February 16, 2021

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

Re: Docket No. R-1723/RIN 7100-AF94 (Advance Notice of Proposed Rulemaking on the Community Reinvestment Act)

To Whom It May Concern:

Thank you for the opportunity to provide comment on the proposed rule. The U.S. Impact Investing Alliance ("the Alliance") is generally supportive of the framework for the modernization of the Community Reinvestment Act ("CRA") put forth in the Federal Reserve's Advance Notice of Proposed Rulemaking ("ANPR").

Summary: The CRA traces its roots back to civil rights era policymaking and the need to combat decades of redlining and disinvestment in low- and moderate-income ("LMI"), and in particular, Black and Brown communities. In the years since its passage, the CRA has provided the foundation for the modern community development finance industry. The Federal Reserve has an important opportunity to affirm the historical roots of the CRA in combating racial discrimination and at the same time helping to transform community investing to confront inequality. Strengthening this keystone policy will draw more private capital into LMI communities to help drive a just and equitable recovery from the current crisis set, including the COVID-19 pandemic, related economic downturn, systemic racism and climate change.

Regulators should seize this opportunity to more directly address racial disparities in access to loan and investment capital, a core tenet of the law not fully lived up to at present. Regulators should also leverage CRA modernization to fortify local economic development ecosystems. Incentivizing more investments into community development financial institutions ("CDFI") and minority depository institutions ("MDI") – community lenders that serve as the economic development anchor of many underinvested neighborhoods – would have positive ripple effects across local economies, supporting small businesses, quality job creation and increased homeownership. Finally, regulators should seek to incentivize catalytic investments[1] by banks in LMI communities to better align the community development efforts of financial institutions, philanthropies, impact investors and others. Our comments expand on these three recommendations and offer specific responses to several questions posed in the ANPR.

The Alliance is a nonprofit organization committed to catalyzing the growth of impact investing in the United States. Members of our boards and councils include individual and institutional investors collectively owning hundreds of billions of dollars of invested assets, in addition to asset and fund managers collectively managing over one trillion dollars in assets. We define impact investing broadly to

[1] According to the MacArthur Foundation's Catalytic Capital Consortium, catalytic capital is defined as "investment capital that is patient, risk-tolerant, concessionary, and flexible…The aim of catalytic capital is to unlock impact and additional investment that would not otherwise be possible."

include those investments that create financial returns alongside measurable and positive social, economic or environmental impacts across asset classes.

The Alliance frequently engages with federal policymakers to promote an enabling public policy environment to flow more private capital for public good. In particular, we are supportive of the federal government's long history of policymaking to incentivize and leverage private capital to invest in historically underinvested communities, such as Black, Brown, Native, rural and LMI communities.

This community development ecosystem is vitally important to the work of impact investors, including many members of our boards and councils, who invest in LMI communities across the United States to achieve positive social, economic and environmental outcomes for residents and local businesses. These investors rely on the certainty and stability that the CRA framework lends to their community and place-based investment activities. For that reason, we urge regulators working on modernization to guard the core intent of the CRA and carefully consider the potential consequences of any changes.

That said, we do recognize the need for CRA modernization. The banking sector has evolved significantly over the past few decades, due to the rise of online and mobile banking and broad consolidation trends within the industry. Furthermore, national and local economies have also undergone significant changes, considering many communities have yet to fully recover from the 2008 Great Recession and are once more being tested due to the COVID-19 pandemic and related economic downturn. For these reasons, it is appropriate to revisit and modernize CRA regulations at this time, and the Alliance believes that the Federal Reserve's ongoing rulemaking process provides an opportunity to strengthen the regulatory framework in a way that will create measurable, positive impact for historically underinvested communities.

