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February 16, 2021

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

RE: Regulation BB: Community Reinvestment Act, Advance Notice of Proposed Rulemaking, Docket Number R-1723, RIN 7100-AF94

Dear Ms. Misback:

I am writing on behalf of the National Housing Conference (NHC) to comment on the Advance Notice of Proposed Rulemaking (ANPR) entitled Community Reinvestment Act (CRA), which was published by the Federal Reserve Board of Governors (the Board) on October 16, 2020.

While the development of effective vaccines brings hope for an end to the COVID-19 pandemic, much work remains to be done to restore the nation's physical and economic health. Financial institutions of all sizes remain engaged in efforts to maintain stability and support the economy in the face of historic levels of economic dislocation and unemployment, particularly for low- and moderate-income (LMI) households and communities. The pandemic's long-term impact on the economy, the financial system and communities throughout the nation remains uncertain. An effectively modernized CRA that improves the statute's clarity, consistency and flexibility will better serve the people and communities it is meant to help and may significantly contribute to an equitable economic recovery and economy.

While the federal government has taken action to ameliorate the pandemic's economic impact, many families can no longer maintain their housing payments. The global advisory firm Stout Risius and Ross estimated that as of September 14, 2020, there were between 9.7 million and 14.2 million renter households in the United States that may be unable to pay rent and were at risk of eviction; this translates to between approximately 23.3 million and 34.0 million individual renters. As of that date, Stout estimated that there was between $12.2 billion and $16.7 billion in past-due rent. Stout projected that by the end of January 2021 the rent shortfall for these households would increase to between $25.1 billion and $34.3 billion among as many as 8.4 million renter households.

Homeowners are equally devastated, particularly in communities of color which have not recovered from the 2008 Great Recession. While CARES Act and COVID-related forbearance by servicers has provided breathing room for many homeowners, this assistance does not cover those whose homes are at risk due to tax foreclosure, past-due homeowner association fees and other threats to home retention. The Mortgage Bankers Association reports that there are currently 3.8 million homeowners who are past due on their mortgages. Over half of these homeowners may be people of color, according to Census Bureau Household Pulse Survey data for the period of January 6 through January 18. Black and Hispanic mortgage holders were more than twice as likely as White homeowners to report being late on their mortgage. Despite being hardest hit by the pandemic, Black and Hispanic homeowners were less likely to benefit from the CARES Act

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relief provisions, putting even current low levels of homeownership further at risk. Homeowners with a first mortgage in predominantly Black neighborhoods were the most likely to be unprotected (2.3%), followed by homeowners in predominantly Hispanic neighborhoods (1.6%). Homeowners in predominantly White neighborhoods were less likely to be delinquent for credit reporting purposes (1.2%). [1]

We strongly believe that it is unwise to require banks, community groups and other CRA stakeholders to navigate this challenging environment under a balkanized regulatory framework. Accordingly, NHC reiterates our strong preference, stated in previous letters and communications, that this ANPR, and the comments the Board receives in response should provide a foundation for a Notice of Proposed Rulemaking that is jointly issued by the Board, the Office of the Comptroller of the Currency (OCC), and the Federal Deposit Insurance Corporation (FDIC).

We also wish to commend the leadership of the Board of Governors and its staff in undertaking comprehensive consultations with a large and diverse set of stakeholders. This work is clearly reflected in the ANPR.

NHC's responses to specific questions on which the Board has solicited feedback follow.

Section I. Introduction: Request for Feedback, Objectives, and Overview

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

NHC believes the Board has captured the most important modernization objectives for the CRA. Throughout the CRA rulemaking process, which was launched by the OCC and FDIC in December 2019, NHC has emphasized four basic tests that must be met for CRA modernization to be effective and sustainable.

1. Increase investment in communities that are currently underserved;
2. Benefit more LMI people, particularly people of color, who live in those communities;
3. Ensure that CRA lending and investment does not lead to displacement of the very people it is meant to help; and
4. Make both bank performance and government enforcement more transparent, consistent and clear.

The Board's stated objectives are well-aligned with these criteria. The balance of this letter highlights important perspectives that NHC members have provided on both the approaches the Board is proposing or considering and the more open-ended questions the ANPR poses across key topic areas, including Assessment Areas, a framework for bank performance evaluation

[1] Urban Institute, "Delinquent Homeowners in Neighborhoods of Color Are Less Likely to Be Protected by Forbearance," Dec. 2, 2020, https://www.urban.org/urban-wire/delinquent-homeowners-neighborhoods-color-are-less-likely-be-protected-forbearance

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(Retail and Community Development Tests), qualifying activities and geographies, ratings, and data collection and reporting.

The scale of the challenge to providing safe, decent and affordable housing to all in America highlights the importance of successfully completing CRA modernization. Even before COVID-19 caused millions of Americans to lose their jobs or suffer a dramatic loss of income, the nation's housing markets were failing to provide affordable options to LMI households, especially for people of color. LMI households increasingly struggle to become homeowners in a market that isn't producing affordable options. 2019 represented the eighth consecutive year that the median home sale price increased faster than household income while the for-sale home inventory stood at its lowest level since 1982.[2] This supply-demand mismatch must be addressed. It threatens to become a structural, permanent obstacle to the American Dream for millions. CRA is an important tool to address this problem.

