February 16, 2021

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

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

Dear Ms. Misback:

Enterprise Community Partners (Enterprise) appreciates the opportunity to provide comments on the Board of Governors of the Federal Reserve System's (Board's) advance notice of proposed rulemaking (ANPR) to modernize regulation of the Community Reinvestment Act (CRA).

Enterprise is a leading provider of the development capital and expertise needed to make well-designed homes affordable and to rebuild communities. Since 1982, we have invested $53 billion in equity, grants, and loans to help build or preserve 662,000 affordable homes in diverse, thriving communities. We bring together public and private resources to create strong neighborhoods of opportunity for low- and moderate-income (LMI) people and strive to make home and community places of pride, power and belonging, and platforms for resilience and upward mobility for all.

Enterprise's efforts to connect communities to opportunity have greatly benefited from the CRA. The law has been an important driver of financial institution investments in the Low-Income Housing Tax Credit (Housing Credit), the New Markets Tax Credit (NMTC), and Community Development Financial Institutions (CDFIs). In addition, by incentivizing philanthropic investments and skills-based volunteerism, the CRA has supported high-impact nonprofit organizations in providing critical services that benefit LMI communities and individuals.

CRA regulations were first promulgated in 1978 and have since been amended twice, in 1995 and 2005. Enterprise recognizes the need for a modernized, regulatory CRA framework, one that reflects the changes in the financial services industry while better promoting access to responsible banking services for LMI communities. As CRA regulations change infrequently, it is also important that banks remain subject to CRA requirements in broad and flexible terms. Even as bank business models shift, the regulations must retain the original purpose of the law: to help LMI communities gain access to financial services, loans, and community development investments that would otherwise be unavailable. Enterprise offers its comments to reinforce the need for a modern, consistent, and transparent regulatory framework that properly gives banks credit for sound community development work.

As we all try to understand the short- and long-term impacts of Covid-19 across the country and on LMI individuals and communities specifically, we know the need for affordable housing, small business investment, neighborhood stabilization, and economic development will likely be of a magnitude not seen in generations. Equitable and supportive capital deployment will be critical in fostering a faster and fairer economic recovery, and CRA – particularly with its disaster-related provisions – will play an important role in informing banks' decisions.

Below please find our responses to the questions posed by the Board in considering changes to the current rule.

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?

We commend the Board on its thorough, measured approach to reform and modernize the CRA and its emphasis on impact, context, and transparency as guiding principles. CRA implementation is complicated due to its applicability to institutions with different business models and sizes serving communities with wide-ranging needs. We are encouraged that the Board's overall approach does not sacrifice nuance in service of an over-simplified regulatory regime that would be detrimental to LMI individuals and communities – particularly those which have historically been subject to redlining and other forms of systemic racism – or the institutions that have consistently sought to be responsive to local needs.

To that end, we would suggest that an additional objective for consideration would be the pursuit of a joint CRA rule. Historically, CRA rulemaking had always proceeded in concert across all bank regulatory agencies until the most recent rulemaking by the Office of the Comptroller of the Currency (OCC). We note that despite publication of its final rule in May 2020, crucial aspects of the rule have yet to be published by the OCC. As such, the opportunity for joint rulemaking has not yet passed.

We believe that the Board's approach, with some revisions as laid out in our comments below, should serve as a starting point for that process. We strongly urge the Board, the OCC, and the Federal Deposit Insurance Corporation (FDIC) to put forth one, final joint CRA rule. From the perspective of banks' community development partners, having a single set of qualifying activities – irrespective of regulator – allows them to propose the most impactful and necessary projects with a larger set of potential funding sources. Moreover, some banks are structured in a way that subjects them to multiple regulators (for example, a consumer bank under the OCC with the parent holding company subject to the Federal Reserve). Inconsistent CRA regimes, especially as they may intersect with guidance related to safety and soundness, could lead to confusion and, by extension, inactivity.

Section II. CRA 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?

