

Statement of
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Community Reinvestment Act

House of Representatives
Financial Services Committee
Subcommittee on Consumer Protection and Financial Services

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Good morning, Chairman Meeks, Ranking Member Luetkemeyer, and members of the subcommittee. My name is Benson Roberts. I am president and CEO of the National Association of Affordable Housing Lenders (NAAHL).

NAAHL is the only national alliance of leading banks, community development financial institutions (CDFIs) and other capital providers for affordable housing and inclusive neighborhood revitalization. A list of NAAHL members is attached.

NAAHL strongly supports a strong CRA. America's economy, financial system, and society can thrive only if all people and every community can contribute to and benefit from them. CRA is essential to providing capital that is vital to the economic health of low- and moderate-income (LMI) communities and people.

CRA has been a uniquely valuable policy for low- and moderate-income people and communities. According to the Urban Institute, banks made 3,634,045 CRA loans totaling \$419 billion in 2016, including:

- 2,762,600 small business loans totaling \$172 billion
- 723,822 home mortgage loans totaling \$108 billion
- 26,397 community development loans totaling \$96 billion
- 12,971 multifamily housing loans totaling \$33 billion
- 108,255 small farm loans totaling \$10 billion

Importantly, CRA is consistent with safe and sound lending principles, as the law requires and experience shows. CRA financing is sustainable for both borrowers and banks.

And CRA could do even more. Unlike most federal programs, CRA lending and investment are not subject to federal budget limits. Banks are willing to make more loans and investments if they get CRA credit for them.

The bad news is that the CRA regulations are now 24 years old and have fallen far behind fundamental changes to the banking industry, local community needs and opportunities, and the practice of affordable housing and community development. For example, mobile banking and other fintech innovations are enabling banks to serve LMI customers better, a convenient complement to branch-based services, but CRA does not fully account for this development. Moreover, LMI people and communities are missing out on too many loans and investments either because it is unclear that they will count for CRA or their location does not fit outdated CRA rules. A large bank managing multiple metrics in dozens or hundreds of local CRA "assessment areas" cannot focus on activities that CRA will not or might not recognize.

The good news is that CRA's current regulatory structure is basically sound. Many important improvements are possible without new legislation.

Principles for Effective Regulation

We recommend the following principles to guide the modernization of CRA policies.

- LMI people and places should continue to be CRA's focus, with some accommodation for markets that face persistent economic distress, high housing costs, or a federally declared disaster. To preserve CRA's LMI focus, activities that benefit a broader community should be credited to the extent that LMI people and places are likely to benefit directly. We provide detailed recommendations on eligible activities below.
- More clarity and certainty about what activities count are essential. Too often, a bank cannot be sure when it considers financing an activity whether it will receive CRA credit, which is determined years later when the bank is examined. Greater clarity and certainty will expand capital for communities, streamline compliance for banks, and simplify the examination process for agency staff.
- Data could help more to establish clearer performance benchmarks and contribute to simpler and more streamlined performance evaluations. However, rating a bank based primarily on the dollar volume of its CRA financing would prove unworkable and have unintended negative consequences for both communities and banks. For example, rural and other communities would be disadvantaged because they often need smaller loans.
- Community and institutional context should continue to be an important part of CRA performance evaluations. Differences in bank structure and product mix, market competitiveness, the availability of opportunities, economic conditions, and community needs should all continue to inform the regulators' evaluation of CRA performance. Proper consideration of performance context is essential to preserve flexibility and responsiveness to community needs.
- The effective administration of the CRA requires well-trained examiners. The agencies should jointly develop comprehensive examiner training to ensure consistency and support well-informed judgements about topics such as performance context, innovation, and local needs, as well as community development practices.
- Performance evaluations should be published within 12 months after the close of an examination period. Of the six largest banks, the most recent year covered by a current performance evaluation is 2013. Long-delayed performance evaluations serve neither communities nor banks well.