The ANPR solicits input on how best to establish better standards regarding where activities are assessed, which activities are eligible for CRA purposes, and how eligible activities are evaluated and assessed. The CRA regulatory framework must better align with today's banking, housing and community development sectors. Even if a final rule is implemented perfectly, the data the Board receives on bank performance and changes in the world will require periodic reviews of key issue areas. While we believe full CRA rulemaking should happen more frequently than it has historically, it is too substantial an undertaking to take on more often than once a decade. Accordingly, our detailed comments are designed to assist the Board in finalizing a rule that provides clear rules-of-the-road to banks and community groups while remaining flexible enough to evolve through published Questions and Answers and other interim guidance tools.

Section II - Background

Question 2. In considering how the CRA's history and purpose relate to the nation's current challenges, what modifications and approaches would strengthen CRA regulatory implementation in addressing ongoing systemic inequity in credit access for minority individuals and communities?

CRA stands at the intersection of geography and race. When enacted in 1977,[3] the CRA responded to concerns over disinvestment in low-income communities and the persistent impact of "redlining," the practice of avoiding investment in minority neighborhoods codified by the Home Owners' Loan Corporation (HOLC) in 1933 and the Federal Housing Administration in 1934.[4] While the Fair Housing Act of 1968 prohibited redlining and other forms of housing

[2] Harvard Joint Center for Housing Studies, State of the Nation's Housing 2020, 11

[3] Pub. L. 95–128, title VIII, § 807, as added Pub. L. 101–73, title XII, § 1212(b), Aug. 9, 1989, 103 Stat. 527; amended Pub. L. 102–242, title II, § 222, Dec. 19, 1991, 105 Stat. 2306; Pub. L. 103–328, title I, § 110, Sept. 29, 1994, 108 Stat. 2364.

[4] Remarks by Martin J. Gruenberg, Member, Board of Directors, Federal Deposit Insurance Corporation on The Community Reinvestment Act: Its Origins, Evolution, and Future at Fordham University, Lincoln Center Campus; New York, New York, October 29, 2018

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discrimination, these practices proved difficult to reverse. Meanwhile, as White Americans left cities for new, largely segregated suburban bedroom communities[5] in the 1960s and 1970s, there was a growing disparity between where banks raised their deposits and where they invested, particularly in housing and mortgage finance. Its impact has left deep scars in communities that persist 50 years after they were outlawed. Research by economists at the Federal Reserve Bank of Chicago demonstrates that areas denied credit in the aftermath of the Great Depression of the 1930s continue to have lower property values, lower homeownership rates, and lower credit scores.[6]

When he introduced the CRA in 1977, Senate Banking, Housing and Urban Affairs Committee Chairman William Proxmire expressed hope that by incenting banks to rebuild and revitalize communities threatened by decline, the bill would ultimately prove good for the banking industry. Congress sought to incentivize banks to invest in the communities where their branches were located, and reverse the impact of redlining. A high CRA rating was intended to provide that incentive. Yet even as Americans' residential migration patterns and banking industry business models have changed dramatically since 1977, the lack of equitable access to credit by communities of color has been alarmingly consistent.

Non-White households' access to affordable home mortgage loans today falls far short of what CRA's champions originally envisioned. Overall, Black homeownership plummeted during the Great Recession, falling from 49.7% in Q2 2004 to 40.6% in Q2 2019, when it was lower than it was when the Fair Housing Act was passed in 1968.[7] This is a national tragedy. And Black and Hispanic households who have managed to become homeowners pay higher mortgage rates than their White counterparts[8] and are at much greater risk of losing their homes during the pandemic.[9]

The critical element missing in CRA enforcement that exists in every other aspect of bank business operations is the explicit tracking and recording of performance. Quarterly business reviews at every major company in America focus on numeric goals and measurable accomplishments. These goals drive compensation and as a result, performance. Yet, much of CRA evaluation is based on income and geographic proxies for race rather than the number of loans made to individual racial or ethnic groups.

CRA was introduced to address the impact of redlining. The HOLC's mapping and evaluation of neighborhoods was laser focused on race. Every racial group was precisely accounted for and racial deed restrictions were touted as examples of neighborhood stability. Geography was a method of identifying where racial groups lived. One need look no further than the HOLC

[5] https://www.nytimes.com/1997/12/28/nyregion/at-50-levittown-contends-with-its-legacy-of-bias.html

[6] The Effects of the 1930s HOLC "Redlining" Maps (Revised August 2018) by Daniel Aaronson, Daniel Hartley, Bhash Mazumder. Federal Reserve Bank of Chicago Working Paper, No. 2017-12, 2017.

