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February 16, 2021

The Honorable Jerome Powell
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW,
Washington, DC 20551

Re: Federal Reserve System Advanced Notice of Proposed Rulemaking Regarding
the Community Reinvestment Act Regulations, 12 CFR Part 228
Regulation BB; Docket No. R-1723
RIN 7100-AF94

Dear Chairman Powell:

The Housing Assistance Council (HAC) appreciates this opportunity to submit comments to the Board of Governors of the Federal Reserve System (Federal Reserve Board) on the Advanced Notice of Proposed Rulemaking (ANPR) regarding the Community Reinvestment Act (CRA). Through this ANPR, the Federal Reserve Board is seeking comments on how best to modernize CRA so that it can, in the ANPR's language: "more effectively meet the needs of low- and moderate-income (LMI) communities and address inequalities in credit access." (pg. 66,410) The CRA is an important policy with an impressive history of expanding access to financial services and community investments; however, a modernization is needed and offers an opportunity to expand the CRA's reach to those still underserved communities, many of which are in rural America.

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HAC is an equal opportunity lender.

HAC is a national nonprofit organization that helps build homes and communities across rural America. HAC is also a community development financial institution (CDFI), delivering financial services and loan products to low-wealth communities. HAC has supported and advocated for CRA since its inception and has encouraged its implementation in often overlooked rural communities. In 2016, HAC produced a comprehensive three-part research series entitled “The Community Reinvestment Act in Rural America.”¹ This analysis highlighted both the limitations associated with CRA and examples of its success in rural communities. With 50 years of experience supporting and developing affordable housing across rural America, HAC is uniquely positioned to comment on CRA’s role in rural communities and how the proposed changes might affect them.

Background

The Community Reinvestment Act is vitally important to communities across the nation. Through CRA, financial services have been made available to many neighborhoods that would otherwise be overlooked. In speaking of the importance of the CRA, Chairman Powell said, “The CRA plays a vital role in supporting economic opportunity in low-income and minority communities, in both rural and urban areas, and is a top priority for the Federal Reserve.”² This ANPR, and the many efforts which will follow, is critically important to ensure not only current CRA-related activities and investments continue but that they expand to reach populations and communities for which access to affordable finance is still elusive.

The Housing Assistance Council appreciates the opportunity to lend our voice to the process and help ensure rural community concerns are included in the discussion. The following comments present HAC’s perspectives and insights on CRA modernization, particularly the need to give CRA consideration to activities occurring outside of assessment areas. HAC’s general comments are followed with responses to specific questions posed in the ANPR that are particularly important to rural communities.

¹As of 2-1-2021, these HAC CRA reports can be accessed at the following url: <http://www.ruralhome.org/sct-information/mn-hac-research/mn-rrr/1320-rpt-making-cra-work>

² Jerome H. Powell. 2020. Statement by Chair Jerome H. Powell – Introducing effort to modernize CRA press release. Press Release 9-21-2020, as of 2-1-2020, accessible at the following url:
<https://www.federalreserve.gov/news-events/pressreleases/powell-statement-20200921.htm>

THE HOUSING ASSISTANCE COUNCIL'S GENERAL RESPONSE TO THE FEDERAL RESERVE'S ANPR AND COMMUNITY REINVESTMENT ACT

First and foremost, the Housing Assistance Council unequivocally supports the Community Reinvestment Act and what it stands for. Without CRA, many communities would lack access to capital, revitalization efforts would not have occurred, and disinvestment would be more common. HAC also knows that CRA does not work in rural America as well as it should. HAC's comments in response to the ANPR are focused on making sure CRA fulfills its yet unrealized potential in rural communities currently, and in any modernization effort.

The Housing Assistance Council Strongly Supports Expanding CRA's Reach

The first objective in the ANPR's introduction, is to "more effectively meet the needs of low-and moderate-income [LMI] communities and address inequities in credit access" (pg. 66,410) This is the only objective that is "in furtherance of the CRA statute and its core purpose." An important aspect of achieving this objective, and one HAC views as elemental to CRA modernization, is the expansion of access to financial services for markets which remain under-served.