Supporting Community Development

The role of community development (CD) within the CRA examination should be reinforced and improved. As noted earlier, CD is now a primary focus of CRA, accounting for \$96 billion in lending in 2016 and billions of dollars more in investments. CRA has made a uniquely valuable contribution to CD. Indeed, an entire generation of CD finance has been built on the foundation of CRA. Banks' leadership and participation in affordable housing and economic development have contributed greatly to the remarkably positive performance and community impact of these initiatives. Banks have provided important market discipline that has distinguished current

practices from those of the pre-CRA era. For example, Low Income Housing Tax Credit (LIHTC) investments are the best performing asset class in real estate¹ and proved especially robust through the Great Recession.² Moreover, CD activities have been far more flexible and responsive to local needs, and engaging of local partners than previous interventions.

David Erickson of the Federal Reserve Bank of San Francisco has chronicled this history well in *The Housing Policy Revolution: Networks and Neighborhoods*. “In total, it is hard to overestimate the role that the CRA has played in promoting the decentralized housing network. At every turn in the process of developing affordable housing – site acquisition, construction, permanent mortgage financing, repair and rehabilitation – there is a need for financing, and banks and thrifts have provided that credit to [nonprofit community development corporations] and to for-profit real estate developers.”³

Notwithstanding these achievements, narrow or unclear CRA eligibility rules have constrained banks’ ability to bring their capital and expertise to other critical elements of CD – including unsubsidized affordable housing, economic development, and infrastructure – whose eligibility is unclear or not permitted, especially beyond a bank’s CRA assessment areas (AAs). Insufficient clarity in this area can also result in inconsistent treatment by examiners of similar activities. We offer detailed recommendations regarding eligible CD activities below.

With regard to how CD fits within the examination structure, we recommend the following improvements.

- A bank should have the option to have either: (1) a CD test that combines CD loans and investments in lieu of the investment test; or (2) CD loans and investments considered separately as currently provided. The interagency hearings in 2010 revealed broad support for a CD test option. An optional CD test would promote: (1) clearer focus on CD activities; (2) greater responsiveness to communities; (3) more flexibility for banks to address community needs; and (4) a focus on the substance of CD activities over their form as a loan or investment. Providing more credit for equity investments would encourage a good balance of activities within a CD test while preserving flexibility.
- CD activities should be at least as important to a large bank’s CRA rating as they are currently, when the investment test accounts for 25 percent of the rating and CD lending contributes a significant share of the lending test’s 50 percent of the rating. CD should receive even more weight for banks that provide a large volume of CD financing relative to home mortgage and small business lending. A large bank that does not

¹ CohnReznick LLP, *The Low-Income Housing Tax Credit at Year 30: Recent Investment Performance (2013-2014)*, December 2015, p. 229. https://issuu.com/cohnreznick/docs/cr_lihtc_dec2015

² CohnReznick LLP, *The Low-Income Housing Tax Credit at Year 30: Recent Investment Performance (2013-2014)*, December 2015, p. 38. https://issuu.com/cohnreznick/docs/cr_lihtc_dec2015

³ David J. Erickson, *The Housing Policy Revolution: Networks and Neighborhoods*, The Urban Institute Press, Washington, D.C., 2009, page 63.

generally make home mortgages or small business loans should be evaluated primarily on its CD activities.

- CD activities everywhere should be evaluated based on their substance and not just their size. The size of a CD activity is only one measure of its impact. For example, a \$1 million loan to a CDFI may be far more impactful than purchasing a \$1 million Ginnie Mae mortgage backed security, but also more complex, time consuming, and capital intensive. However, the substance of CD activities is considered only in a relatively few "full scope review" AAs. The problem is especially acute for very large banks with AAs in multiple states. Examiners understandably tend to select the largest AAs within a state for a full scope review because these markets generate the most deposits, but the result is to disregard the substance of CD activity everywhere else, especially in non-metropolitan and smaller metropolitan AAs. For example, a bank may have 30 AAs in California but receive a full scope review in only a few markets, leaving out areas as large as San Diego, San Jose and Sacramento, let alone rural areas. To balance the importance of considering the substance of CD activities with the practical limitations of an examination, we suggest conducting a full-scope review of CD activities: (1) for each AA among the largest 50-100 metropolitan areas nationwide; (2) the other AAs within a state on a combined basis; and (3) to reflect any CD activities in other states, at the institution level.
- Wholesale and limited purpose banks should continue to be evaluated based on their CD activities. These banks offer neither retail lending nor deposit accounts to the general public.