The Alliance submitted comments[2] opposing the proposed rule pursued by the Office of the Comptroller of the Currency ("OCC") in the spring of 2020.[3] In that proposal, the single ratio approach to CRA evaluations paired with a wide expansion of what activities count toward CRA credit would result in significantly less CRA activity in LMI communities. If implemented, such a framework would lead banks to prioritize fewer and larger deals rather than engaging in a wide range of CRA investments, loans and services that are beneficial and responsive to community needs. As a result of the OCC's rulemaking, there are currently multiple CRA regulatory frameworks at play for different segments of the market, which causes a great deal of uncertainty for banks, investors and communities alike. Given our significant concerns with the OCC framework, we encourage the Federal Reserve to leverage this rulemaking process to reach alignment across the three regulating agencies – the Federal Reserve, Federal Deposit Insurance Corporation ("FDIC") and the OCC – on a modernized framework. Consistency among agencies is not only important for CRA-regulated banks and the communities in which they invest, but it is also vital for impact investors who depend upon the stability of the CRA market.

Given the infrequent opportunities for major updates to the CRA framework, we encourage regulators to take the necessary time and consideration to ensure that this rulemaking process is effective and the outcomes impactful for communities. Below, we outline our broad recommendations for CRA

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[2] U.S. Impact Investing Alliance, "CRA Reforms Jeopardize Impact Investments in Vulnerable Communities," April 2020. Available at: http://impinvalliance.org/news-updates/2020/4/8/cra-reforms-jeopardize-impact-investments-in-vulnerable-communities.

[3] OCC-2018-0008, RIN 3064-AF22.

modernization, as well as our response to specific elements of the ANPR itself. Finally, we offer the possibility of CRA expansion through legislation, which we encourage regulators to consider as they advance this rulemaking process.

General Recommendations for CRA Modernization

Reaffirm the CRA's Historical Roots to Address Racial Inequities

The CRA was crafted to respond to racial inequities within the financial system, but meaningful and lasting economic disparities for Black and Brown communities persist. A study published in 2020 by Redfin concludes that homeowners living in formerly redlined neighborhoods have on average generated 52% less personal wealth through property value increases over the past 40 years than those living in neighborhoods that had adequate access to mortgage lending – what they refer to as "greenlined neighborhoods."[4] The study also notes that Black families are "five times more likely to own in a formerly redlined neighborhood than in a greenlined neighborhood," meaning Black families disproportionately experience the loss of net worth due to the racist practices of the 20th century. Indeed, as of 2016, the net worth of an average White household was estimated to be ten times greater than that of an average Black household.[5]

Of course, the CRA has also evolved to be a critical driver in small business lending and investments, however racial disparities still fester within the small business sector as well. A 2019 study conducted by the National Community Reinvestment Coalition ("NCRC") reveals that the rates of Black and Hispanic business ownership are disproportionately low relative to population.[6] For instance, according to the Center for American Progress, 2% of small businesses with at least one employee are owned by Black Americans, even though about 13% of the U.S. population is Black. Comparatively, 82% of those small businesses are owned by White Americans, despite the fact that they represent only 60% of the broader population.[7] Furthermore, Black-owned small businesses continue to face significant access to capital barriers. During the Great Recession, the proportion of the Small Business Administration's ("SBA") 7(a) loans going to Black-owned businesses fell from 8% to 3%, a rate that has yet to recover.[8] In private markets, research has shown that that virtually all of venture capital dollars go to White, male entrepreneurs.[9] The reasons for these disparities are multi-faceted and deeply rooted in systemic

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[4] Redfin, "Redlining's Legacy of Inequality: $212,000 Less Home Equity, Low Homeownership Rates For Black Families," June 2020. Available at: https://www.redfin.com/news/redlining-real-estate-racial-wealth-gap/.

[5] Kriston McIntosh, Emily Moss, Ryan Nunn and Jay Shambaugh, Brookings, "Examining the Black-white wealth gap," February 2020. Available at: https://www.brookings.edu/blog/up-front/2020/02/27/examining-the-black-white-wealth-gap/.

[6] Amber Lee, Bruce Mitchell and Anneliese Lederer, National Community Reinvestment Coalition, "Disinvestment, Discouragement and Inequity in Small Business Lending." Available at: https://ncrc.org/disinvestment/.

[7] Connor Maxwell, Darrick Hamilton, Andre M. Perry, and Danyelle Solomon, Center for American Progress, "A Blueprint for Revamping the Minority Business Development Agency," July 2020. Available at: https://www.americanprogress.org/issues/race/reports/2020/07/31/488423/blueprint-revamping-minority-business-development-agency/.