[7] US Census HVS Survey Data. https://www.census.gov/housing/hvs/data/histtab16.xlsx

[8] Black homeowners refinance less and pay more for mortgages, new data reveals, by Taylor Allen; PBS and NPR, January 4, 2021 https://whyy.org/articles/black-homeowners-refinance-less-and-pay-more-for-mortgages-new-data-reveals/

[9] https://www.brookings.edu/blog/up-front/2020/12/18/housing-inequality-gets-worse-as-the-covid-19-pandemic-is-prolonged

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mapping descriptions – the narratives written by neighborhood evaluators. Areas identified as "B - Still Desirable" and colored blue, routinely note the importance of deed restrictions, and no African Americans. Areas rated "C - Definitely declining" and colored yellow, emphasize the threat of "Negro infiltration." Another area, "D -Hazardous" and colored red, typically notes the high numbers of African Americans and "Aliens."[10]

CRA's implementing rules have addressed race only peripherally, insofar as evidence of racial discrimination can lower a bank's CRA rating. CRA's establishment of a "continuing and affirmative obligation" by banks to serve their entire communities goes far beyond a fair lending mandate to do no harm. While CRA does examine service to LMI people and communities, "LMI" and "minority" are far from the same: nearly two-thirds of LMI households are White, while nearly 40% of Black households and more than half of Hispanic households are not LMI.[11]

Racial discrimination was rewarded in assessments that directly determined mortgage availability. Numeric evaluation of efforts to increase racial equity should, therefore, be a part of CRA assessments as well. Banks already report racial data under the Home Mortgage Disclosure Act (HMDA). This same data reporting should be used in assessing performance and establishing performance context in CRA evaluations as well. NHC recommends that the CRA regulation develop a process for collecting and reporting baseline data on investment and lending to people of color. Much like the first report of HMDA data in 1976 led to the introduction of the CRA in 1977, this data collection may inform future efforts to improve racial equity. Material decreases in performance by race should be a factor in determining a "Needs to Improve" rating, and material increases should be an important part of earning an "Outstanding" rating.

Section III - Assessment Areas and Defining Local Communities for CRA Evaluations

Questions 3-10

Question 3. Given the CRA's purpose and its nexus with fair lending laws, what changes to Regulation BB would reaffirm the practice of ensuring that assessment areas do not reflect illegal discrimination and do not arbitrarily exclude LMI census tracts?

Question 4. How should the Board provide more clarity that a small bank would not be required to expand the delineation of assessment area(s) in parts of counties where it does not have a physical presence and where it either engages in a de minimis amount of lending or there is substantial competition from other institutions, except in limited circumstances?

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

[10] Mapping Inequality, Redlining in New Deal America. University of Richmond's Digital Scholarship Lab. https://dsl.richmond.edu/panorama/redlining/#loc=5/39.1/-94.58&text=downloads
[11] https://www.census.gov/data/tables/time-series/demo/income-poverty/historical-income-households.html

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Given the fair lending concerns and uncertainty that can arise when assessment areas do not align with subdivisions, the Board might consider setting a presumption that smaller bank assessment areas should also reflect county, city, town, or other political subdivision boundaries. Small banks could rebut this presumption by demonstrating that it lacks a physical presence and engages in *de minimis* lending in portions of the relevant subdivision, so long as the examiner determines that the proposed assessment areas are not drawn arbitrarily or in a discriminatory manner.

NHC supports the Board's retention of a facility-based assessment area approach, tailored to bank size. However, combined metropolitan statistical areas are too large and diverse to be effective as assessment areas. For example, the Los Angeles-Long Beach combined statistical area extends from northwest of Ventura to the Arizona border. However, it is also important to permit banks to designate the whole non-metropolitan area of a state as an AA. We appreciate that the OCC final rule permits a bank to designate the whole non-metropolitan area of a state as an AA. We encourage the Board to adopt that policy.

Question 6. Would delineating facility-based assessment areas that surround LPOs support the policy objective of assessing CRA performance where banks conduct their banking business?

Yes.

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

NHC recommends that the Board retain the requirement for banks to delineate AAs around deposit-taking ATMs, which are often the only banking facilities available in rural and highly distressed urban areas. Deposit taking ATMs are an important alternative to check-cashing facilities that remain a dominant form of financial services in many low-income communities.

Question 8. Should delineation of new deposit- or lending-based assessment areas apply only to internet banks that do not have physical locations or should it also apply more broadly to other large banks with substantial activity beyond their branch-based assessment areas? Is there a certain threshold of such activity that should trigger additional assessment areas?

Question 9. Should nationwide assessment areas apply only to internet banks? If so, should internet banks be defined as banks deriving no more than 20 percent of their deposits from branch-based assessment areas or by using some other threshold? Should wholesale and limited purpose banks, and industrial loan companies, also have the option to be evaluated under a nationwide assessment area approach?

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

We are concerned that the establishment of deposit- or lending-based AAs are the wrong paradigm for evaluating activity that is inherently not local. Instead, we join the National Association of Affordable Housing Lenders (NAAHL) in supporting a new framework that establishes accountability for activity beyond branch-based AAs for the full continuum of large retail bank business models as the industry evolves.