Clarifying which CD activities will get CRA credit would significantly increase the flow of capital for communities, reduce regulatory burden and uncertainty for banks, and streamline and simplify the examination process for agency staff. Additional clarity is especially important for CD activities.

- A bank should receive full credit for CD activities nationwide if it has served its AAs, in the aggregate, at a satisfactory level based on its most recent exam. Current policies regarding credit for CD activities in a "broader statewide or regional area" (BSRA) that includes a bank's AAs are well intentioned, but in many cases are both unnecessarily restrictive and too unclear for banks to follow with confidence.
 - One problem is that current guidance requires that banks meet an undefined AA responsiveness test to allow certain BSRA activities, but AA responsiveness is only determined as part of the examination years later. Banks must be able to know in real time whether their service to AAs will meet the required threshold to qualify those BSRA activities.
 - A second problem is that allowable BSRA boundaries are unnecessarily restrictive and too unclear. An examiner could determine that a bank's BSRA boundary is too

broad and deny credit for an important activity. While a clearer definition of BSRAs would be a step in the right direction, CD financing is often provided on a nationwide basis, either directly or through intermediaries. Crediting CD financing nationwide would be an important simplification for community developers as well as for banks, facilitate financing for underserved areas, and align with today's CD financing practices. We see no over-riding policy reason to deny a bank in, for example, Salt Lake City credit for financing CD in Detroit or Appalachia if it chooses to do so, provided that the bank has a satisfactory rating on its most recent exam. (Note: we separately recommend that a bank should have a satisfactory or better rating for its AAs, in the aggregate, in order to achieve a satisfactory CRA rating overall.)

- Clarity about what activities qualify as CD would remove a significant barrier to reinvestment. Banks need to have confidence at the time they make financing decisions and develop new financing products whether CD activities will receive CRA credit. For most banks it is simply not practical to pursue CD financing that might not qualify for CRA credit. The agencies should provide clearer guidance on common CD activities as described below. For less common or more nuanced activities, the agencies should develop a mechanism to provide timely confirmation of CRA eligibility in advance of a transaction closing. It would also be helpful if the agencies would publish these determinations so that all banks can learn about and rely on them.
 - Unsubsidized affordable rental housing accounts for 80 percent of all affordable rentals, but its eligibility under CRA is unclear. It is important that CRA modernization should resolve this issue because the need for affordable housing has deepened significantly since 1995, public subsidy programs alone cannot solve the problem, and practitioners are focusing more on preserving unsubsidized affordable rental housing.
 - Affordable rental housing undertaken in conjunction with an explicit federal, state, or local government affordable housing policy or program should receive full CRA credit if at least 20 percent of the units will be affordable for the term of the bank's financing. The primary federal affordable housing production policies – LIHTC, tax-exempt multifamily housing bonds, and the HOME Investment Partnerships program – all use 20 percent as their eligibility thresholds. More states and localities are supporting affordable housing through direct funding, tax relief, and inclusionary zoning requirements. Aligning CRA with other governmental policies would promote consistency, clarity, simplicity, and efficiency.
 - Infrastructure financing should receive CRA credit to the extent it is reasonably expected to serve LMI people or places: (1) full credit if LMI people or places will receive most of the benefits; (2) pro-rata credit if LMI people or places will receive 20-50 percent of the benefits; and (3) no credit if LMI people or places will receive less than 20 percent of the benefits. Considering that about 30 percent of all census

tracts and people nationwide are LMI, this approach would provide a reasonable level of credit without diluting CRA's primary LMI focus.

- Economic development activities in "distressed" middle-income metropolitan areas should receive the same CRA credit available for activities in similar non-metropolitan census tracts. Many metropolitan areas continue to struggle even as other areas thrive, a divide that has deepened significantly in recent years.⁴
- Long-term loans and investments made in prior exam periods should be credited for as long as a bank retains them, based on the unpaid principal balance for loans and GAAP accounting treatment for investments. Long-term financing is important, especially to CD activities. Currently, only investments (but not loans) made in prior exam periods continue to generate CRA credit. This system perversely gives banks more credit for making and then renewing a short-term loan than for making a long-term loan in the first place. We also observe that examiners do not consistently recognize the value of investments made in prior exam periods.

