LISC
LOCAL INITIATIVES SUPPORT CORPORATION

**February 16, 2021**

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

**SUBJECT:** Community Reinvestment Act Advance Notice of Proposed Rulemaking
Docket #: R-1723
RIN: 7100-AF94

The Local Initiatives Support Corporation (LISC) is pleased to offer comments in response to the Advance Notice of Proposed Rulemaking pertaining to modernizing the Community Reinvestment Act.

**BACKGROUND ON THE LOCAL INITIATIVES SUPPORT CORPORATION (LISC)**

LISC is a non-profit housing and community development organization and certified Community Development Financial Institution (CDFI) with offices in 36 cities throughout the country, and a rural network encompassing 92 partners serving 44 different states. LISC's work supports a wide range of activities, including affordable housing, economic development, building family wealth and incomes, education, community safety, and community health. In 2020 alone, LISC raised and deployed approximately $2 billion of grants, loan and equity capital into distressed urban and rural communities. This included over $1.1 billion of equity capital that utilized federal Low Income Housing Tax Credits (LIHTC) and New Markets Tax Credits (NMTC), secured by our subsidiary entities the National Equity Fund (NEF) and the New Markets Support Company (NMSC), respectively. In our experience, the Community Reinvestment Act (CRA) remains the primary driver of bank financing for our activities. Historically, LISC raises approximately 80% of its private capital from CRA motivated investors.

**OVERVIEW OF COMMENTS ON THE ANPR**

The CRA has been a critical, if not the most critical, incentive available to facilitate the flow of private capital into underinvested communities. It has been successful not only for the communities and community residents that have benefitted from these investments, but also for the banks – who have managed to find new and profitable investment opportunities that generally perform as well or better than other bank investments.

As successful as the CRA has been, LISC agrees that improvements could be made. The banking industry has undergone significant changes since the CRA regulations were last updated, most notably in the rise of interstate banking, internet banks, mergers of institutions, and mobile banking. A reexamination of the current CRA delivery system is therefore appropriate and, some might argue, even overdue.

LISC believes that the objective of any reform exercise should be first to protect what has been working, and then to determine whether there are ways that CRA can be modernized to more efficiently and effectively deliver still more investments and services into distressed communities. Streamlining program requirements and adding transparency to the CRA review process are worthy objectives, but to achieve them without also obtaining equal or greater outcomes for communities and underserved populations would constitute a failure of CRA reform.

LISC therefore welcomes the Federal Reserve Board's (the Board's) solicitation of comments at this time. Like many others in both the banking and the community development sectors, LISC was disappointed with the final regulations published by the OCC in June of 2020. First, we objected to the OCC moving forward without consensus from the FDIC and the Board. But we also feel that the final rule will likely: (i) lead to a decline in mortgage lending and small business lending in low-moderate income (LMI) communities; (ii) encourage activities that may not bring impactful benefits to LMI communities or LMI families; (iii) lead to a decrease in LIHTC and NMTC investments; and (iv) fall short of the goal of increasing opportunities in communities, particularly rural communities, that have been historically denied opportunities under CRA.

As discussed further below in our responses to the questions in the ANPR, we believe that there are many merits to the approach outlined by the Board in the ANPR; but also several areas that the Board needs to clarify and/or strengthen in subsequent rulemaking. Briefly:

- *We believe that the Board's baseline metrics are preferable to those adopted by the OCC.* Specifically, we support the Board's proposals to: (i) evaluate originations (not just on balance sheet activities) during the assessment period; (ii) use both market and community data to inform their presumptive retail lending scores in each assessment area; (iii) evaluate retail lending based on the number (as opposed to the total dollar amount) of loans; and (iv) consider loan purchases under the retail lending test, rather than the community development test.

- *We believe the approach to designating assessment areas, particularly for non-branch banks, is a notable improvement over the current approach, but that the Board can do more to encourage investments in underbanked communities.* LISC supports the creation of deposit (or lending) based assessment areas for non-branch banks. LISC also supports offering national service areas for certain banks, but only to the extent the Board provides incentives for these banks to invest in underbanked communities. LISC also supports the Board's intention to allow banks to get credit at the state level for community development loans and investments, but believes that for certain community development investments, it would be more impactful for such investments to be credited as serving the assessment area(s) within those states.

