others, even where a higher degree of centralization exists, the time, resources and impacts of first line areas cannot be minimized. As an example, commercial lenders in some institutions may be charged with identifying and documenting loans that meet the community development definition. In other institutions, a centralized team may be responsible for identifying and qualifying these loans. In both instances, interactions with the first line to gather information and ensure appropriate documentation is indispensable.

Many banks could calculate resources that are fully devoted to CRA, but that would (a) only scratch the surface and significantly underestimate the important contribution by lines of business and other staff functions and (b) vary widely between institutions depending on the degree to which certain functions are more decentralized. Regardless of the degree to which responsibilities are centralized, strong and effective CRA programs impact nearly every area and every associate of the institution.

Financial institutions continuously seek ways to improve their CRA programs to make them more effective and more efficient just as is the case with any other business function. And banks have been successful in establishing strong protocols for managing their CRA programs that match the bank's business strategies and capacity. We would urge the agencies not to develop any new reporting requirements that would disrupt existing programs, redirect resources away from providing benefits to LMI populations and LMI areas, and add unnecessary costs without any commensurate benefit.

Rather, we would recommend that the agencies limit data reporting to an annual basis to provide the appropriate assurances to the public of the accuracy of any numeric calculations related to the bank's performance. We believe reviews that are more frequent than annual would be unnecessary, burdensome, and produce results that are not beneficial. And in the instances where interim calculations would be necessary due to a regulatory application, as long as the regularly timed data integrity reviews were being conducted by the agencies,

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receive Medicaid assistance; or (5) a composite of these data sources. The district must use the same measure to rank all its school attendance areas.

measuring the bank's current performance through a numeric calculation would be a very straightforward process.

Public File Requirements

The current requirements for maintaining a public file in branch offices are out of date and should be updated and modernized.

Currently, institutions are required to maintain and update a public file that contains specific information about its CRA performance. A complete public file must be kept in the main office of the bank, as well as one in each state. The file needs to include all written comments from the public relating to CRA performance, as well as responses, from the prior two years; the most recent CRA Performance Evaluation; a map of assessment areas; a list of branches, including branches opened and closed during the current and prior two years; a list of loan and deposit services and transaction fees; the HMDA disclosure statements from the prior two calendar years, if applicable; and if the CRA rating was lower than satisfactory, the quarterly report on its efforts to improve.

We agree with the importance of providing information to customers and ensuring the transparency of CRA. However, the requirement was written at a time when the branch was the principal means of reaching customers. Every bank now has a web site, and all the relevant information can be readily obtained by anyone who wishes to obtain it, without the need to have it readily available in hard copy or downloadable at the main office and in each state. This is a requirement that should be modernized to reflect the realities of consumer behavior.

Thank you for the opportunity to share our comments on the ANPR. We would be pleased to answer any questions and to participate in any further efforts to modernize CRA.

Sincerely,

Steven I. Zeisel
Executive Vice President & General Counsel