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

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

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

In contrast with a deposit- or lending-based AA model, this framework would capture a bank's entire lending for any retail product line with significant business outside its AAs. The loans would be subjected to the same community and industry comparator tests as to geography and borrower as would be applied at the AA level for each applicable retail lending product line. Regarding benchmarks, the Board should analyze retail lending data to determine whether there would be a significant difference between the nationwide and tailored benchmarks. In concept, the tailored benchmark might be more accurate and fairer than the nationwide benchmark, but it would be simpler for all banks to have the same benchmark. Whether the additional accuracy is worthwhile in practice depends on how much the benchmarks vary among local markets. The Board could also generally apply the nationwide benchmark but permit a bank to use the tailored benchmark at its own discretion.

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

<u>Community Development activity outside facility-based AAs</u>. Supporting community development activity both in AAs and nationwide is one of the most important imperatives of CRA modernization. Current policies have failed to serve either local or national community development needs well, and instead have frustrated the needs of community development organizations and attempts by banks to receive CRA credit for addressing them. The Board has

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recognized that current CRA policies have contributed to the uneven provision of community development financing between so-called hot and cold markets.

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

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

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

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

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

Section IV - Overview of Evaluation Framework

Questions 11-13

Bank Size

Question 11. Is it preferable to make the default approach for small banks the current framework, with the ability to opt in to the metrics-based approach, as proposed, or instead the metrics-based approach, with the ability to opt out and remain in the current framework?

NHC recommends that small banks be subject to the current framework as the default approach, with the option to address the metrics-based evaluation. As the Board notes, multiple evaluation frameworks add to the complexity and undermine the clarity and consistency within CRA implementation. While the Board's proposal does not differ substantially from the current small bank test in terms of administrative burden, changes in procedure and measurement do create additional costs that should be taken into account.

We also recommend keeping the intermediate small bank test for banks that now fall within that category.

Question 12. Should small retail banks that opt in to the proposed framework be evaluated under only the Retail Lending Subtest? Should large retail banks be evaluated under all four subtests: Retail Lending Subtest, Retail Services Subtest, Community Development Financing Subtest, and Community Development Services Subtest?

NHC recommends the community development activities of small banks be unchanged. These are often the primary source of lending, investment, and banking services in rural and other areas of high need.

NHC supports the Board's proposed approach of evaluating large banks under all four subtests.

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

NHC supports the increase to between $500 million and $750 million, with an automatic mechanism to adjust with aggregate national inflation over time. We recognize the importance of the community development test in areas served by small banks and encourage the Board to consider which threshold point will strike the best balance between community impact and the resources necessary to meet the compliance expense that comes with a higher threshold. In any case, indexing that level to periodically adjust for inflation is an important component of a fair threshold.

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Section V - Retail Test

Questions 14-32

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

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

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

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

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

The current approach should continue to apply.

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

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

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

NHC believes the proposed presumption of "satisfactory" approach is an appropriate way to increase clarity, consistency, and transparency. The Board can mitigate concerns that the threshold for a presumption of "satisfactory" could be set too low in communities underserved by all lenders by ensuring that the performance context and qualitative elements of the proposed evaluation framework are both rigorous and have substantial weight. A presumption of a "satisfactory" rating should not become, in practice, an entitlement to that rating, where banks are collectively underserving the credit needs of an AA. Examiner discretion to downgrade a rating in the face of such evidence, or of a bank's substantial neglect of a credit need within an AA or actual discrimination, must be exercised in practice and not simply in theory.

We strongly urge the Board to retain the distinction between high and low "satisfactory" ratings. If a single "satisfactory" rating is used, the threshold level for "satisfactory" performance would risk a race to the bottom.

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

NHC supports the Board's proposal to use performance ranges to complement the use of the presumption of "satisfactory" for the Retail Lending Subtest. The performance range analysis provides additional transparency and consistency when a bank: 1) meets the presumption of "satisfactory" and wants to reach an "outstanding"; or 2) fails to meet the presumption and is assessing where its rating might ultimately fall on the Subtest.

This approach enables a more nuanced quantitative analysis of a bank's retail lending performance. This said, it is essential that the examiner's review of performance context and the bank's specific activities the Board proposes to combine with the *recommended* conclusions based on this analysis to form a *final* conclusion have real weight, with the actual potential to shift the conclusion downward or upward.

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

We strongly support the development of transparent performance context factors and/or specific activities that an examiner would take into account when considering adjustments to the recommended conclusion under the performance ranges.

Section VI – Retail Test Qualifying Activities

Questions 33-41

Question 38. Should the Board provide CRA credit only for non-securitized home mortgage loans purchased directly from an originating lender (or affiliate) in CRA examinations? Alternatively, should the Board continue to value home mortgage loan purchases on par with loan originations but impose an additional level of review to discourage loan churning?