- *<u>We have significant concerns about eliminating the "investment test"</u>*. LISC is concerned that, without a separate investment test for large banks, banks may have a diminished appetite for investing in LIHTC, NMTC and historic tax credit transactions. We believe the separate investment test may be the single biggest driver of banks' financing these products, since the characteristics of these tax credit investments (e.g., relatively modest yields, longer duration, less liquidity, substantial compliance risk, higher capital charges) would otherwise make these investments less attractive to banks than traditional debt products. In the absence of a separate investment test, the Board should consider ways to mitigate against the substitution effect away from investments, including by:

  (i) Requiring large banks to devote a certain percentage of their community development activities towards community development investments;

  (ii) Reviewing the bank's prior investment track record against its evaluation period performance and potentially downgrading the bank if there is a substantial decrease in investment activity that cannot be reasonably explained; and

  (iii) Clarifying that community development investment activities will receive the highest possible impact scores under the performance context review.

- *<u>The Board must provide significantly more information on how "impact" will factor in to the scoring, particularly for community development loans and investments.</u>* As the Board moves to a more quantitative review system, which we appreciate provides more certainty and clarity to banks, it will need to better articulate how it intends to examine and encourage more innovative and impactful bank products. The Board should consider: (i) expanding its proposed three-point evaluation scale to at least five points; (ii) posting illustrative examples of impactful products that will be scored most favorably under this scale; and (iii) identifying a baseline percentage of community development activities that must score highly under this scale in order for a bank to receive a presumptive rating of satisfactory or outstanding.

**RESPONSES TO THE QUESTIONS POSED IN THE ANPR**

**<u>Section II: Background</u>**

***<u>Question 2</u>.*** *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?*

Structural racism, cultural racism and individual-level discrimination generate racial wealth health, and opportunity disparities that systematically undermine the success of Black, Indigenous, and people of color (BIPOC) households. Barriers to economic mobility and opportunity negatively affect wealth building among BIPOC families. White family wealth is nearly ten 10 times greater than Black family wealth and eight times greater than Hispanic family wealth—a divide that is wider than it was in 1963 and that is still growing. The gap in net worth between Black and white families is particularly pervasive—it persists at nearly every income level, meaning that even when Black and white households have similar income, the latter are likely to enjoy more overall wealth.

Unfortunately, with its long history of racially discriminatory practices, the banking industry has done more to exacerbate the racial wealth gap than to correct it. The CRA was enacted in 1977 as a specific response to the industry's widespread practice of "redlining" – refusing to lend in minority communities. And while banks no longer engage in this practice as brazenly as they did decades ago, it is clear from very recent scandals at major financial institutions that racially discriminatory practices are still in widespread use today – affecting everything from loan approvals to interest rates to servicing fees to branch closings. The CRA may have been enacted to counter blatantly racist practices, but it has yet to completely neutralize them.

As such, the Board is advancing the statutory intent of CRA by continuing to focus on racial equity as it considers additional CRA reforms and enhancements. The banking industry, perhaps more so than many other industries, is in the position to help close this racial wealth gap by providing home loans, small business loans, consumer loans and deposit accounts to BIPOC customers – provided that the products offered are transparent and fair. To this end, the Board should consider:

(i) Collecting data from all of the bank's major business lines to ensure they are adequately addressing the needs of all of their customers, using peer and geographic comparators as a means of determining whether an institution is significantly underserving certain populations;

(ii) Examining in the performance context review whether the bank is developing appropriate products for, and conducting appropriate outreach to, BIPOC populations;

(iii) Providing larger CRA impact scores for loans to BIPOC families and entrepreneurs, including those that don't reside in low income communities;

(iv) Encouraging bank investments in minority depository institutions and in CDFIs that primarily serve minority customers or majority-minority communities; and

(v) Continuing and adding additional transparency to the practice of providing downgrades to CRA scores for banks that violate fair lending laws.