[8] See footnote 6 above.

[9] Ilene H. Lang and Reggie Van Lee, Harvard Business Review, "Institutional Investors Must Help Close the Race and Gender Gaps in Venture Capital," August 2020. Available at: https://hbr.org/2020/08/institutional-investors-must-help-close-the-race-and-gender-gaps-in-venture-capital.

racism, but as a result Black and Brown communities are frequently denied critical pathways to capital access, business ownership, economic opportunity and wealth creation.

Unfortunately, these economic disparities along racial lines have only been exacerbated by the ongoing COVID-19 pandemic and ensuing economic crisis. Preliminary data have shown that Black-owned small businesses are experiencing higher rates of closure than others[10] and federal response programs – like the Paycheck Protection Program – failed to address these disparities "with small businesses in majority-white neighborhoods receiving PPP loans more quickly than small businesses in majority-Black and majority-Latino or Hispanic neighborhoods."[11]

This evidence speaks to the fact that while the CRA has been instrumental in local economic development across the United States, there is much more work needed to rectify inequitable banking practices and economic outcomes. There are some mechanisms built into the current framework that seek to uncover or prevent racial discrimination. For example, alongside a CRA examination, banks also undergo a fair lending review, which is meant to verify that they are not discriminating in their lending activity based on prohibited classes, such as race, gender or ethnicity.[12] While those measures are undoubtedly important, we believe the CRA can be more proactively leveraged to pursue racial equity in financial services access.

We believe that each of the recommendations contained in this comment letter will contribute to the easing of racial disparities, but we also encourage the Federal Reserve to study and consider more direct strategies to target gaps in banking services for Black and Brown communities.

In response to Question 2[13] posed in the ANPR, the Alliance endorses a method proposed by NCRC, which is to include underserved census tracts as a criterion for each subtest within the evaluation framework (retail and community development in terms of the proposal put forth in the ANPR) to help flow more retail lending and community development financing to areas that are often low-income and are disproportionately Black and Brown communities. So, for example, the percent of community development loans or investments in these underserved census tracts would be included as a performance measure for the community development financing subtest.

The Alliance encourages regulators to explore the cited paper in more depth, but in short, NCRC offers a method for determining which communities are "underserved," namely by calculating which census tracts tied to Core Based Statistical Areas ("CBSA") experience the lowest levels of mortgage lending per housing unit and small business loans per operating business. These census tracts often show signs of economic distress and are both disproportionately communities of color and formerly redlined

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[10] Chauncey Alcorn, CNN Business, "Black-owned companies are shutting down twice as fast as other businesses," August 2020. Available at: https://www.cnn.com/2020/08/04/economy/black-business-coronavirus-study/index.html.

[11] Sifan Liu and Joseph Parilla, Brookings, "New data shows small businesses in communities of color had unequal access to federal COVID-19 relief," September 2020. Available at: https://www.brookings.edu/research/new-data-shows-small-businesses-in-communities-of-color-had-unequal-access-to-federal-covid-19-relief/.

[12] Sandra F. Braunstein, Director, Division of Consumer and Community Affairs, Federal Reserve, Testimony, "The Community Reinvestment Act and fair lending examination processes," October 2007.

[13] ANPR, 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?"

neighborhoods, indicating that the methodology is effective in targeting the intended groups.[14] In the paper, NCRC offers several qualifying issues that regulators should consider. First, they suggest considering the lowest quintile of census tracts within each CBSA in terms of lending activity to best create a targeted underserved designation. Second, they propose excluding recently gentrified census tracts to avoid accelerating existing displacement trends within those areas.[15] This would also prevent the exacerbation of trends in which the majority of CRA loans in LMI communities are directed to middle- and upper-income borrowers.[16] Regulators should carefully consider these issues, as well as an analogous methodology for determining underserved rural tracts, to ensure the policy change will create the intended benefit.