Addressing discrimination. The CRA was enacted largely as a response to "redlining," a discriminatory practice in which banks would deny loans to residents living in neighborhoods that they deemed hazardous, often solely based on the presence of large minority populations. Enterprise commends the Board for its emphasis on undoing the harmful effects of redlining in this ANPR, as well as its focus on deeper and sustained investment in minority communities. Addressing the unmet credit needs of LMI communities and individuals, and particularly people of color, must remain central to any modernized CRA regulation and should be the standard against which any changes are measured. This is especially important given the nation's current economic challenges due to Covid-19, particularly for communities of color, who have faced historic disinvestment and who have been disproportionately affected by the pandemic. The CRA can play a critical role in an equitable recovery by providing accessible and effective financial services to low-income communities of color.

Providing affordable housing. Enterprise would specifically like to emphasize the importance of the CRA in financing the production and preservation of affordable rental homes and the purchase of affordable owner-occupied homes by LMI borrowers. We strongly support regulations that continue to encourage robust investment in affordable housing, particularly given the cost burdens shouldered by people of color due to historic disinvestment and underinvestment in these communities.

Our analysis of the 2019 one-year American Community Survey (ACS) microdata indicates that nearly a quarter of all families who rent their homes – over 10.5 million households – spend more than half of their income on rent. [1] In addition, more than 4 out of every 5 renters earning less than half their area's median income are paying in excess of 30 percent of their income for rent and are thus considered at least moderately cost burdened. Specifically, the 2019 ACS data shows that 30 percent of Black renters were severely cost burdened last year, paying more than half of their income on housing. Moreover, most of these households also had extremely low incomes, earning less than 30 percent of their Area Median Income (AMI). Nearly a quarter of all Black renter households were both severely cost burdened had extremely low incomes, the highest share among any racial/ethnic group and larger than the share of all white renters who were severely cost burdened. Any changes to the CRA should shift towards increased support to address housing and community economic development needs.

The Housing Credit is our nation's most successful tool for developing and preserving affordable rental housing. Since it was created in 1986, the Housing Credit has helped finance nearly 3.5 million affordable homes, providing 8 million low-income households in all 50 states and all types of communities – including urban, suburban, and rural – with housing they can afford. Without a subsidy like the Housing Credit, virtually no affordable rental housing production or preservation would occur, because rent levels affordable to low-income households are too low to cover total development costs and sustain a typical mortgage on the property. The infusion of equity by Housing Credit investors allows the developer to take out less debt on the property, which is then translated into lower rents. Any changes to CRA must be mindful of the effects on equity availability and pricing.

Housing Credit investment reached an estimated $18.3 billion in 2019,[2] an estimated 73 percent of which was CRA-motivated.[3] A strong Housing Credit investor market is critical to the health of our nation's affordable housing delivery system, and Enterprise urges the Board to ensure that affordable housing remains a robust investment option in any modernized CRA regulatory system.

Listening to community voice. Enterprise would like to emphasize the importance of community voice in the CRA. The primary purpose of the CRA is to ensure that banks meet the credit and financial service needs of LMI communities, and performance context has been key in helping the regulations achieve this mission. 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. Increased clarity and consistency of the regulations is a desirable outcome, but regulators must also incorporate the responsibility of lifting up local perspectives and needs, specifically through a commitment to performance context, potentially reflected through the adoption of impact measures to reflect the value activities bring to communities.

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[1] Enterprise Community Partners analysis of U.S. Census 2019 one-year American Community Survey public use microdata as provided by *IPUMS USA, University of Minnesota,* www.ipums.org.
[2] CohnReznick, "Housing Tax Credit Monitor," (2020). *Retrieved from:* *https://www.cohnreznick.com/insights/housing-tax-credit-monitor*
[3] CohnReznick, "Housing Tax Credit Investments: Investment and Operational Performance," (2019). *https://www.cohnreznick.com/insights/2019-housing-tax-credit-investment-operational-performance*

Community voice is particularly important when considering the nature of neighborhood change, which can often take the form of gentrification that leads to displacement. The ACS published by the U.S. Census Bureau offers broadly available data at the local (census tract) level, but the data are significantly lagged; community voice reflective of the lived experience of residents and locally generated data, conversely, offers a real-time record of dynamic conditions in communities. Capturing that through performance context and prioritizing targeted investment through impact scores and other mechanisms is crucial to both understanding need and measuring progress towards reversing the multigenerational impacts of redlining and other forms of discrimination.