We recommend that full credit be provided for: 1) origination and whole loan purchase; and 2) first bank purchase of home mortgage-backed securities (MBS). An additional level of review should be applied to subsequent bank-to-bank purchases of MBS with a presumption of reduced or no credit and subject to the following exceptions:

- <u>Within AA</u>: bank demonstration that other community development activities were too few (e.g., rural areas with infrequent Low-Income Housing Tax Credit deals) or too competitive (e.g., urban CRA "hot spots") for the bank to otherwise meet performance thresholds. No percentage or dollar limitation would apply at the AA level.

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- Institution-level: In no event could a bank receive CRA credit for MBS purchases in excess of 20% of its total community development activities.

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

Current CRA exams rarely discuss whether banks are purchasing loans from CDFIs that are particularly responsive to local needs. NHC recommends examiners review purchased loans separately from loan originations on CRA exams to determine the concentration of bank activity in loan purchases. This method of examination would allow banks to offer greater detail on their loan purchases. Activities that provide liquidity to CDFIs or other mission lenders could be considered particularly responsive or impactful and receive additional consideration.

We note that CDFIs often face greater liquidity challenges for loans to support community facilities than rental housing or home mortgage loans, given the lack of maturity and smaller scale of those markets. The balance sheet space taken up by these loans affects CDFIs' ability to make additional loans, including home mortgage and rental housing loans. Accordingly, the Board might consider providing extra credit or other measures to encourage the purchase of whole loans and/or creation of secondary markets for non-housing loans held by CDFIs.

Section VII. Community Development Test

Questions 42-51

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

NHC is concerned about the potential impact of combining community development loans and investments on banks' incentive to make equity investments in real estate projects and small businesses, which are among the most impactful and responsive CRA-motivated activities. In particular, the Low Income Housing Tax Credit (LIHTC) is the linchpin of affordable rental housing production nationwide,[12] serving millions of the nation's most economically vulnerable households[13] and distressed LMI communities.[14]

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[12] ACTION Coalition, "The Low-income Housing Tax Credit's Impact in the United States," (2020). Retrieved from: https://static1.squarespace.com/static/566ee654bfe8736211c559eb/t/5f49371ab849107398486479/1598633756198/ACTION-NATIONAL-2020.pdf

[13] Department of Housing and Urban Development, "Understanding Whom the LIHTC Serves: Data on Tenants in LIHTC Units as of December 31, 2017," (2029). Retrieved from: https://www.huduser.gov/portal/sites/default/files/pdf/LIHTC-TenantReport-2017.pdf

[14] Freddie Mac, "Spotlight on Underserved Markets: LIHTC in Rural Persistent Poverty Counties," (2020). Retrieved from: https://mf.freddiemac.com/docs/lihtc_persistent_poverty_counties.pdf?_ga=2.144102133.1178134337.1608330267-1072611062.1607617388

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At a minimum, banks should continue to separately track and report on equity investments, and the regulators should publish this data. It is critical for community groups and other stakeholders to be able to observe whether a bank's equity investment activity as a percentage of its total community development activity is decreasing over the course of exam periods.

We also support conferring on LIHTC and other community development investments the highest Impact Score on the Board's proposed scale.

We are cognizant of competing policy risks at play here. On one hand, in the absence of the current standalone investment test, the Board's proposed approach could lead to a decline in equity investments by banks (not explained by cyclical patterns). On the other, setting an absolute minimum community development investment threshold at the institution-level would raise the specter of credit allocation which Congress and regulators have sought to avoid since CRA's enactment and represents an intervention that puts a strong 'finger on the scale' in favor of equity investments.

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

NHC supports the Board's approach. While CRA modernization should provide additional clarity, consistency and transparency to banks on CRA credit for outside AA activities, it is critical that banks remain responsive to their AAs.

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

NHC encourages the use of assets as the measure of financial capacity in the case of wholesale and limited purpose banks. Assets are used currently on CRA exams to develop CD ratios. If assets are not used, the absolute dollar amount of CD activity loses meaning since wholesale and limited purpose banks will have differing amounts of assets and thus differing capacities to engage in CD finance.

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

NHC supports the Board's proposed use of local and national benchmarks. However, without explicit steps to address the current patchwork of CRA "hot-spots" and "deserts," local benchmarks could simply replicate and even exacerbate current trends, such as substantially distorted LIHTC pricing (up to 10-15% variability).[15] For example, an AA currently attracting a relatively high level of community development activities against deposits would have a high

[15] CohnReznick, "Housing tax credit investments: Investment and operational performance," (2019). *Retrieved from:* https://www.cohnreznick.com/insights/2019-housing-tax-credit-investment-operational-performance "Housing Tax Credit Monitor," (2020). *Retrieved from:* https://www.cohnreznick.com/insights/housing-tax-credit-monitor

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benchmark, incenting banks to continue focusing AA to meet the benchmark, and an AA receiving a low level of community development activities against deposits would have a low benchmark, allowing minimal investment or lending to meet the standard.