Achieving this improvement starts by specifically supporting lender involvement in CRA-overlooked, LMI and rural distressed and underserved communities.³ These are communities with depressed economies that receive little if any CRA incentivized activity – particularly community development services or investments. Setting aside the issue of capacity, CRA does not impact communities because lenders lack a significant relationship with them. CRA-overlooked communities generally include: 1) those left entirely outside the CRA process (no bank offices); and 2) those that generally lack large bank offices, resulting in little to no community development/investment activity and possible relegation to limited scope review⁴.

Ending limited scope review, which often involves rural areas, is a good start. Discontinuing the practice of performing cursory reviews, which are overlooked when it comes to overall institutional ratings, will result in CRA exams that truly reflect activities, or the lack thereof, in all service area communities.

³ LMI here refers to low- and moderate-income as defined by the CRA designation of low- and moderate-income census tracts. Rural distressed and underserved here refers to the CRA's definition of distressed and underserved outside metropolitan area census tracts that do not meet the low- and moderate-income thresholds due to extreme low incomes in areas at large. The following Minneapolis Federal Reserve Bank article discusses the CRA approaches:

<https://www.minneapolisfed.org/article/2007/2005-revisions-define-new-craeligible-geographic-areas>

⁴ Limited scope reviews are usually areas where a large bank has limited activity and they are given a more cursory evaluation while the evaluator concentrates her or his efforts on the areas where a lender does more business – they get a full scope review. The limited scope reviews are not used in the final ratings. See the following article for a better explanation:
<https://www.novoco.com/periodicals/articles/buzz-clarifying-cra-policy-would-stimulate-financing>

Large Bank Exams Should Be Expanded To Better Cover Rural Communities

Increasing CRA oversight of banks already serving rural communities could help the dynamic where large-asset bank presence is extremely limited. For example, there are 271 counties (87 percent are rural) where the largest-sized lender is an intermediate-asset bank.⁵ Regulators apply a streamlined community development test to intermediate banks instead of the full large bank exam. If more of these lenders were subject to the large bank exam, they would engage in increased community investment activity.

The ANPR proposal to change the CRA exam to include only small- and large-bank exams will streamline the process and potentially result in increased CRA oversight. HAC supports this concept generally, but the delineation of banks is an important element in the process. The ANPR proposes setting the small-bank asset threshold at either \$750 million or \$1 billion. These thresholds would exacerbate the problem of CRA under coverage in rural areas. Communities, that once had an intermediate lender with its streamlined CRA community development test, would now only have small bank(s) with no community development and investment review.

In the case of rural headquartered banks, 95 percent would be considered a small bank with a \$1 billion threshold (under the current threshold it is 77 percent). It is not that these are always the only banks serving rural communities, but that most of their work occurs in such communities while larger-asset lenders, usually headquartered in an urban or suburban community (84 percent) undertake a small share of lending there.

The Housing Assistance Council recommends that the Federal Reserve Board modify the small-bank threshold to \$500 million in assets to delineate small-banks. Currently, only 92 (or 3 percent) rural headquartered banks are large asset lenders. Under a \$500 million threshold this increases to 377 (13 percent). The corresponding numbers for large-asset lenders would be 142 and 220 with the ANPR's \$1 billion and \$750 million thresholds, respectively.⁶ The modified threshold would allow more rural headquartered lenders to receive full CRA community development and investment oversight. While there have been concerns expressed regarding a burden on financial institutions, the Federal Reserve Board's clarity and specificity in metrics should lower compliance costs, substantially limiting burden. It is also important to note that these lenders are already subject to a streamlined version of the community development test. Given the proposed improvements in the overall process, the enhanced oversight should be easily attainable by most financial institutions with more than \$500 million in assets.

⁵ This involved HAC tabulations using the \$326 to \$1.305 billion CRA intermediate-small examination asset thresholds. We applied these thresholds to all FDIC-insured lenders SOD data period ending June 30th 2018 and 2019 asset total. FDIC data accessed, 1-20-2021, at the following url: <https://www7.fdic.gov/idasp/advSearchLanding.asp>

⁶ We applied the ANPR proposed thresholds and a \$500 million threshold to all FDIC-insured lenders SOD data period ending June 30th 2018 and 2019 asset total. FDIC data accessed, 1-20-2021, at the following url: <https://www7.fdic.gov/idasp/advSearchLanding.asp>

CRA Consideration for Community Development Activities Should be Expanded to Persistently Poor Communities.