Incentivize Broader Support for CDFIs and MDIs

CDFIs and MDIs are critical providers of loan and investment capital for underinvested areas, such as Black, Brown, Native and low-income communities. Impact investors frequently invest in and partner with these institutions to achieve positive community development outcomes. Amid the COVID-19 pandemic response, CDFIs and MDIs are finally receiving more mainstream recognition for their critical role as community intermediaries – often referred to as a capillary banking system[17] – but their funding sources are still quite limited. Alongside philanthropic capital and grants from the Treasury Department's CDFI Fund, one of the primary sources of capital for these institutions is CRA-motivated investment capital from banks.

This rulemaking process affords regulators the opportunity to unlock the full potential of the CRA for increasing the flow of capital to these institutions. Granting special consideration for investments in CDFIs and MDIs within the proposed community development financing subtest would be one method. Particularly if regulators decide to combine community development loans and investments into one test, offering a preference for investments in CDFIs and MDIs is all the more important. In conversation with former and current CDFI practitioners, a common barrier to raising investment capital was that banks were hesitant to invest in CDFIs outside their direct assessment areas.[18] In response to Question 67[19] in the ANPR, at a minimum, regulators should grant nationwide consideration for investments in and support for Treasury Department-certified CDFIs. Provided a bank has properly served the

[14] Bruce Mitchell and Josh Silver, National Community Reinvestment Coalition, "Adding Underserved Census Tracts As Criterion On CRA Exams," January 2020. Available at: https://ncrc.org/adding-underserved-census-tracts-as-criterion-on-cra-exams/.
[15] Ibid.
[16] Laurie Goodman, John Walsh and Jun Zhu, Urban Institute, "Most CRA-qualifying loans in low- and moderate-income areas go to middle- and upper-income borrowers," March 2019. Available at: https://www.urban.org/urban-wire/most-cra-qualifying-loans-low-and-moderate-income-areas-go-middle-and-upper-income-borrowers.
[17] For instance, Robert Smith, Chair and CEO of Vista Equity Partners spoke about the need to invest in improving the efficiency of "capillary banking systems" like CDFIs. See more here: https://techcrunch.com/2020/05/10/vista-partners-founder-calls-for-a-fintech-revolution-to-help-pandemic-hit-minority-owned-small-businesses/.
[18] The U.S. Impact Investing Alliance partnered with the Federal Reserve Bank of New York to conduct a landscape assessment of the current and emerging sources of community investment capital. As part of that project, the Alliance interviewed around a dozen community investing experts. The report is expected to be published publicly in the spring of 2021.
[19] ANPR, Question 67: "Should banks receive CRA consideration for loans, investments, or services in conjunction with a CDFI operating anywhere in the country?"

community development needs of its assessment areas, this could create several beneficial outcomes that the Federal Reserve lists in the ANPR. First, banks would have the clarity to invest in CDFIs that serve a larger range of areas across multiple states, for instance. Second, it could enable banks to flow capital to areas that are significantly underbanked via CDFIs operating in these communities.

In response to Question 64[20] in the ANPR, the Alliance agrees that regulators should make it clear to banks that they will receive CRA credit for investments in MDIs, women-owned financial institutions and low-income credit unions outside their assessment areas for similar reasons cited above. However, we would caution against these investments providing a pathway for an "Outstanding" rating, as is posed in the question. Due to CRA grade inflation trends – which are discussed in a later section – creating such a pathway would not likely increase and could in fact ultimately decrease overall community development investments. Essentially, we are concerned that banks could rely on a few investments in MDIs to receive the highest rating without meaningfully expanding levels of community development activity.

Question 65[21] of the ANPR asks if MDIs, women-owned financial institutions and low-income credit unions should receive CRA credit for investments in other institutions of the same kind. The Alliance supports this approach and would encourage regulators to expand that list to include investments in Treasury-certified CDFIs. As raised in the ANPR, larger MDIs, for example, could deepen their overall community development impact by flowing investment capital to smaller minority-serving institutions in need of capital to expand their loans and investments in LMI communities. Finally, we support awarding credit for these institutions investing in their own activities that would provide a direct benefit to underinvested communities, such as expanding services in LMI and predominantly Black and Brown neighborhoods.