To avoid maintaining the current CRA hot spot/desert pattern, we believe banks should be allowed to receive credit, at the assessment area level, for LIHTC investments made anywhere within a state in which a bank has one or more assessment areas. While we appreciate that the ANPR proposes that a bank will receive credit at the state level for any community development loans or investments in the state, we believe that it would provide more clarity if it were clear that such investments would be treated as serving the assessment area(s) in that state. If a bank has more than one assessment area within the state or multi-state MSA, the credit could be allocated evenly to each assessment area. This treatment would ensure underserved communities not within local assessment areas are still able to benefit from the incentive that the CRA provides, evening LIHTC investments geographically and helping to limit CRA pricing distortions.

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

NHC supports the Board's proposed three-pronged approach to evaluating community development financing: thresholds, performance ranges, and impact scores. Given the data limitations around community development financing that exist today and—as the Board notes—are likely to persist for a number of years, we support the Board's proposed gradated approach of employing thresholds as general guideline to help evaluate a bank's community development financing metric rather than creating a presumption of "satisfactory." Surpassing a threshold would be taken into consideration by an examiner, but would not initially grant a presumption of a specific conclusion.

We are hopeful that performance ranges can be used as a means to improve bank performance in community development financing, particularly in light of research suggesting that a number of banks have received passing CRA ratings while doing very little community development financing.

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

We support the ANPR's proposed approach, under which examiners will judge activities based on responsiveness. We recommend that "innovation" and "complexity" be taken into account as well, as under the current evaluation system.

We support the Board's proposal to assign an impact score to each grant, loan, or investment (which banks should be required to report separately). The impact score should be explained clearly in exam narrative and accompanying tables. True equity investments in housing and other real estate projects or small businesses should automatically receive the highest impact score.

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Given the need for substantially more and better community development financing data, the Board should consider requiring banks to report supplemental data currently provided only when they seek higher ratings (e.g., affordable housing units, jobs created). The Board should streamline data submission through a standardized template. To provide additional clarity, the Board should also develop a list of pre-approved activities and their corresponding impact scores.

Section VIII. Community Development Test Qualifying Activities

Questions 52-72

Affordable Housing

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

NHC strongly supports the Board's proposal to give CRA consideration to subsidized affordable housing, unsubsidized affordable housing, and housing with explicit pledges or other mechanisms to retain affordability in the definition of affordable housing.

NHC recommends that rental housing not subject to tenant income restrictions ("naturally occurring affordable housing" or "NOAH") receive favorable consideration as affordable housing if most of the property's rents are affordable when the financing is committed, and the property meets <u>one</u> of the following three additional standards:

- <u>The property is located in a LMI neighborhood</u> (i.e., census tract). We applaud the ANPR's inclusion of this criterion inclusion, reflecting longstanding CRA policy as implemented by examiners.
- <u>Most renters in the neighborhood are LMI and most rents in the neighborhood are affordable</u>. We strongly urge the Board include this criterion given that:
  - The income of renters already living in the neighborhood is a better indicator of the likely tenants of a property than the income of all neighborhood residents, many or most of whom may be homeowners.
  - Applying a median renter income standard would qualify affordable housing in many middle-income "opportunity areas," while adhering to the principle of likely LMI occupancy.
  - If most neighborhood rents are affordable, a property owner will be unlikely to charge higher rents because the market will not support it.
  - These criteria are readily determinable when financing is committed, using broadly available data from the U.S. Census Bureau's American Community Survey, which is updated annually.
  - This would greatly expand CRA impact on NOAH. Currently, most renters are LMI and most rents are affordable in 58% of all census tracts in the 50 largest

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metropolitan areas (MSAs) and metropolitan divisions (MDs), far more than the one-third of census tracts where the median family or household income is LMI.

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

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

Determination of rent and affordability. NHC recommends requiring that, in all cases, the rent be affordable to LMI households for a majority of the units in the property, as determined when the financing is committed and based on a 30%-of-income affordability standard ("30% of 80% of Area Median Income"). This affordability metric is consistent with other federal housing policies federal housing policies, including LIHTC, Section 8 project-based rental assistance, Housing Choice Vouchers, and the HOME Investment Partnerships program.

This should reflect affordability at the time financing is committed and initial rent levels, which is consistent with the Federal Housing Finance Agency, in setting affordable rental housing goals for Fannie Mae and Freddie Mac. Banks and other lenders do not routinely collect income information on tenants as a basis for underwriting. Further, property owners are highly unlikely to under-estimate rents (and thereby over-estimate affordability) because that would reduce the financing they can obtain.

Optional use of HUD income data. Banks should have the option to use either Federal Financial Institutions Examination Council (FFIEC) area income data or Department of Housing and Urban Development (HUD) area income data for purposes of qualifying unsubsidized affordable rental housing. The HUD income data are used for federally subsidized affordable housing. They vary in certain respects from the FFIEC data. First, HUD data are adjusted based on the number of persons in a household. Since the size of an occupying household is not easily verifiable and can change over time, we recommend assuming a three- or four-person household as a convention. An area's income limit may not exceed the U.S. median family income level ($68,000 for FY 2017) except when justified by high housing costs. Third, an area's income limit is adjusted due to high housing costs if 85% of the area's annual two-bedroom HUD Fair Market Rent is greater than 35% of the U.S. median income. CRA Q&A guidance already allows adjustments for high-cost areas but offers no clear method for making such adjustments. Allowing banks, the option to use HUD area income data would provide a clear and simple way to operationalize the existing policy.