**Section III: Assessment Areas and Defining Local Communities for CRA Evaluations**

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

Yes, although "portions" of towns seems to be a little small for an assessment area. Perhaps in larger cities a bank could choose a smaller subdivision that makes geographic sense if it has branches in only a part of the city. However, in small towns, it would seem like the entire town should be the smallest jurisdiction.

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

This should continue to be a requirement – otherwise a large bank could be receiving deposits from many communities, particularly rural communities, without any obligations to invest in those communities.

***<u>Question 8.</u>*** *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?*

The creation of deposit-based or lending-based assessment areas should be applied generally to all "non-branch" banks, not just the subset of those banks deemed "internet banks". In defining non-branch banks, the Board should consider the definition adopted by the OCC, which defines a non-branch bank as any bank where 50% of more of the deposits (or loans) come from outside of where the bank has physical facilities or ATMs. The Board should consider creating statewide assessment areas in any state that comprises at least 10% of the bank's total deposit (or loan) base, and should ensure that the CRA activities are being directed to the banks' assessment areas before getting credit at the national level.

<u>Example:</u> Bank A is a bank where only 20% of the deposits are coming from areas where it has physical facilities, so it qualifies as a non-branch bank. Of its total deposit base, 25% are in California; 15 % are in New York; 10% are in Texas; and the remaining depositors are scattered across 20 different states, with no single state constituting more than 10% of the total deposit base. Bank A would be assigned statewide assessment areas in California, New York and Texas; and would be required to demonstrate that approximately 25%, 15% and 10% of its CRA eligible investments were placed in those three states before the bank could get credit at the institution for any investments made throughout the rest of the country.

*__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?*

Nationwide service areas could potentially be offered to internet banks as well as other non-branch banks, including wholesale and limited purpose banks and industrial loan companies. But in order to be granted this concession, the bank should demonstrate that it generally operates throughout the country (as opposed to a smaller region), that it has a small deposit base in general, and that it doesn't have a large concentration of its loans or deposits (e.g., more than 10%) in any one state. Banks that meet these criteria should be considered for a national service area. However, the Board should also consider requiring such banks to demonstrate that a certain percentage of their activities are directed towards underbanked communities in order to receive a presumptive rating of satisfactory or outstanding.

## __Section IV. Overview of the Evaluation 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?*

LISC believes that community development performance should be a part of the CRA review for all banks, regardless of size. Smaller banks could have the choice of whether to be evaluated based on community development financing, community development services, or both; and the overall score for the community development test could be much smaller for smaller institutions.

With respect to the overall weighting of the community development test, we recommend that it comprise 50% of the CRA score for large banks, and 25% of the overall score for smaller banks.

*__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 current small bank threshold of $326 million is appropriate, but the regulations should contain an automatic mechanism for inflation adjustment over time. To the extent the threshold is raised significantly (e.g., to $750 million or $1 billion), the Board should definitely consider adding a community development test, as we recommend in our response to Question 12 above.

## <u>Section V:  Evaluation of Retail Lending and Retail Services Performance</u>

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

It is probably not necessary to review each category separately as independent tests under the retail lending distribution analysis, as this would likely add unnecessary burden and complexity.  However, there is merit to including an examination of the portion of the total CRA eligible activities that are directed to very low income persons, very low income census tracts, and/or majority-minority census tracts; and requiring that certain percentage thresholds are met (based on peer and geographic comparators are met) to receive an outstanding rating.

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

For consumer lending, the Board could specify the product rates and terms that must be offered in order for the loan to qualify for CRA credit (e.g., a maximum APR of 36%).  If such safeguards are in place, then this mitigates some of the need for market comparators.

*<u>Question 20.</u> Is the approach to setting the threshold levels and a potential threshold level set at 65 percent of the community benchmark and at 70 percent of the market benchmark appropriate?*

These thresholds do not appear to be sufficiently robust to encourage CRA lending activities.  First, the numeric thresholds seem low.  They should be raised at least to 75% as a threshold for a bank to receive a satisfactory score.   Secondly, these are "either/or" tests, such that the bank could still receive a satisfactory rating even if it significantly underperformed on one of the benchmarks.  The Board should consider requiring a minimum ratio under <u>each</u> benchmark in order to receive satisfactory or outstanding rating.