Reconsidering Assessment Areas

A central question for CRA modernization is how to balance activities in the areas surrounding branches and elsewhere, especially in a rapidly evolving banking world of digital banking access, nationwide lending and investment practice, and branchless banks, even as branches continue to serve important functions. We propose a comprehensive approach to engage an increasingly diverse banking industry more fully in addressing community needs.

- Branch-based AAs should be retained. The CRA statute clearly requires a separate presentation for each metropolitan area where a bank has a branch. Moreover, it is important to affirm CRA's mandate that banks should serve the communities where they have retail branches.
- A bank with branches should have to serve its AA(s), in the aggregate, at a satisfactory level in order to achieve an overall satisfactory CRA rating. Activity outside a bank's AA(s) can be important but should not compensate for unsatisfactory service to its AA(s). This principle should preserve the local focus of CRA while enabling activity elsewhere to be recognized.
- AA performance benchmarks should reflect the level of deposits within each AA. For this purpose a bank should have the option of either: (1) allocating deposits among AAs based on the location of its deposit customers; (2) following the current practice of

⁴ See, e.g., Christopher Rugaber, "Decade since recession: Thriving cities leave others behind," Associated Press, December 14, 2017, <https://www.foxnews.com/us/decade-since-recession-thriving-cities-leave-others-behind>

assigning deposits to its branches; or (3) a combination of the two. Brokered deposits should be disregarded for this purpose.

- To increase focus on rural areas while streamlining the evaluation process, non-metropolitan portions within a state should comprise a single AA (or in very large states with diverse non-metro regions, a few AAs). Current CRA policies inadvertently but systematically tend to devalue non-metropolitan areas because the typical non-metro AA has a small population, generates relatively limited deposits, and offers limited or episodic CD financing opportunities. It is not surprising that banks frequently have difficulty in consistently finding responsive CD activities in every non-metro AA or that examiners tend to focus more on larger, metropolitan AAs. In addition, as a practical matter, it makes little sense from a CRA perspective for a bank to go the extra mile for a major CD project in an AA that will contribute negligibly to its overall rating. Combining multiple non-metro portions within a state into one or a few AAs would significantly address these factors.
- Branchless banks that conduct business nationwide now have combined assets of \$1.5 trillion, a significant and growing segment of the banking industry. These banks should not have local AAs because they do not function as local banks. Instead, they “typically draw their resources from, and serve areas well beyond, their immediate communities”.⁵ Accordingly, these banks should be evaluated on their LMI activities nationwide. This approach is consistent with CRA’s statutory mandate that banks should serve “the communities in which they are chartered to do business”⁶ because banks already conduct business nationwide without violating their charters. If the agencies determine that the statute requires the designation of a local AA where the bank is chartered, then the level of deposits from customers located within the AA should set the performance context for evaluating activity there. In short, the AA should receive at least its fair share of reinvestment activity, but not necessarily more than its fair share. We do not support the idea, which some have raised, that a branchless bank should have AAs in the markets where it makes the largest number of loans; those markets would likely be the largest metropolitan areas, further diminishing CRA’s attention to less populous areas.
- If a large retail bank’s presence in a given AA or state is equivalent to that of a small bank (e.g., deposits less than \$321 million⁷), then the small bank examination process (i.e., streamlined lending test only) should apply to that AA or state. The comprehensive large bank examination structure would continue to apply at the institution level, as well

⁵ This is the same rationale the agencies cited in 1995 for crediting nationwide CD activities of wholesale and limited purpose banks. *Federal Register*, Vol. 60, No. 86, p. 22160.

⁶ 12 U.S.C. 2901

⁷ The examination buckets for CRA examinations are based on assets, not deposits, but deposits are more easily identifiable to AAs than are assets. Many banks have roughly comparable levels of assets and deposits.

as to any AA or state where the bank's deposits exceed \$321 million, so overall expectations and evaluation for CD, services, and other lending elements would continue to apply there. However, this approach would greatly simplify evaluations for the specific AAs and states where a bank has only a very limited presence.

Getting CRA Performance Metrics Right

While data can be more helpful in setting clearer, more objective and more consistent performance metrics, basing CRA ratings primarily on the dollar volume of a bank's financing will prove unworkable and have unintended negative consequences for both communities and banks.