Clarify Catalytic Investment Activity as Qualifying

A stated goal within the ANPR is to provide more clarity and consistency within the CRA regulatory framework. The Alliance supports this endeavor, as we believe that banks will be more inclined to engage in innovative and impactful CRA activities provided they have the right assurances. Regulators should specifically clarify that banks can receive CRA credit for catalytic investments that primarily benefit low-income communities, a proposal put forth by the Sorenson Impact Center.[22]

Catalytic capital can refer to capital that is patient, flexible, risk-tolerant, concessionary, and/or that leads to follow-on investments by others.[23] Clarifying when and how such investments receive CRA credit could unlock significant investments by banks that might otherwise avoid such transactions due to their time-intensive or less profitable nature.

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

[21] ANPR, 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?"

[22] Janis Dubno, Kyra Clarke and Allison Nicholson, Sorenson Impact Center, "Unlocking Catalytic Capital: Community Reinvestment Act (CRA),"2020.

[23] See the Catalytic Capital Consortium's definition in footnote 1.

An example of a catalytic investment that regulators should incentivize (and score favorably in terms of community development performance context factors like responsiveness) would be an equity-equivalent (“EQ2”) investment in a CDFI.[24] There are structural challenges facing CDFIs, one of which is the general need for equity to strengthen their capital structures. A bank could provide a long-term subordinated loan that functions as equity for a CDFI, in turn allowing the CDFI to meaningfully expand its lending to its low-income clients.

Other potential examples of catalytic investments could include those that are closely aligned with state or local economic development priorities, such as an otherwise qualifying investment made in a census tract that is a designated Opportunity Zone. Further details and additional examples are explored in a white paper published by the Sorenson Impact Center.[25]

Address Grade Inflation Concerns

The Alliance encourages the Federal Reserve to examine general concerns regarding grade inflation within the CRA evaluation framework, as this trend has implications for any proposed changes to the regulations. Simply put, the current rating scale should be updated to better motivate more CRA investments, loans and services. It is estimated that about 60% of CRA loans in LMI census tracts are directed to middle- and upper-income borrowers, and 29% of LMI loans go to upper-income borrowers.[26] The fact that the majority of CRA loans in LMI communities are not reaching the lowest income clients indicates that there is a great deal of room for improvement in how banks are serving these groups. This is especially true for very large banks. Several studies have revealed that large banks – defined as those with over $50 billion in assets – trail well behind smaller banks in terms of the proportion of their loans being directed to LMI borrowers and very small businesses.[27]

Despite the fact that in the aggregate, CRA-motivated activity is not necessarily reaching the communities the policy is intended to target, roughly 90% of banks receive at least a “Satisfactory” CRA rating from regulators, meaning there is little incentive for these banks to expand or deepen their CRA activities to better reach these groups.[28] One method for addressing this problem would be to expand the rating system, specifically by creating “Low Satisfactory” and “High Satisfactory” grades. This would presumptively place a significant portion of the 90% of “Satisfactory” banks in the lower grade, perhaps motivating them to increase their CRA activities over time. The current ratings distribution could lead to stagnation of CRA activity in LMI communities in the long-term.

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[24] Beth Lipson, National Community Capital for the Federal Reserve Bank of San Francisco, “Equity Equivalent Investments,” March 2002. Available at: https://www.frbsf.org/community-development/initiatives/community-development-finance/investment-vehicles/equity-equivalent-investments/.

[25] See footnote 22 above.

[26] Laurie Goodman, John Walsh and Jun Zhu, Urban Institute, “Most CRA-qualifying loans in low- and moderate-income areas go to middle- and upper-income borrowers,” March 2019. Available at: https://www.urban.org/urban-wire/most-cra-qualifying-loans-low-and-moderate-income-areas-go-middle-and-upper-income-borrowers.

[27] Paul Calem, Lauren Lambie-Hanson, Susan Wachter, Penn Institute for Urban Research, “Is the CRA Still Relevant to Mortgage Lending,” September 2019. Available at: https://penniur.upenn.edu/uploads/media/Calem_Lambie-Hanson_Wachter.pdf.