*<u>Question 21.</u> Will the approach for setting the presumption for "satisfactory" work for all categories of banks, including small banks and those in rural communities?*

It is not clear how this will work in rural communities, where there might not be any other market comparables.  The Board may need to consider using a statewide or national non-metro comparable in these instances.

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

It should be a goal of the Board to try to minimize examiner judgement and provide certainty for the banks whenever possible. The Board could achieve this by providing a list or set of examples of products (including rates and terms) that the Board shall automatically deem to meet the innovativeness and responsiveness test. Products like small dollar consumer loans, microenterprise loans, and home loans to low income borrowers are the types of activities that merit higher impact scores, to the extent they meet other guidelines set by the Board with respect to rates, terms, fees etc. That said, this list should not be all-inclusive. The bank should be permitted an opportunity to make a case to the examiner that any other products it may offer that are not on the list similarly meet the standards of being innovative or complex.

***Question 36.*** *Should consumer loans be evaluated as a single aggregate product line or do the different characteristics, purposes, average loan amounts, and uses of the consumer loan categories (e.g., motor vehicle loans, credit cards) merit a separate evaluation for each?*

Consumer loans should be reviewed in the aggregate unless multiple consumer lines each comprise 15% of the banks' activities, in which case they should be reviewed separately. Otherwise, breaking out a bank's consumer products by product lines would increase the likelihood that a bank may not need to report on any of its consumer activities, because none of them on their own meet the minimum volume threshold for evaluation.

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

LISC supports any measures the Board can put in place to minimize or eliminate altogether CRA credit for "churned" loans, while continuing to provide CRA credit for the direct purchase of loans to low income and minority borrowers, as well as the loans originated by CDFIs and MDIs. LISC also supports the Board's proposal to include loan purchase activities under the Retail test and not the Community Development test, given that these activities could otherwise crowd out other types of more impactful community development loans and investments.

**Section VI: 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?*

LISC is concerned that, without a separate investment test for large banks, banks may have a diminished appetite for investing in LIHTC, NMTC and historic tax credit transactions. CRA-motivated banks are the largest investors in these credits. It is estimated that 85% of the investors in LIHTC are CRA-motivated banks, and it is likely that an even higher proportion of NMTC investors are CRA-motivated banks. Collectively, these institutions place well over $20 billion per year of equity investments into LIHTC and NMTC transactions, helping to develop affordable housing, revitalize neighborhoods and lift families out of poverty. We believe the separate investment test may be the single biggest driver of banks financing these products, since the characteristics of these tax credit investments (e.g., relatively modest yields, longer duration, less liquidity, larger compliance risk, higher capital charges) would otherwise make these investments less attractive to banks.

In addition, grants to non-profits are a small portion of banks' community development investment activities, but have an outweighed role in the community development funding ecosystem, including supporting CDFIs. These grants currently count under the investment test, and are less likely to be offered without a separate investment test.

In the absence of a separate investment test, the Board should consider ways to mitigate against the substitution effect away from investments, particularly LIHTC, NMTC and other community development investments and grants, and into debt products. As noted in the comments submitted by others, including the Affordable Housing Tax Credit Coalition, the Board should consider the following strategies, which could be mutually exclusive or used together:

- **Requiring large banks to devote a certain percentage of their community development activities towards community development investments**. The Board, using historic CRA performance data across all institutions, could establish a minimum threshold level of investment activity (as a percentage of its total community development activities) that a bank must meet in order to receive an Outstanding or Satisfactory rating, or otherwise satisfactorily explain the failure to meet the target.

- **Reviewing the bank's institutional investment track record against its assessment period performance.** If a bank's volume of CRA eligible investments, particularly Housing Credit investments and New Markets Tax Credits, have declined significantly from one period to the next (taking into account cyclical patterns), then the bank should be required to explain the variance and, at the discretion of the examiner, may be downgraded in its scoring under the community development test.