Rebuttable presumption. Meeting the proposed affordability standard would establish a rebuttable presumption of likely LMI occupancy, thereby qualifying the property as affordable housing.

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However, an examiner could disallow consideration in rare cases where the property is maintained in substandard condition or it is upgraded such that rents are no longer affordable.

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

NHC recommends the Board publish a list of illustrative activities that could be viewed as particularly responsive to affordable housing needs. The list should be non-exclusive (i.e., failure of a particular activity on the list should not prevent a bank from receiving extra credit if that activity is particularly responsive to the housing needs of the AA in which it takes place). Particularly responsive activities includes housing that:

- Targets to those below 30% of AMI or persons experiencing homelessness.
- Is provided in conjunction with community health, mental health or other supportive services (service-enriched housing, permanent supportive housing), particularly if targeted to the elderly, persons with disabilities or veterans.
- Creates or preserves affordable housing near transit (TOD).
- Serves large families (five or more members of the household) or families with children under age five.
- Preserves LMI affordability in a census tract at high risk of gentrification coupled with involuntary displacement of LMI families.
- Is located in "designated areas of need."
- Supports homeowner repair to benefit existing residents on homes in areas suffering from valuation gaps (where repair costs exceed home values) or areas in danger of gentrification.
- Provides capital through loan funds or other vehicles to nonprofit housing developers working in LMI communities, especially when such lending relies on collateral rather than recourse to the nonprofit's balance sheet to ensure safety and soundness
- Expands the supply of affordable homeownership through preservation or new development
- Supports adaptive re-use of commercial or other property in communities struggling with blight or vacancy.
- Mortgage lending with nontraditional underwriting.
- Small-dollar mortgage lending.

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

NHC recommends full credit for any property in which 20% of units are set aside for low-income households at or below 60% of AMI, if the property also receives funding from a federal or state affordable housing financing program. For properties without federal or state funding, we suggest

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pro-rata credit for properties with less than 50% of homes affordable to low-income households, but full credit for properties with over 50% of homes affordable to low-income households.

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

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

Revitalization and Stabilization

Question 61. What standards should the Board consider to define "essential community needs" and "essential community infrastructure," and should these standards be the same across all targeted geographies?

We believe that it is redundant (given there is already a definition for community development activities) and potentially unnecessarily restrictive (banks might view list as exclusive) to define "essential community needs" or "essential community infrastructure."

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

Yes. Such activities should score higher on impact scores in areas that are most devastated by climate change and areas that have had a disproportionate amount of their vegetation and tree coverage removed.

Question 63. What types of activities should require association with a federal, state, local, or tribal government plan to demonstrate eligibility for the revitalization or stabilization of an area? What standards should apply for activities not requiring association with a federal, state, local, or tribal government plan?

NHC recommends that association with a federal, state, local, or tribal government plan should confer automatic eligibility, but should not be a requirement for any particular activity to qualify for revitalization or stabilization of an area. Local, state, and federal revitalization initiative definitions can miss highly impactful activities because they: 1) fail to change quickly enough to reflect shifts in area demographics and needs; or 2) miss 'micro-targeting' of need within an area.

MDIs, CDFI and other Mission-Oriented Financial Institutions

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

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

NHC supports providing CRA credit for investments and other financial support in MDIs, women-owned financial institutions and low-income credit unions, as well as CDFIs, outside of a bank's AA or outside of broader statewide or regional areas. The pandemic has revealed the importance of these institutions as financial "first responders" in LMI areas, particularly communities of color. Yet their assets remain low relative to many other financial institutions.

We further support designating these investments as a factor for an "outstanding" rating to incentivize them, but only in the context where the final rule maintains High and Low Satisfactory subtest ratings and comprehensively evaluates bank community development financing inside and outside AAs.

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

NHC supports financial institutions receiving CRA credit for investing in other MDIs, women-owned financial institutions, and low-income credit unions. NHC recommends they receive CRA credit for investing in their own institutions subject to the Board's proposed limitation to activities that demonstrate meaningful investment in the business, such as staff training, hiring new staff, opening new branches in minority neighborhoods, or expanding products and services, above and beyond what should typically be expected. MDIs and women-owned financial institutions should receive CRA credit for investing in such institutions, low-income credit unions, as well as CDFIs, as should other banks.

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

NHC encourages the Board to highlight and disseminate best practices in bank support for MDIs, women-owned financial institutions, low-income credit unions and CDFIs (e.g., through publications and other tools available on its website and those of the Federal Reserve Banks, including as topics in Board convenings and conferences).