Balancing Safety and Soundness while Advancing Racial Equity. There are currently no widely used models to develop risk assessments for providing low down payment lending options to minority communities. We encourage bank capital requirements that provide preferential treatment to minority communities, while balancing safety and soundness with the purpose inherent in a public charter. This preferential treatment would allow for a system that balances community development lending and investment – and lending to historically excluded people and places – with other systemic objectives. Currently, banks are restricted from taking on certain types of projects because of the risk rating. We envision a system that rewards prudent risk that facilitates innovation and impactful activities, which can be more easily approved internally by bank decision makers, in order to encourage strategic investments in LMI communities.

Section III. Assessment Areas

Questions 8-10

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?

The banking industry has changed significantly since the CRA was originally enacted, and regulations have not been properly updated to reflect advancements in technology and data collection. Currently, the regulations provide a strong incentive to lend and invest primarily in the assessment areas (AAs) that receive a full-scope CRA exam. This results in hypercompetitive "hot spots" in some markets and creates community development financing "deserts" in other areas. Deposit-based AAs – which could result in additional AAs in wealthier, metropolitan areas – may serve to exacerbate this "hot spot" dynamic, and additional concerns exist that deposit-based AAs could be costly or burdensome.

Enterprise encourages greater flexibility to banks to designate statewide non-metropolitan AAs. This could be particularly beneficial for rural areas and may mitigate some of the problems of CRA deserts. To further address the issue of hot spots and deserts, we would suggest regulators consider allowing high-performing banks (as determined by the previous exam period) to adopt statewide AAs for CD activities. Along the same lines, we are supportive of changes that would allow high-performing banks to expand

the scope of their CRA activities outside their AAs. This could help reduce hot spots and make it simpler for CDFIs and intermediaries with a national footprint to deploy capital based on community need.

Specifically, Enterprise is supportive of CRA regulations that encourage investments in CDFIs, MDIs, and women-owned financial institutions, even outside of existing AAs. Certification to become a CDFI is granted to specialized organizations that provide financial services in low-income communities and to people who lack access to financing, which aligns with the original intent of the CRA and should be sufficient for automatic CRA consideration. Further, the national footprint of a CDFI should automatically be eligible for CRA credit once a bank has reached a "satisfactory" rating. Along the same vein, we believe that investment in national Housing Credit funds should be treated similarly and receive automatic CRA consideration.

Enterprise also appreciates the Board's interest in updating AAs to more accurately reflect changes in the financial industry like online lending and branchless banking. Aligning AAs and current practices is critical — particularly with the growth of nontraditional institutions such as internet banks, which attract deposits from across the country but have very few or no physical branches.

Enterprise suggests the Board to consider a modified nationwide AA for internet banks, shifting the focus of CRA activities to CRA "deserts." Internet banks without a geographic footprint should be required to primarily provide banking services in rural, tribal, and persistent poverty areas – communities that have faced historic underinvestment and disinvestment and are the least well served. Further, any financial services offered in Native communities should automatically qualify for CRA credit.

Section IV. Tailoring Evaluations Based on Bank Size and Business Model

Questions 11-13

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?

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?

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?

The Board is proposing to set the asset threshold between small and large banks to either $750 million or $1 billion, designating banks below the set level as small and banks above the set level as large. This would eliminate the intermediate small bank category that currently exists. Enterprise encourages the Board to retain the intermediate small bank category. Adjusting the bank size limits along with inflation is reasonable.

Currently, intermediate small banks with assets between $326 million and $1.305 billion are evaluated on their community development activities, while small banks are evaluated on their retail performance alone. Eliminating the intermediate small bank category would mean a notable portion of banks would no

longer be subject to community development performance measures, which are important to drive investment into low-income communities.