[28] Josh Silver and Jason Richardson, National Community Reinvestment Coalition, “Do CRA Ratings Reflect Differences In Performance: An Examination Using Federal Reserve Data,” May 2020. Available at: https://ncrc.org/do-cra-ratings-reflect-differences-in-performance-an-examination-using-federal-reserve-data/.

Until the broader grade inflation concerns are addressed, regulators should be aware of potential unintended consequences that could arise from proposed changes. For example, as alluded to earlier, the Alliance would caution against bank investments in CDFIs being a factor for an “Outstanding” rating. While incentivizing support for CDFIs and MDIs is an important goal, this method of “extra credit” could actually result in banks receiving the highest CRA rating possible without meaningfully expanding their community development activities.

Improved Data Collection and Reporting

The ANPR calls for the collection of more robust community development data in order to create the local and national benchmarks for the proposed community development financing metric. Generally, we are supportive of this and encourage the Federal Reserve to broaden public disclosure of CRA community development activities to better understand where capital is flowing. Regulators should collect and regularly report on community development loan and investment totals by category, such as affordable housing, community services, economic development, and revitalization and stabilization efforts. These totals should be disaggregated and publicly disclosed at the census tract or perhaps county level.[29] More robust reporting requirements would help regulators better measure and analyze community development activity over time, better accounting for trends across geographies.

Public disclosure of data is also critical from an impact investor’s perspective. Easily accessible and analyzable data on community development activities at the census tract or county level would allow for a better understanding of the community development field, specifically in terms of where CRA is having a beneficial impact on LMI and underinvested communities and where it is falling short. As stated in the ANPR, for example, publishing the data sources and thresholds for the local and national community development benchmarks would help provide a clearer measure of expected community development financing both locally and nationally. Furthermore, better market data could be leveraged by impact investors to partner with CRA-regulated banks more effectively.

Recommendations in Response to the ANPR

As stated previously, the Alliance is generally supportive of the proposed framework included in the ANPR. First, we agree that separating the evaluation framework into a retail test and a community development test will help ensure that large retail banks are meeting the broad array of banking and financial needs for LMI communities. Further, the proposed subtests within each appear to properly balance the objectivity and consistency that quantitative metrics can provide with the necessary subjective analysis that qualitative measures in turn provide. In contrast, we oppose the framework put forth by the OCC in 2020, given that we believe a single ratio evaluation framework would ultimately dilute the core purpose of the CRA. Accordingly, the Alliance strongly urges the Federal Reserve, the FDIC and the OCC to align around the proposal included in the ANPR going forward. While the provisions related to the retail test, changes to assessment areas and other items are vitally important, our comments below will focus on the community development test.

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[29] Josh Silver, National Community Reinvestment Coalition, “Increasing Community Development Financing Data A Necessary Component For CRA Reform,” March 2019. Available at: https://ncrc.org/increasing-community-development-financing-data-a-necessary-component-for-cra-reform/.

Separate Investment and Loan Totals

In response to Question 42[30] in the ANPR, the Alliance recommends retaining separate tests for both loan activity and investment activity within the proposed Community Development Financing Subtest. We are concerned that a combined test could ultimately jeopardize the level of community development investments over the long-term. Combining loan and investment totals will allow for banks to reach their community development thresholds through loans alone, to the detriment of investments, given that equity investments often carry higher transaction costs and risk levels. This could lead to a decrease in investments in CDFIs and MDIs, as well as a decrease in capital flowing to vital programs such as the Low-Income Housing Tax Credit ("LIHTC") and the New Markets Tax Credit ("NMTC") program. These programs flow billions of dollars to LMI communities each year, which is in large part supported by CRA-motivated capital. If regulators move forward with a combined test, we request that the total community development loans and total community development investments are still collected. In that case, banks are still held accountable on both activities, and regulators can identify imbalances between the two financing methods and correct accordingly.

Support for Impact Scores

In response to Question 47[31] of the ANPR, we are supportive of impact scores as a method to maintain important qualitative assessments in conjunction with quantitative metrics in the proposed evaluation framework. Given our concern regarding the need to incentivize robust community development investment activity, the added element of impact scoring could help correct for when a bank is failing to meet local community development needs. For instance, if a bank fails to invest in the CDFIs within its assessment area, and such investments are identified as being a local priority by a community-based organization or others providing comment on CRA examinations, the examiner would give the bank a lower impact score.