- **Clarifying that Housing Credit investments, NMTCs and grants to non-profits will receive the highest possible impact scores under the performance context review**. As discussed in response to Question 47, the three-point scale may not be nuanced enough to truly reward the most impactful community development activities. We suggest expanding this scale (e.g., to five points), and providing a unique assignment at the top of the scale for investment activities, particularly Housing Credit investments and NMTCs, and for grant making.

*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?*

For large retail banks, it seems like the ratio of dollars to deposits is a good measurement and is consistent with the approach that the OCC has adopted.

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

There may be sizeable number of non-branch banks that do a high volume of lending relative to a low level of deposit taking. Perhaps for these institutions, it may not be appropriate to set benchmarks based on loan to deposit metrics. Instead, the Board should consider using the data it receives from its reporting institutions to attempt to quantify a peer percentage of retail bank loans/investments that are dedicated to community development activities, and to use this percentage as a target for non-branch banks with limited deposits to achieve in order to receive satisfactory and/or outstanding ratings.

*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?*

In markets with a substantial presence of lending institutions, peer comparators will serve as a proxy for calibrating for local conditions. As long as banks are surpassing the performance of their peers, their ratings could be given a presumptive rating of satisfactory or higher. Banks that are significantly underperforming relative to their peers in the market should conversely be given an opportunity to provide an explanation to the examiner that may provide a justification for their outcomes. Banks in markets (e.g., rural communities) that don't have a significant presence of financial institutions, and where peer comparators cannot readily be ascertained, can be compared against statewide or even national peer performance, at least for an initial presumptive rating.

As noted in our response to Question 23, the Board should attempt to move away from requiring narratives from banks to document local performance context – particularly to the extent banks are providing products that have been pre-identified by the Board as being sufficiently innovative or complex. For example, the Board could deem that all LIHTC investments, NMTC investments, long term loans into CDFIs, loans that support affordable housing, loans that support facilities that primary serve low income families, etc. would be deemed to automatically qualify as innovative and responsive loans, provided that rates and terms are in accordance with guidelines published in advance by the Board. Again, this wouldn't be an exhaustive list – banks could still make an argument to examiners that other loans and investments should be deemed innovative or responsive – but it will provide a safe harbor.

***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?*

The impact scores are a potentially valid way to try to quantify what is currently a qualitative element of CRA reviews. However, it is not likely that a three-point scale provides enough nuance to uplift and encourage truly impactful activities. As noted in our response to question 42, we would suggest a scale of at least 5 points – with the top of the scale reserved for impactful community development investments and grants, with the most impactful debt products assigned a rating of four. The Fed should publish these impact scores alongside the list of products and services that have been "pre-approved" as innovative and responsive.

The Board also needs to clarify how the impact scores will be factored into the final score. We recommend that the Board set benchmarks that banks must achieve to receive a presumptive score of satisfactory or outstanding. For instance, a bank may be required to demonstrate that at least 50% of its total community development loans and investments are valued at a 3 or higher (on the proposed five point scale) in order to get an outstanding. We believe that this type of approach will help to minimize the qualitative elements of the performance context review, particularly to extent that the Board can provide advance notification of the assigned impact scores for given types of loans and investments, as we recommend above.

***Question 48.*** *Should the Board develop quantitative metrics for evaluating community development services? If so, what metrics should it consider?*

This is admittedly more difficult than quantifying the impact of community development loans and investments. Perhaps banks could quantify the hours spent on providing in kind services to CDFIs, non-profits and other community based organizations annually as a percentage of their total annual workforce hours, such that their performance could be more easily compared to those of their peers.

***Question 51**. Should financial literacy and housing counseling activities without regard to income levels be eligible for CRA credit?*

No.  Such activities should be directed to low-moderate income populations, or else to minority populations, in order to qualify.

## 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?*

All units of housing that are subsidized, or otherwise have pledges or covenants requiring affordability for low income persons, should automatically be deemed eligible for CRA investments.