Data collection and reporting for these intermediate small size banks can be kept simple to minimize any burden, and the Board should continue to engage with these banks to ensure ongoing support for community development under the CRA.

Section VI. Retail Lending Subtest Definitions and Qualifying Activities

Question 38. Should the Board provide CRA credit only for nonsecuritized 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?

Expanding home mortgage lending to underserved individuals and historically excluded communities is crucial to reducing (if not ultimately eliminating) the racial disparities in homeownership that currently exist. To that end, CRA credit within the retail lending test should be considered for all mortgage originations and loans purchased from an originating lender (or affiliate), with the latter activity intended to help facilitate a regular flow of capital for ongoing originations, particularly for originators who excel at serving LMI individuals and communities. We concur with the Board's sentiment (echoed by others) that "loan churning" should be ineligible for CRA credit, and with only a small number of institutions responsible for the preponderance of purchased loans, we suggest that should it be evident over time that loan purchases are not translating into increased liquidity for LMI originations, the burden of proving impact should shift to the institutions seeking consideration of the loan purchases.

Section VII. Community Development Test: Evaluation of Community Development Financing and Community Development Services Performance

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?

The Board's proposal to evaluate community development loans and qualified investments together under one subtest is a change from current CRA regulation, which includes a separate investment test. This has important implications for Housing Credit investment, and Enterprise encourages a final CRA regulation that separates these tests, so as not to inadvertently deflect equity investment away from affordable housing.

Offering loans is often an easier, less complex, and shorter process than investing in a Housing Credit project. Under the Board's proposed rule, banks would weigh the benefits of these two types of qualifying activities and would likely end up loaning more and investing less. Ultimately, this could lead to less affordable housing production and preservation, as the equity commitment is a necessary precursor to the development that might ultimately also carry debt. With reduced demand for CRA-motivated equity investment, the price of credits is likely to fall (as evidenced by the pricing disparity between CRA hot spots and deserts), increasing the need for gap financing from public resources, as the allowable rents in Housing Credit properties are unlikely to be able to support additional debt service. Similar arguments could be advanced for other CD equity investments, including equity-equivalent investments in CDFIs, which are far more impactful than shorter duration lines of credit.

We support the Board's proposal to apply full-scope assessments in all AAs to ensure that CD activities are undertaken with an eye to local needs and maximal impact.

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?

The Board proposes measuring community development financing as a function of deposits. This is a reasonable measure. Enterprise considers long-term, patient capital in the form of investments and loans important tools to uplift LMI communities. Long-term commitments are particularly valuable for CDFIs that rely on lines of credit when contrasted with short-term lines of credit that both lenders and CDFIs plan to renew time and again but cannot be deployed beyond the term of the line. Evaluating bank balance sheets rather than only considering in-period loans and investments (separately) encourages long-term support of important CD activities.

In the context of the balance sheet evaluation, we believe binding Housing Credit commitments, which must be accounted for in reserves at the time of the commitment, should be included in the balance sheet assessment.

In addition to calculating CRA activities on an institution's balance sheet, Enterprise would also like to stress the importance of an additional measurement that evaluates a (net) new financing requirement, to encourage additional loans and investments in LMI communities beyond CRA-eligible activities on an institution's balance sheet from prior exam cycles. This second measure is intended to preclude banks that outperform the threshold level of performance for a given rating in the previous exam cycle from doing only minimal new activity in the next cycle while still maintaining their rating. (This is another reason to evaluate CD loans and investments independently.)

Questions 45-47

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?

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?

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?