- Banks' business strategies and product mixes vary widely, even among banks of similar size. It will not be easy for banks to fit in one of a few categories (e.g., traditional, internet, wholesale, limited purpose), especially as product mixes change, hybrid business models evolve, and new banks emerge to serve various market niches. A simple metric cannot provide the needed flexibility to account for the differences between banks.
- Local communities and their needs and reinvestment opportunities also vary widely. It is important to keep CRA focused on banks' responsiveness to community needs. For example, markets with high home prices generate few LMI mortgages, but those markets do not necessarily generate other off-setting financing opportunities. In addition, bank competition is greater in some markets than others.
- Focusing on the dollar volume of CRA activity would disadvantage rural, non-coastal, and other markets with low home prices, as well as the banks that serve these areas. A \$150,000 mortgage in Chicago should not count twice as much as a \$75,000 mortgage in Appalachia, Toledo, or Montgomery just because Chicago's home prices are twice as high. Worse, one \$750,000 mortgage for an upper-income homeowner in a gentrifying LMI neighborhood in Brooklyn should not be worth five mortgages in Chicago or ten in Appalachia, Toledo or Montgomery, especially if the loan has dubious benefit to the LMI community.
- CD activities could lose attention if not considered separately, even if weighted extra. If CRA focuses too narrowly on the dollar volume of financing, a bank may be able to meet its CRA obligations without undertaking highly impactful CD activities that are complex, high-touch, less liquid, more capital intensive, longer-term, smaller, or not maximally profitable.
- National and regional economic cycles could make dollar volume targets alternately too easy or too hard. For example, mortgage and small business lending volumes change substantially as interest rates and the economy rise and fall. Any sustainable metric must

account for such cyclical or risk imposing undue credit allocation in a downturn, potentially compromising safety and soundness while diserving LMI people and places.

- Maintaining predictable performance targets will be difficult because periodic changes to dollar volume targets will be necessary and appropriate. Not only will it be hard to set the initial volume targets at just the right level, but industry, community, and economic conditions are inherently dynamic. As one example, as mortgage lending migrates from banks to other lenders, the dollar volume of banks' LMI mortgage lending is shrinking even for banks that maintain or increase the LMI share of their mortgage lending. Adjustments to CRA dollar volume targets will inevitably lag market changes and, more fundamentally, will defeat the purpose of predictability. Dollar volume targets would also be vulnerable to policy risk; for example, the affordable housing goals for Fannie Mae and Freddie Mac, which have a few simple percentage-of-business metrics, were increased significantly at least twice.

Much can be done to improve clarity, predictability, transparency, and consistency without adopting a simple dollar volume metric. In particular:

- To promote transparency and consistency, the agencies should clearly explain:
 - How they evaluate the various elements of the performance evaluation (e.g., mortgage lending, small business/farm lending, CD activities, and services), including what performance benchmarks and peer comparisons are used and how they are used;
 - How those elements are weighed within AAs and state rating areas; and
 - How activities among state rating areas and elsewhere are aggregated to reach an overall rating.
- Evaluation of mortgage and small business/farm lending should be based on the number and distribution of loans, not the dollar volume of lending. A dollar-volume focus would devalue small balance loans, which are important to communities but already challenging to make.
 - Home equity lines of credit/loans should be either: (1) disregarded entirely; or (2) evaluated separately from home purchase and refinance mortgages. Many LMI homeowners and many LMI neighborhoods have limited home equity so they present limited opportunities for home equity lending. In addition, the small home equity loan amounts common to LMI borrowers and neighborhoods makes them incomparable with home purchase or refinance mortgages.
 - If a bank's mortgage (or small business/farm) lending is insignificant or not offered to the general public, it should be disregarded. A given product line (e.g., home

mortgages; small business/farm loans; or CD) should receive greater emphasis within the performance evaluation if it comprises more of a bank's activity.

- Giving additional weight to certain preferred activities makes more sense within the current evaluation framework than within a single metric framework. If a bank has a fixed dollar volume target, additional weighting becomes a two-edged sword: on one side, it encourages those activities over others; on the other side, a bank could achieve the same volume target by undertaking fewer of those activities. It will be important to avoid this unintended consequence.