With respect to unsubsidized affordable rental housing, also known as naturally occurring affordable housing (NOAH), LISC supports the position advocated by the National Association of Affordable Housing Lenders.  We believe that such housing should receive favorable consideration as affordable housing if most of the property's rents are affordable when the financing is committed, and the property meets at least one of the following three additional standards: (i) the property is located in a LMI neighborhood (i.e., census tract); (ii) most renters in the neighborhood are LMI and most rents in the neighborhood are affordable; (iii) the owner agrees to maintain affordability to LMI renters for the life of the financing.

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

Certainly all hosing developed with the Low Income Housing Credit, which is administered by competition through state allocating agencies based on annual selection criteria, should be viewed as particularly responsive to affordable housing needs; as should other projects selected by localities to receive local sources of revenue or federal pass through dollars like HOME.  Other projects that should be deemed particularly responsive include those serving special needs populations, including homeless populations, veterans, disabled populations and senior citizens.

*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?*

With respect to a mixed income property, the bank should get CRA credit for the portion of the investment funding all affordable units in the property provided that at least 20% of the units are affordable to families making below 80% of AMI; and credit for the full investment amount if at least 50% of the units are affordable to such families.

*__Question 58.__ How could the Board establish clearer standards for economic development activities to "demonstrate LMI job creation, retention, or improvement"?*

The regulations could potentially specify that the bank calculate a "jobs to investment ratio" based upon prevailing industry standards, and if at least 50% of new job are anticipated to be offered to LMI populations, then the project will be deemed to meet this test.

*__Question 59.__ Should the Board consider workforce development that meets the definition of "promoting economic development" without a direct connection to the "size" test?*

Yes. Workforce activities should not just be linked to "small" businesses. Quite to the contrary – any workforce activities that support employment in any industry or businesses, regardless of size, need to be considered as CRA eligible activities. Activities that specifically focus on special needs populations and/or on jobs with higher wages and better benefits for low income workers should be given higher impact scores.

*__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?*

LISC believes that the definitions adopted in the OCC's regulations were far too expansive. For instance, "essential community facilities" included schools, libraries, parks, hospitals, police and fire stations; and "essential infrastructure" included roads, bridges, tunnels, telecommunications, transit, water, utilities, sewage, industrial parks, etc. In addition, it is not clear how the OCC intends to pro-rate credit for essential infrastructure investments (roads, water) that may only partially intersect with LMI communities; and whether this in fact won't lead to banks being able to secure at least partial CRA as a "windfall" under investments that aren't primarily focused on serving LMI communities or LMI families. Furthermore, investments in municipal projects are precisely the types of activities that banks would likely invest in without the incentive of CRA financing, because they are often of larger size and are secured by local governments; and in fact could crowd out other smaller, high touch and more impactful community development loans and investments.

That is not to say that all infrastructure or community facility investments shouldn't qualify. There needs to be an assessment of whether the activities benefit LMI persons or communities before they will be deemed to qualify. For example, a public or nonprofit hospital that <u>primarily</u> serves LMI populations should be given more favorable treatment than a private hospital that may only incidentally serve such populations. And providing financing to water and sewer systems in Flint, for example, may be deemed worthy of CRA credit; whereas a municipal water bond for a city with a much more diverse income base of residents may not.

LISC recommends that for community facilities and essential infrastructure to qualify, the Board should require that the primary beneficiaries of the project are LMI persons or residents of LMI communities. This means that at least 50% of the customers, clients or users of the project should be LMI persons or residents of LMI communities. There should be no partial investment credit given for projects in which only a portion of the benefits are derived by these populations – though exceptions could potentially be made for projects that serve rural communities.

Regulators should also consider the extent to which a community facility or infrastructure project would not likely have received bank financing through typical bank channels. Banks should be rewarded under CRA for making loans or investments that would not normally be undertaken. By contrast, most infrastructure and many community facility investments are public finance projects that are backed by municipalities, often with AA bond ratings. Banks are likely to seek out these investments anyhow, and these investments should not be allowed to crowd out other more valuable community development activities.

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

Yes, but only to the extent those activities principally support low-income populations or residents of low-income communities.

*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?*

Yes. These are worthy investments that should be encouraged, and providing CRA credit at the institution level should provide an incentive. However, banks should also be incentivized to provide better products for these borrowers (e.g., tier I equity, extremely discounted debt, subordinated debt).