Providing flexibility in evaluating community development financing performance given local context is important to ensure that local needs are met, especially for harder to reach rural, Native, and persistent poverty communities. By calibrating metrics to local conditions and not just national benchmarks, the Board will help incentivize more targeted and impactful CRA activity. By the same token, however, the local benchmarking process should capture both community development needs as well as reflect the extent to which those needs are being met by an institution and its peers. It is important not to enshrine current levels of CRA activity, with hot spots and deserts, into the new evaluation. Rather, the benchmarking process should seek to encourage more equal distribution of activities based on local

conditions with the necessary flexibility for institutions to support statewide and national CD needs when local needs are met across the system. (In this regard, the proposed publicly accessible performance dashboards will be an important decision-making tool for banks, as they consider how well-served an AA might be over the course of an exam cycle.)

We also note that the use of properly calibrated local benchmarks, especially if coupled with the ability to receive credit for Housing Credit investments statewide for an institution with an AA in that state, will mitigate some of the concern that large banks may not otherwise be able to meet performance expectations if a standalone CD investment test is retained.

Enterprise supports the use of impact scores to account for qualitative considerations in the Community Development Financing Subtest. Impact scores are an effective way to convert qualitative factors into quantitative measures to qualify for CRA credit, and we believe this approach within an overall context-aware rubric is far preferable to a purely category-based multiplier divorced from actual community impacts. While a straight multiplier in a system that solely devolves to a ratio of CD activity to deposits functionally reduces the actual dollars flowing into communities, the impact scores aspire to encourage locally meaningful activities.

To that important end, the three-point impact scale as described may not provide enough detail to assess differences in how certain activities create community impact. An activity may be impactful for multiple reasons, but chief among these are that it is well-suited to meet the particular needs of the community. Indeed, responsiveness has always been a highlight of celebrated CRA activities in a performance context. Similarly, innovative activities, by virtue of tackling seemingly intractable barriers to financing a CD need or adapting successful products to new locations or institutions, are also worthy of consideration for an impact score. Closely related to innovation is addressing complexity, irrespective of the dollar amount of the activity. Taken in total, the different ways that an activity may be viewed as impactful are not easily distilled into a simple 3-point value. To more fully embrace (and encourage) the multiple ways an activity may have impact, we suggest a much wider range of impact values, potentially reflecting scores for each of these dimensions.

We recommend that the Board recognize the following activities for impact score consideration:

- Equity investments in the Housing Credit, NMTC, CDFIs, minority depository institutions (MDIs), and women-owned financial institutions.
- Partnerships with CDFIs, MDIs, and women-owned financial institutions.
- Activities in chronically underserved communities like rural, Native, and persistent poverty communities.
- Activities that are particularly responsive to local community needs, including small-dollar activities that have outsized local effects, both directly and indirectly.
- Financing with unconventional terms or that require underwriting flexibilities.
- Financing in minority communities and businesses.

Question 49. Would an impact score approach for the Community Development Services Subtest be helpful? What types of information on a bank's activities would be beneficial for evaluating the impact of community development services?

It is important to ensure that community development services are responsive to community need. For banks using board service to fulfill their community development service commitment, Enterprise encourages banks to consider whether this engagement is meaningful for nonprofits and positively impacts their capital outcomes. We also recognize that because community development services are varied, a qualitative measure of this activity is appropriate, as long as this measure draws from the performance context and is fully responsive to community need.

Section VIII. Community Development Test Qualifying Activities and Geographies

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?

Enterprise supports CRA consideration for subsidized affordable housing, unsubsidized affordable housing, and housing with explicit pledges or other mechanisms to retain affordability in the definition of affordable housing. The overwhelming majority of homes that are affordable to LMI families receive no public subsidy, often referred to as naturally occurring affordable housing, or NOAH. It is important for CRA regulations to positively consider financing for these affordable properties. Generally, lenders for unsubsidized housing do not collect tenant income data nor are borrowers certifying resident incomes on an annual basis. As such, determination of eligibility for CRA consideration for unsubsidized affordable housing should be predicated on a mix of property- and community-level factors.

Consistent with the approach detailed by the National Association of Affordable Housing Lenders, Enterprise believes that unsubsidized affordable housing should be favorably considered if the majority of rents within a property are affordable (as defined in response to Question 53, below) when the financing is committed. While a necessary condition, it is insufficient. At least one of the following criteria must also be met: the property is located in an LMI census tract; most *renters* in the neighborhood are LMI and most rents in the neighborhood are affordable; or the owner agrees to maintain affordability to LMI renters for the life of the financing.