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

NHC supports banks receiving CRA consideration for loans, investments, or services in conjunction with a CDFI operating anywhere in the country. Accordingly, we also recommend the following:

- Bank examiners should include an assessment of qualitative factors, including performance context and impact scores, banks' responsiveness to the needs of CDFIs headquartered or operating primarily within their AAs or eligible states/regions.
- The Board should consider providing additional credit for loans, investments or services in conjunction with a CDFI operating anywhere in the country where said activity involves a

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commitment by the national CDFI to partner with one or more local/regional CDFIs (e.g., joint loan participation in individual projects, co-administration of local/regional loan funds, provision of 'back office'/'shared services' support, etc.).

Geographic Areas of Eligibility for Community Development Activities

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

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

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

NHC supports the Board's inclusion of designated areas of need to expand the geographic areas in which a bank's community development activities would be eligible for credit. We recommend that activities within designated areas of need that are also in a bank's assessment area(s) or eligible states and territories be considered particularly responsive. We support the Board's proposal that these designated areas of need must be updated on short, regular intervals (such as on a biennial basis as proposed in the ANPR).

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

We encourage the Board to consider providing additional credit for community development activities in especially vulnerable census tracts within designated areas of need (e.g., areas of persistent poverty, particularly low income, highly segregated, distressed housing stock, significantly lower levels of community development financing than other areas within designated area of need).

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Options to Provide Additional Certainty About Eligible Activities

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

NHC strongly supports the development and publication of illustrative, but non-exhaustive, list of CRA eligible activities provide greater clarity on activities that count for CRA purposes. We recommend the list be developed in consultation with CRA stakeholders and updated at least biennially.

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

NHC encourages the Board to provide a pre-approval process that enables pre-approval for both specific proposed transactions and general categories of eligible activities. Lack of clarity exists at both levels of bank community development activity.

Section IX. Strategic Plan Evaluation

Questions 73-77

NHC defers to banks and community groups that have experience with implementation of strategic plans regarding strategies the Board might consider in improving and streamlining this underutilized option.

Section X. Ratings.

Questions 78-99

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

NHC supports the Board's proposal.

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

Yes.

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

Yes.

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

NHC strongly recommends that the Board retain High and Low Satisfactory differentiation for component ratings. A single "satisfactory" rating diminishes the value of incentivizing additional efforts within the "satisfactory" rating, where the vast majority of banks are rated. While the statute prohibits differentiation within the "satisfactory" range within the final rating, the component ratings have been split between high and low since 1995.

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

NHC supports the Board's proposed standardized approach of using weighted averages and matrices to increase transparency in developing both Retail and Community Development Test assessment area conclusions. Examiners should have the discretion to adjust the weighting of Retail and Community Development tests in deriving assessment area conclusions. This is particularly important in the context where there is a disparity in ratings between subtests (e.g., Satisfactory on community development financing subtest but Outstanding on CD services subtests which has a lesser weight) and an expert, qualitative assessment would lead to the judgement that the higher rating is justified.

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

NHC believes the Board's proposed approach is sufficiently transparent for combining and weighting the Retail Test and Community Development Test scores to derive the overall rating at the state and institution levels.

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

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

Consistent with our response to Question 8, a bank should not be required to provide community development financing outside its AAs; rather, a bank's total domestic deposits should be used to set benchmark community development performance at the institution level; and it should be able to fulfill its institution-level community development responsibilities entirely within its AAs or through a combination of activities within and outside of its AAs.

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Consistent with our response to Questions 47 and 88, additional consideration is important to encourage activities that benefit certain underserved regions such as Indian Country, involve partnerships with certain institutions such as CDFIs, involve equity investments such as LIHTCs and New Markets Tax Credits. But these activities should not be mandatory to achieve an "outstanding" rating.

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

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

Activities undertaken through third-party financing funds, such as CDFIs and LIHTC funds, that intend to serve a broader area that includes a bank's AAs but have not yet fully deployed their capital, could be provisionally allocated among a bank's AAs or at the institution level on any reasonable basis. The location of those activities can be adjusted as capital is deployed – in many cases in time for a CRA examination.

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

NHC recommends that community development and retail services activities should augment only "satisfactory" performance for all small banks.

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

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

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

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Yes, as well as activities undertaken with CDFIs. A bank should not be considered for an "outstanding" rating without at least reaching "satisfactory" performance, regardless of the activities undertaken with MDIs, women-owned financial institutions, and low-income credit unions and CDFIs.

Data Collection and Reporting

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

Yes. For CRA to achieve its purpose, it is essential that the public and private sector have access to better and more complete community development financing information.

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

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

For CRA to achieve its purpose, it is essential that the public and private sector have access to better and more complete community development financing information.

On behalf of the more than 330 members of the National Housing Conference, we appreciate the opportunity to comment on this comprehensive and historic ANPR and look forward to working with the Board, the OCC and the FDIC to see it result in a unified rule that builds a CRA for the 21st century.

Respectfully,

David M. Dworkin

David M. Dworkin
President and CEO