With respect to requiring these types of investments in order to get an outstanding, this may not be appropriate for all banks – given that many might not have a sufficient number of these institutions in their markets. It might be better to indicate that these types of investments are among the types of investments that will be provided with a high impact score, rather than requiring all institutions to make these investments as a condition of receiving an outstanding rating.

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

Yes, but guardrails should be put into place to ensure that banks aren't shifting too many investment dollars outside of their assessment areas. For example, in order to get credit at the institution level for these investments, the bank may have to first demonstrate that it had exhausted CDFI investment opportunities in its assessment area; or that the investment in the CDFI will serve traditionally underbanked communities (e.g., persistent poverty and rural communities).

Additionally, as noted elsewhere in our comments, banks should get higher impact scores not just for investing in CDFIs, but for providing better rates and terms, including long term debt (e.g., 10 years or more).

***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?*

LISC supports the Board's efforts to expand opportunities for banks to make community development loans and investments outside of their assessment areas, particularly to the extent these activities will be undertaken in traditionally underserved and underbanked communities.

There is little doubt that the current approach to designating assessment areas and determining whether banks are satisfactorily serving these areas has been failing large parts of this country. Communities that have large concentrations of bank branches and ATMs are going to see more CRA bank activity, and communities without a large banking presence will be left further behind. This is particularly pronounced in the LIHTC investment market, where credits in "CRA hot" markets can sell for a significant premium over projects in CRA deserts.

We believe that allowing banks to get CRA credit at the statewide or regional level for all community development loans and investments is a step in the right direction and could help to more evenly distribute CRA community development activities on the margins. However, it is important to recognize that the primary driving factor for project selection for a bank is whether or not the project is in a bank's assessment area. Therefore, unless a bank is guaranteed that it will get credit in its assessment areas for these investments, it is not likely to seek out such investment opportunities.

We therefore propose that for a narrow band of community development activities (e.g., community development investments like LIHTC and NMTC), a bank may count the investment as being in its assessment area as long as the investment is made in the state in which it has one or more assessment areas; provided that the bank had received a satisfactory score or higher in that assessment area under a prior review.  Under this scenario, for example, a bank whose sole assessment area is the city of San Francisco will be able to claim assessment area CRA credit for a LIHTC investment in Visalia.  To the extent that a bank has multiple investment areas in the state, then the amount of the investment could be distributed evenly among each assessment area.

We also recommend that, in the next stage of rulemaking, the Board provide additional guidance on methodologies for providing banks credit for investing in statewide, multi-state, regional or national LIHTC funds in which the activities fall entirely within a bank's geographic footprint, but not necessarily within the banks' designated assessment areas. Currently, banks in multi-investor funds require side letters to ensure their investments in the fund are tied to projects in their specific assessment areas; which drives up transaction costs, artificially limits investor demand, and further exacerbates CRA pricing inefficiencies. To provide more certainty to banks, and to address the items above, the Board should at a minimum consider allowing banks to apportion CRA credit for their investment in a statewide LIHTC fund equally across all of their assessment areas within the state, up to the amount of its total investment in the fund.

***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?*

As noted previously, banks should be encouraged, particularly when working outside of their designated assessment areas, to target designated areas of need.  This could be accomplished by providing higher impact scores for activities serving these areas; or, in the case of non-branch banks opting for nationwide service areas, a requirement that a certain percentage of activities be directed towards Board-designated areas of need.

***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?*

LISC appreciates that the Board is making a concerted effort to make the CRA evaluation process, including which activities shall be deemed to qualify for CRA credit, more consistent and transparent. Under the current review process, a bank would only find out during an exam review – which could be three years or more after an investment has been made – that a presumably qualifying activity was deemed ineligible.  LISC believes that banks need clear information at the time they make an investment that the investment will qualify for CRA credit.

Another value to these efforts to increase transparency is that it will also ensure better consistency from CRA examiners, both within agencies and across agencies.  Inconsistent examiner treatment is often cited by banks as a weakness in the current examination procedures, so any certainty that can be provided to what qualifies for CRA credit that is understood by both banks and examiners is going to be very useful.