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?

Enterprise supports the criterion that the rent should be affordable to LMI households for a majority of the units in a property, as determined when financing is committed and based on a 30 percent-of-income affordability standard for a household at 80 percent of the AMI. This affordability metric is consistent with other federal housing programs. Further, banks should have the option to use either FFIEC area income data or HUD area income data to qualify unsubsidized affordable rental housing. These recommendations are in alignment with the National Association of Affordable Housing Lenders and the National Housing Conference.

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

Enterprise encourages CRA eligibility for investments that support Housing Credit projects, which are critically important in addressing the affordable housing needs of LMI individuals and communities.

We also believe that banks should be encouraged to develop more innovative and flexible products appropriate to small rental properties. A large portion of low-income households live in rental properties of 49 units or fewer, yet this sector suffers from long-term structural barriers to accessing appropriate capital for acquisition, preservation, and rehabilitation. We believe banks should receive CRA credit for developing and providing innovative lending products for these properties, which provide more housing for low-income renters than any other category of building size. (The need to support this segment of the market is particularly acute given the Covid-related stresses on residents.)

In addition, Enterprise has developed a robust conventional equity product for the acquisition and preservation of unsubsidized affordable properties, which has attracted banks looking to secure CRA credit for innovation and impact. Preservation funds are relatively higher risk than other CRA eligible activities, but they serve a critical need in many markets. Any shift away from rewarding this type of innovation will significantly curtail these kinds of investments, and Enterprise supports CRA regulations that reward banks for taking measured, impactful risks to benefit LMI communities. Financial activity in rural, Native American, and persistent poverty communities is critical, and the Board should automatically include these as qualifying activities for CRA credit. Tribal lands in particular have some of the most persistent poverty problems and inadequate housing in the country; encouraging additional retail lending and investment in these communities is important for achieving greater economic inclusion. The financial activities of CDFI, MDI, and women-owned financial institutions have also been demonstrated to be particularly responsive to the affordable housing needs of LMI communities, alongside Housing Credit and NMTC investments.

Enterprise also recognizes that public welfare investments – such as those that support extremely low-income or homeless individuals – are particularly responsive to affordable housing needs, and we view investments that serve these groups as worthy of automatically qualifying for CRA credit.

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?

Enterprise supports full CRA credit if at least 20 percent of units are affordable at or below 50 percent AMI or 40 percent of units are affordable at 60 percent AMI. This is the eligibility threshold for the Housing Credit and tax-exempt multifamily housing bonds programs.

For unsubsidized affordable rental activities, pro rata credit should be considered if at least 20 percent and up to 50 percent of the units are affordable to households earning at or below 80 percent of the AMI. Pro rata credit should also be considered for affordable units produced in response to local inclusionary zoning requirements for any units set aside as affordable above the minimum required by statute. For example, in a jurisdiction with a 10 percent set aside, a development with 15 percent affordable units could receive consideration for the 5 percent above the minimum.

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?

Enterprise supports bank activities that have a direct impact on LMI communities. The Board should only consider an activity to meet the definition of eligible "essential community need(s)" or "essential community infrastructure" if it primarily benefits LMI communities. There should be no pro rata credit for large-scale projects that happen to serve LMI communities as a modest part of a much larger service area.

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

LMI communities are highly exposed to the risks of natural disasters and climate change. They are particularly vulnerable to extreme weather and other natural disasters, as they are more likely to be cited in floodplains, fire zones, and areas that have not benefitted from investment in hazard mitigation. With fewer resources generally, these communities are also the slowest to recover. It is only appropriate that

the CRA recognize investments in these communities to advance community resilience and the adaptive capacity of community stakeholders to respond to these climate events. With certain adjustments, CRA investments can strengthen and protect LMI communities, particularly their affordable housing stock, helping them prepare for and recover from new risks from natural hazards and climate change.