We are generally supportive of components such as responsiveness, innovation and complexity of activities – performance factors for community development currently used by CRA examiners – to be used to determine impact scores, though stakeholders have called for more clarity around the definitions of these terms.[32] We would additionally urge regulators to consider including broadly applicable community development needs – such as the need for equity investments in CDFIs and MDIs – to be included as part of the performance context for CRA-regulated entities.

Finally, the Alliance prefers the application of impact scores rather than multipliers for community development equity investments. We are concerned that the latter could actually lead to stagnant or

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[30] ANPR, 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?"

[31] ANPR, 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?"

[32] Board of Governors of the Federal Reserve System, "Perspectives from Main Street: Stakeholder Feedback on Modernizing the Community Reinvestment Act," June 2019. Available at: https://www.federalreserve.gov/publications/stakeholder-feedback-on-modernizing-the-community-reinvestment-act-201906.htm.

decreased community development activity overall, given that lower levels of investments would be sufficient to achieve the same grade.

Clarity Around Qualifying Activities

The Alliance is generally supportive of the two proposed methods for providing greater clarity and certainty for banks in terms of what community development activities will qualify for credit. As stated earlier, we believe clarifying what does and does not count for CRA credit will encourage more banks to engage in innovative and complex activities that benefit LMI communities. In addition to the non-exhaustive list of eligible activity examples proposed in the ANPR, we would recommend regulators also clarify the underlying principles for why such examples would qualify and how they relate to LMI community benefit. Such a list could be updated to reflect evolving context and policy goals to serve as a meaningful resource for banks.

Overall, we encourage the inclusion of items that directly serve the community development needs of LMI communities. As referenced in a previous section, we would encourage the inclusion of language that will incentivize investments in CDFIs and MDIs, as well as catalytic investments in LMI communities. We would also encourage regulators to consider how Opportunity Zone investments could play a role given the broad alignment between the CRA and the Opportunity Zone program in flowing capital to economically distressed areas. Beyond that, the Alliance would also urge regulators to consider language that would encourage investments in businesses such as benefit corporations that have adopted stakeholder governance in their legal governing structure. Regulators could further target qualifying investments to be in such businesses that specifically seek to create positive social, economic and environmental outcomes for LMI communities, and in turn, certify and report on those factors, such as the number of quality jobs created and diversity, equity and inclusion ("DEI") metrics.

Additionally, introducing a pre-approval process for banks to receive advance feedback on whether a planned activity would qualify would further improve overall clarity and transparency. Regulators could also consider if such a mechanism could allow for the input of community-based organizations to better align activities with community need at an early stage in the process.

Designated Areas of Need

In response to Question 69[33], the Alliance supports the idea of allowing banks to receive credit for community development activities outside of their assessment areas in designated areas of need. That said, regulators should require that banks have already met the community development needs of the communities within their own assessment areas – such as through the use of the proposed local and national benchmarks – before they can receive CRA credit for activities elsewhere. Regulators should carefully analyze which geographies are chosen to increase the level of community development activities in the most underbanked areas, such as Indian Country, as proposed in the ANPR. This is also an opportunity in which regulators can more directly address racial inequities in access to capital, by ensuring that perhaps historically redlined and predominately Black and Brown neighborhoods are

[33] ANPR, 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?"

prioritized within the designation. Specifically, the Alliance would point to a proposed method from NCRC, which would designate an area as underserved based on retail loans per capita.[34]

More broadly, this provision could better enable CRA-motivated activity to be more responsive to dynamic economic conditions. Regulators could also consider designating geographies hardest hit by crises such as natural and climate-related disasters, public health crises like the COVID-19 pandemic and other challenges that create severe economic distress in certain areas of the country.

Finally, it is important that regulators reevaluate these designations regularly to ensure that they are having the intended benefit in driving community development activity where it is needed most. Consequently, regulators should collect comprehensive data on community development CRA activity at the census tract or county level.