To this end, LISC supports the Board's proposal to post a list of illustrative qualifying activities, and updating it frequently, as a means to provide certainty to banks that certain activities will qualify. We would recommend that before posting such lists, that the regulators first allow for a period of public comment. We would also recommend, as noted elsewhere in these comments, that the list also include the presumptive impact rating that the type of activity will receive; and that whenever possible the Board also provide illustrative examples of acceptable rates, terms, fee structures, etc.

LISC also recommends that, like the OCC, the Board allow banks to seek confirmation from the regulators in advance that an activity will qualify, to the extent that it is not otherwise addressed on the list of qualifying activities.

**Section X: Ratings**

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

Yes. The Board should consider setting a numeric target (e.g., a bank cannot receive an overall score of "satisfactory" or higher if more than 20 percent of its assessment areas are "needs to improve").

***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?*

No. It is important to distinguish between high and low satisfactory ratings, given that the vast majority of banks receive scores in the satisfactory range. Better yet would be to create incentives for banks to strive for an outstanding or high satisfactory rating rather than just settling for a satisfactory, such as an expedited or streamlined CRA evaluation, or a reduced documentation collection, in the subsequent exam cycle.

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

Yes. The standardized/weighted approach makes sense. However, examiner "discretion" should be minimized. Changes to weighting should be based upon quantitative methodologies. For example, with respect to community development loans and investments, the Board could require that after achieving a presumptive score of satisfactory, a bank can only receive an "outstanding" score if a certain percentage of its activities fall into the "high impact" scoring category for performance context.

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

No. The Board needs to provide significantly more information regarding how the impact scores will be determined, and then factored into the final ratings. We believe that performance context is an important part of the CRA review, but that the current system relies too much upon qualitative information and examiner subjectivity. Impact ratings are a good start, but as noted elsewhere in these comments, these need to be: (i) on a scale of at least five points instead of three; (ii) transparent with respect to the ratings that will be applied to specific transaction types; and (iii) applied in quantifiable manner to the final rating (i.e., the percentage of CRA activities that must be "high impact" in order to achieve an outstanding score).

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

Yes. We believe this will be helpful on the margins. But as noted in our response to questions 68 and 69, certain activities (e.g., community development investments) should be counted as serving the assessment area(s) within a state where the investment was made, even if not in the actual assessment area. This could in particular help smooth out pricing differentials for LIHTC investments.

Furthermore, as noted elsewhere in our comments, we believe it would also be advisable for the Board to: (i) require non-branch banks that opt for a national service area to commit that a minimum amount of activities will be directed to underbanked communities as determined by the Board; and (ii) provide higher impact scores for those investments made outside of the assessment area that are in underbanked communities. It would defeat the purpose of encouraging investments outside of assessment areas if the investments are made in communities where there is already a significant bank presence.

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

This should not be a condition of receiving an outstanding rating, given that not all institutions will have such investment opportunities in their assessment areas. But certainly these types of activities should be among the activities eligible for higher impact scores.

**<u>Section XI: Data Collection and Reporting</u>**

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

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

The answer to both Q.96 and Q.97 is yes. Banks need to be able to collect and report out this data not only to demonstrate that the institution is satisfying its CRA requirements, but also so that the banks, the regulators and the community advocates can review this data to identify industry best practices and peer comparators; thus helping to inform future regulatory or sub-regulatory actions.

**<u>CONCLUDING COMMENTS</u>**

The Community Reinvestment Act has been by far the most effective tool for delivering capital to underserved communities and organizations that are dedicated to serving these vulnerable communities. Many of the proposals put forth by the Board as part of this ANPR should help to improve both the CRA review process and outcomes in the community, but we've identified several potential revisions and reforms that we believe need to be incorporated into the next stage of rulemaking to preserve and expand critical investment activities driven by CRA. We are hopeful that the Board will be able to adopt these recommendations, and that the OCC and the FDIC will join the Board in publication of a subsequent proposed rule.

Thank you for consideration of our comments.

Sincerely,

Matt Josephs
Senior Vice President for Policy