Enterprise encourages the Board to consider a programmatic investment framework that leads to investment in climate vulnerable, LMI communities, with an emphasis on investment in affordable housing. Following a natural disaster, damage to housing and housing displacement are among the most critical needs of a community. Access to low-cost funding post-disaster can help owners recover units, which is an important way to mitigate a long-term community downturn and the further degradation of affordable housing assets. In addition, providing technical and planning support for banks to respond to community needs in high-risk areas will help ensure recovery investments are strategic, responsive, and scalable. Focusing on development efforts with the highest impact, creating credit incentives for banks to work in non-urban communities outside of typical AAs, and increasing the ability of private investors to invest in communities directly –through partnerships with FEMA and other community development organizations – are also ways for the CRA to support climate resilience in LMI communities.

Finally, a component of these efforts should also advance research and highlight projects that model resilient community recovery. Showcasing projects that have received CRA credit through incorporating hazard mitigation, recovery, and community resilience will provide communities, banks, investors, and CRA examiners examples to model future efforts. By extension, future efforts could also include dedicated technical assistance that helps communities use CRA money before and after a disaster in a manner consistent with local hazard, housing, economic development, resilience, and climate adaptation planning.

Enterprise also supports a CRA regulatory framework that gives credit for investments in cultural resilience. An additional consideration of climate resilience relates to whether these types of investments produce co-benefits that address other community needs; for example, advancing local small business activity or increasing recreational opportunities that can create more connectedness among residents. In New Orleans, the Lakeview storm water drainage project will reduce flooding in a downtown area, but will also generate several notable co-benefits, including improved street access and traffic relief; renovation of the public alleys that many of the area residents use to access their homes; and resurfacing of badly degraded streets.[4] Bolstering cultural resilience means investing in communities both strategically, through physical infrastructure enhancements that protect and strengthen the community, and holistically, to build communities that foster pride and belonging among its residents.
Disaster and culturally resilient communities provide the time and space LMI families need to build a strong financial foundation where they live, promoting the long-term success economic mobility of these individuals.

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?

Enterprise appreciates the Board's interest in providing CRA credit for investments in MDIs, women-owned financial institutions, and low-income credit unions outside of AAs, and are supportive of including them in consideration of an "outstanding" designation for these mission-oriented institutions.

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[4] Schoeman, Laurie. "Pre-and Post- Disaster Investments in Housing and Community Development." Federal Reserve Bank of San Francisco, Community Development Innovation Review Series, vol. 14, no. 1, 2019, pp. 001–202., doi:10.24148/cdir2019-02.

As long as community development needs are satisfactorily being met within AAs, and as banks increasingly operate outside of their geographic footprint, Enterprise is in favor of bank activities that benefit LMI individuals regardless of their location, with the evaluation of those activities applying at the institutional level.

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

Enterprise is supportive of CRA consideration for all loans, investments, or services made in conjunction with a CDFI operating anywhere in the country. CDFIs are certified entities that invest in LMI communities, and any work banks engage in with CDFIs will no doubt benefit LMI individuals and should thus automatically qualify for CRA credit. Enterprise has long supported bank investment in CDFIs for their critical role as mission-driven financial intermediaries and their capacity to offer both capital and technical assistance to underserved communities.

Questions 68-72

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?

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?

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?

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?

Question 72. Should 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?

Enterprise supports CRA consideration at the institutional level for community development activities that occur outside of designated AAs, especially those in low-income communities that have been historically underserved and stymied by the negative economic impacts of redlining. Assuming banks are fulfilling their requirements in designated AAs, Enterprise supports lending and investment in chronically distressed communities, recognizing the incredible impact that CRA can have low-income, minority populations. In Indian country especially, CRA credit for lending and investment is critical, given the pervasive and historic lack of credit flow among Native Americans. Leveraging the access and expertise of CDFIs in supporting Native, rural, and persistent poverty communities is an effective way to fulfill the intent of CRA, and CDFI activity is highly worthy of CRA credit. In general, it is imperative that the financial activities of banks in these harder to reach communities are appropriately tailored to the needs of the consumers in these markets.