We would, however, support additional credit for certain activities within a framework closer to the current one. The federal banking agencies should clearly explain how additional credit for certain CRA activities will be applied. In particular:

- Activities should receive additional credit if they are especially responsive to local or national needs, complex, innovative, feature non-standard terms, or involve multiple financing sources. Such qualitative factors are particularly important to evaluating CD activities. The agencies should specify clearly how such elements are defined and treated. At the same time, we recognize that some examiner discretion will be appropriate.
- Equity investments – including those based on LIHTC and New Markets Tax Credits and those in CDFIs – as well as loans to CDFIs should specifically receive additional credit because they are highly responsive to LMI needs, are difficult to obtain from other sources, and require banks to allocate higher levels of capital to support them.
- Activities should receive more credit if located in a community with: (1) low median income (vs. moderate income); (2) a high rate of poverty, unemployment, or out-migration; (3) native tribal authority; or (4) governmental designation for revitalization or redevelopment. The agencies could designate most of these communities based on readily available federal data or information.
- A bank should receive additional credit if it retains a loan or investment for a long term. Long-term financing is especially important to CD activities but requires a bank to commit capital for a longer period and can be hard to obtain. Loans and investments made in prior examination periods should receive CRA credit based on a loan's outstanding balance and an investment's current value using GAAP. Under current guidance, only prior period investments, but not loans, receive credit.
- A separate service test should be retained because access to basic banking services for LMI people and places remains essential. However, the service test should recognize that, while branches continue to be important, they are becoming a secondary access point for many consumers. Accordingly, the service test's primary focus should be the extent to which banks are reaching depositors located in LMI areas (and, at a bank's option if it has

supporting data, LMI individuals), whether through branches or digital channels. To the extent that a bank has branches, they should be accessible to LMI area residents on an equitable basis. A bank should also receive credit if it provides, directly or through a nonprofit partner, financial counseling and education, including for aspiring and current homeowners and small business owners.

- A strategic plan option should be retained. The CRA Strategic Plan option provides clear and predictable activity targets while allowing for the inclusion of critical institutional and community performance context. The CRA Strategic Plan is particularly important for institutions with non-traditional business models that should not be evaluated under the same process as banks with more traditional business models. In addition to preserving the strategic plan option, the federal banking agencies should improve the strategic plan process to make it more workable for more banks, such as by allowing substantive feedback on draft plans from regulators, providing clear guidance on the role of public comments, and allowing banks to make minor adjustments to the plan during the plan period.

Conclusion

This concludes my testimony. Thank you for considering our views.

NAAHL Member Organizations

Affordable Housing Tax Credit Coalition
Alabama Multifamily Loan Consortium
Ally
American Bankers Association Foundation
American Express
America's Federal Home Loan Banks
Bank of America
Bank of New York Mellon
BB&T
BMO Harris Bank
Boston Private Bank and Trust Company
California Community Reinvestment Corporation
California Housing Finance Agency
Capital One
Centrant Community Capital
Century Housing
Cinnaire
Citi
The Community Development Trust
Community Housing Capital
Community Investment Corporation
The Community Preservation Corporation
Community Reinvestment Fund, USA
Deutsche Bank
Enterprise Community Partners
E*TRADE
Fifth Third Bank
Goldman Sachs
Housing Partnership Network
Illinois Housing Development Authority
JPMorgan Chase
KeyBank
LISC / National Equity Fund
Low Income Investment Fund
Massachusetts Housing Investment Corporation
Massachusetts Housing Partnership
MassHousing
Morgan Stanley
MUFG Union Bank, N.A.
National Housing Trust
NCALL Loan Fund
Neighborhood Lending Partners, Inc.
NeighborWorks America

Network for Oregon Affordable Housing
New York City Housing Development Corporation
Northern Trust
Ohio Capital Corporation for Housing
Opportunity Finance Network
Pembroke Capital Management, LLC
PNC Community Development Banking
Raza Development Fund
RBC Global Asset Management, Inc.
RIHousing
Rocky Mountain Community Reinvestment Corporation
Santander Bank, N.A.
Silicon Valley Bank
TD Bank, Community Development
U.S. Bank
Washington Community Reinvestment Association
Wells Fargo
Woodforest National Bank