Other Considerations – Potential for CRA Expansion

Modernization of the CRA through regulatory changes is no doubt critical for the goals and priorities outlined in this comment letter. The full potential of the CRA to provide economic opportunity to LMI communities, however, is limited in the law's current form. Additionally, amid the ongoing public health and economic crises that have decimated many Main Streets, we must think boldly about the policy tools at our disposal to support communities. While not possible through regulation, the Alliance would encourage the Federal Reserve to craft new regulations throughout this rulemaking process with certain potential statutory changes in mind.

In particular, expanding the types of institutions that are regulated under the CRA would help strengthen the policy's overall effectiveness. The Alliance is advocating for an expansion of CRA to include non-bank financial entities, such as credit unions, non-bank mortgage lenders and insurance providers. In the past several decades, the number of non-bank lenders has risen while bank branches have closed due to industry consolidation and the rise of branchless banking.[35] In other words, there is a growing segment of the lending market not bound by CRA requirements, which could ultimately undermine the policy's core intent of providing equitable access of financial services to LMI communities. We would encourage the Federal Reserve to conduct further research into the decrease in the portion of the lending market covered by CRA and the effects on LMI communities.

Take credit unions as one example, an industry that has grown significantly in recent years[36] but is still behind CRA-regulated banks in terms of the level of financial services provided to LMI communities.[37] Introducing CRA requirements for credit unions would help flow more retail lending and community development investments in underserved and LMI areas. As an interim step, the Alliance is also

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[34] Josh Silver and Bruce Mitchell, National Community Reinvestment Coalition, "How To Consider Community Development Financing Outside Of Assessment Areas By Designating Underserved Counties," January 2020. Available at: https://ncrc.org/how-to-consider-community-development-financing-outside-of-assessment-areas-by-designating-underserved-counties/.

[35] Ellen Seidman, ShoreBank and New America Foundation for the Federal Reserve Bank of San Francisco, "A More Modern CRA for Consumers," 2009. Available at: https://www.frbsf.org/community-development/files/more_modern_cra_consumers1.pdf.

[36] According to a snapshot on credit unions by Robin Cook for the American Bankers Association, business lending by credit unions grew from $4 billion in 2000 to $71 billion by the end of 2018.

[37] Statement based on a national analysis of credit union and bank service by the National Community Reinvestment Coalition.

advocating that legislators lift the small business lending cap for large credit unions, paired with basic reporting requirements to inform regulators about the effectiveness of credit unions in reaching small businesses in otherwise underserved communities. The Sorenson Impact Center published a white paper that explores these proposals more in depth, also offering a case study of the state of Massachusetts' expansion of CRA.[38]

Conclusion

Overall, the Alliance is supportive of the proposed direction put forth in the ANPR. CRA modernization is necessary to account for the broad changes in the banking sector over the past several decades. Perhaps more importantly, modernization is also critical to ensure that the policy is having its greatest impact in the communities it was created to benefit. The CRA is frequently cited – by impact investors, community development finance experts and community stakeholders – as an essential and cornerstone piece of public policy. Modernizing its regulation is an essential step toward confronting broad economic inequality.

As such, this is a crucial moment that should not be squandered. Beyond incremental changes, regulators should consider how to better target racial disparities in access to financial services using the CRA framework. Relatedly, regulators should think creatively about ways to drive more bank investments into CDFIs and MDIs, given the critical role they play in equitable economic development at the local level. Finally, regulators should use this opportunity to incentivize more banks to employ impact investing strategies, such as the deployment of catalytic capital that can have transformative effects for the beneficiaries.

Unfortunately, the rulemaking undertaken by the OCC in 2020 would result in a severe dilution of the policy overall at the expense of LMI and underinvested communities across the country. We are encouraged, however, by the leadership of the Federal Reserve in this area, and regulators at each of the three agencies should work to reach alignment around the framework proposed in the ANPR.

We look forward to engaging with the Federal Reserve throughout the remainder of the rulemaking process. Thank you for the opportunity to provide comment.

Sincerely,

Fran Seegull, President, U.S. Impact Investing Alliance

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[38] See footnote 22.