In addition, it is important for CRA regulations to address the displacement of LMI individuals occurring as higher income families move into gentrifying areas. Specifically, CRA regulators should monitor bank consumer lending, to ensure that loans for homeownership target LMI individuals rather than higher-income people moving into LMI tracts. Enterprise suggests regulators establish income cut offs for homeownership lending in certain neighborhoods, to ensure that CRA lending does not cause the displacement of the very individuals it aims to help.

Enterprise also supports the development of an illustrative, but non-exhaustive list of CRA eligible activities that fulfill the original purpose of the CRA. We urge Housing Credit, NMTC, and CDFI investment activity to be considered for CRA credit, given their demonstrated ability to further the goals of the CRA. Further, other public welfare investment activities should be considered for this list, especially activities that support Housing Credit investment.

For example, Opportunity Zone (OZ) funds can provide much needed, additional equity to Housing Credit projects; however, OZ funds are often excluded from these deals – and thus CRA credit – due to inflexible regulatory affordability requirements. Enterprise supports providing more regulatory flexibility and clarity across agencies so that OZ investments more easily qualify for CRA credit, as long as there is a clear and measurable benefit for LMI individuals and communities resulting directly from the Opportunity Fund's activity (for example, when OZ funds are paired with Housing Credit deals). That being said, it is important for regulators to consider the specific activity and its benefits to the community when evaluating CRA credit for OZ investments. We strongly recommend that any Opportunity Fund investments seeking CRA credit align with current guidance around eligible public welfare investments.

The non-exhaustive list should be updated on a regular cycle of two to three years. A transparent pre-approval process should start with specific proposed transactions to allow the board to make a determination of both eligibility and possible impact score. Should the board grant substantial numbers of requests for pre-approvals that could be consolidated into a new category of eligible activity, that category should be added to the list in between updates.

X. Ratings

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?

Enterprise is opposed to eliminating the distinction between high and low satisfactory, given the overwhelming majority of banks receive a satisfactory in their final evaluation. Retaining the distinction within the individual components is important for keeping banks encouraged to continue improving their CRA efforts. Offering a high satisfactory rating in conjunction with a rigorous but achievable outstanding rating will establish (or further) a system-wide increase in CRA-eligible activities, facilitating a virtuous circle among peer banks and across multiple exam cycles. Eliminating the gradation within satisfactory, on the other hand, would essentially lower the bar too far (unless the threshold for satisfactory approaches today's high satisfactory, which we believe is unlikely). Ultimately, it would encourage a "race to the bottom" simply by eliminating competition among most banks to outperform peers, resulting in a loss of interest by banks to innovate and truly serve the needs of the communities where they are based.

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?

Enterprise encourages the Board to allow banks to receive credit for any for Housing Credit investments statewide for an institution with an AA in that state, as discussed in our response to questions 8–10. When making CD investments beyond states where an institution has an AA, the credit should be incorporated into the institution-level evaluation.

Conclusion

For the past four decades, the CRA has been a critical tool to direct private-sector lending and investment to LMI individuals and communities that would otherwise be poorly served by the banking system. Enterprise commends the Board for its emphasis on reversing the harmful effects of discrimination and redlining through this ANPR and offer these comments to encourage a final CRA regulation that facilitates meaningful and effective financial services for LMI communities. We encourage the Board to work with the OCC and FDIC to issue a final, joint rulemaking that builds from the strengths of the existing CRA framework, as this proposal does, especially as LMI communities work to recover from the economic fallout of Covid-19.

Thank you for your consideration of these comments, and if you have any questions, please do not hesitate to reach out to Andrew Jakabovics (ajakabovics@enterprisecommunity.org) or Krista D'Alessandro (kdalessandro@enterprisecommunity.org).

Sincerely,

Priscilla Almodovar
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Enterprise Community Partners, Inc.