Another approach to improve CRA in rural America is to expand and improve lender assessment areas. The ANPR's proposal to use counties as opposed to census tracts for defining large bank assessment areas could help. HAC supports this idea if consideration of activities is based at the census tract geography rather than the county. An additional refinement to the census tract level geography delineating not just rural and urban (inside and outside metropolitan area) but rural, suburban, and urban would be useful. The more precise designation can help improve our understanding of rural activity rather than the overly broad inside and outside metropolitan area approach which clearly mixes rural and suburban areas.⁷

The ANPR notes another possible approach to expand access:

"In addition, the Board is considering how to treat community development activities outside of assessment areas to help address discrepancies...The Board seeks feedback on defining designated areas of need—for example, in Indian Country or in areas that meet an "economically distressed" definition—where banks could conduct community development activity outside of an assessment area." (pg. 66,411)

The proposal later suggests using federal agency and commission identified economically distressed regions (pg. 66,451) to identify these "areas of need." HAC believes such a consideration would expand CRA's reach into underserved areas. Other federal agencies and initiatives, such as the Federal Housing Finance Agency's (FHFA) Duty to Serve regulations, identify "high-need" regions and populations such as Native American Lands, Central Appalachia, the Lower Mississippi Delta, the Border Colonias region and migrant and seasonal farmworkers. The ANPR's proposal to grant CRA consideration for activity in Indian Country could be expanded to also include these other existing "high needs" regions.

The challenge in this dynamic is to ensure that CRA consideration goes primarily to underserved areas and populations within these geographies. For example, in an analysis conducted by the Housing Assistance Council, nearly half of all residents living on Federally recognized American Indian Reservations and trust land, Alaska Native Villages or Hawaiian Homelands do not identify as American Indian, Alaska Native or Hawaiian Homelander.⁸

⁷ The following report reviews the challenges and problems associated with defining geography by rural/urban/suburban designations: George, Lance. 2008. What is "Rural"? Working Towards A Better Programmatic Definition. Housing Assistance Council Report. As of 1-28-2021, accessible at the following url: <http://ruralhome.org/storage/documents/ruraldefinition.pdf>

⁸ *Taking Stock: Rural People, Poverty and Housing in the 21st Century.* Housing Assistance Council. <http://www.ruralhome.org/component/content/article/587-taking-stock-2010#:~:text=Nearly%2030%20years%20ago%20the,release%20of%20decennial%20Census%20data.>

A better and more refined approach would be to concentrate on activities in persistently poor counties. These are counties (395 in total), as defined by the U.S. Treasury Department, with poverty rates of 20 percent or more for each of the last three decades.⁹ Thirty-seven percent of high-need region counties are persistently poor compared to 13 percent for all counties. These high-need region counties constitute 61 percent of all persistently poor counties. Additionally, majority-minority rural counties are often persistently poor. For example, 90 percent of majority-African American rural counties are persistently poor as are 69 percent of majority-Native American rural counties. Please see Map 1. on page 7 and Map 2. on page 8 which illustrate how these geographies overlap.

The Housing Assistance Council believes the adoption of persistent poverty classification is preferable to giving blanket consideration for activities to a politically defined region or to a specific population. A similar stipulation should be included on all proposals to expand CRA consideration.¹⁰

The Federal Reserve Should Consider Lender Incentives To Promote CRA Activity in Rural and Underserved Communities.

Giving CRA consideration for activities alone is not enough to spur financial activity and investment in some communities. A significant reward or incentive is likely necessary to encourage action. Requiring “above and beyond” activities for an outstanding rating would have merit. The ANPR suggests this approach for lender collaborations with minority owned depository institutions:

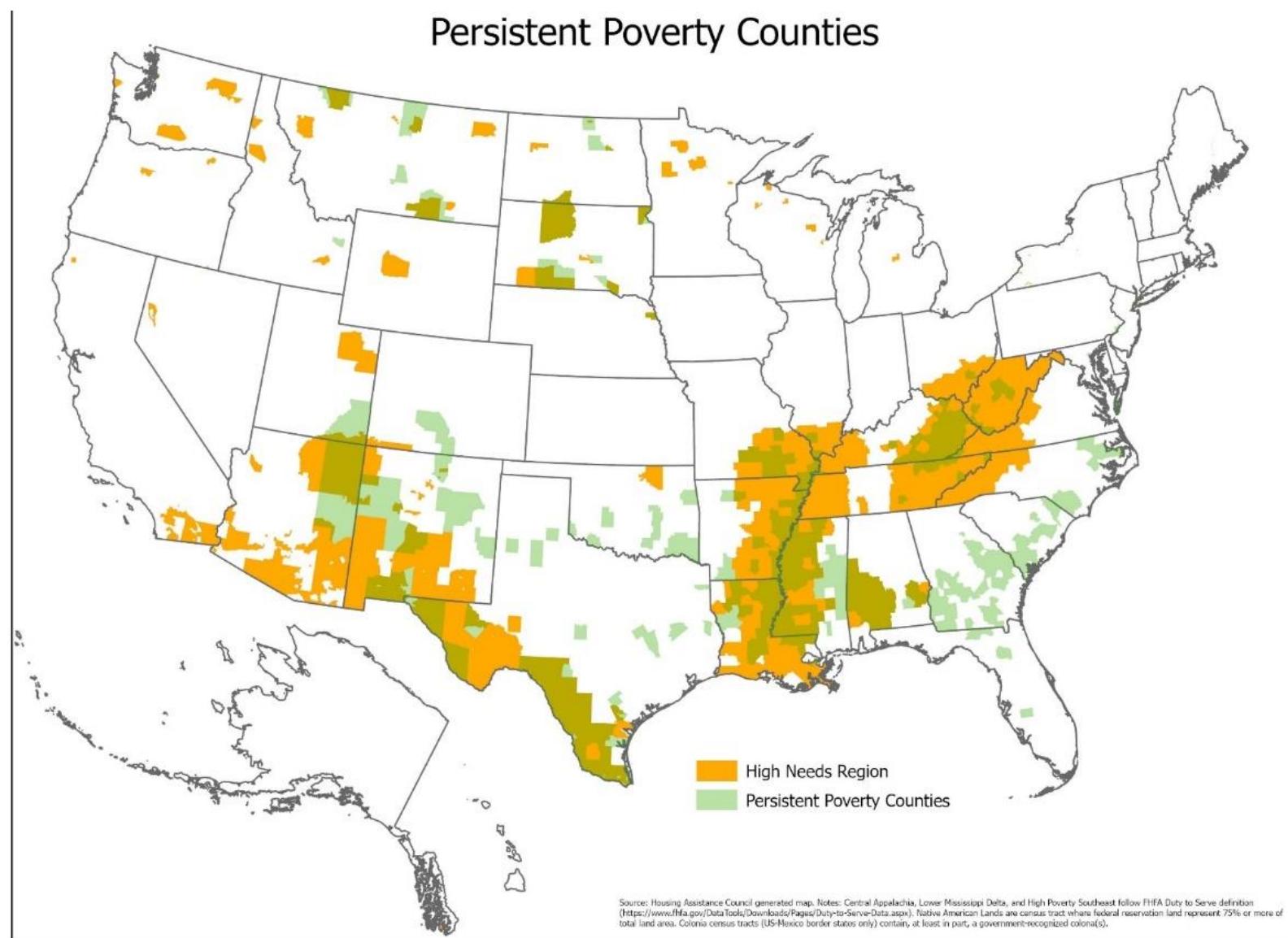
“Certain activities outside of a bank’s assessment area(s) would also be considered in determining overall ratings, such as a partnership with an MDI, which could be considered as part of a pathway to an “outstanding” rating.” (pg. 66411)

⁹ As of 2/1/2021, the Department of Treasury persistent poverty county (using Census 1990, 2000 and ACS 2011-2015) data download at the following url:

<https://www.bing.com/search?q=cdfi+persistent+poverty+counties&form=ANNH01&refig=72ed59bf68e64decafd1238cc0514f01&sp=1&qs=AS&pq=cdfi+persistent+pover&sk=PRES1&sc=2-21&cvid=72ed59bf68e64decafd1238cc0514f01>

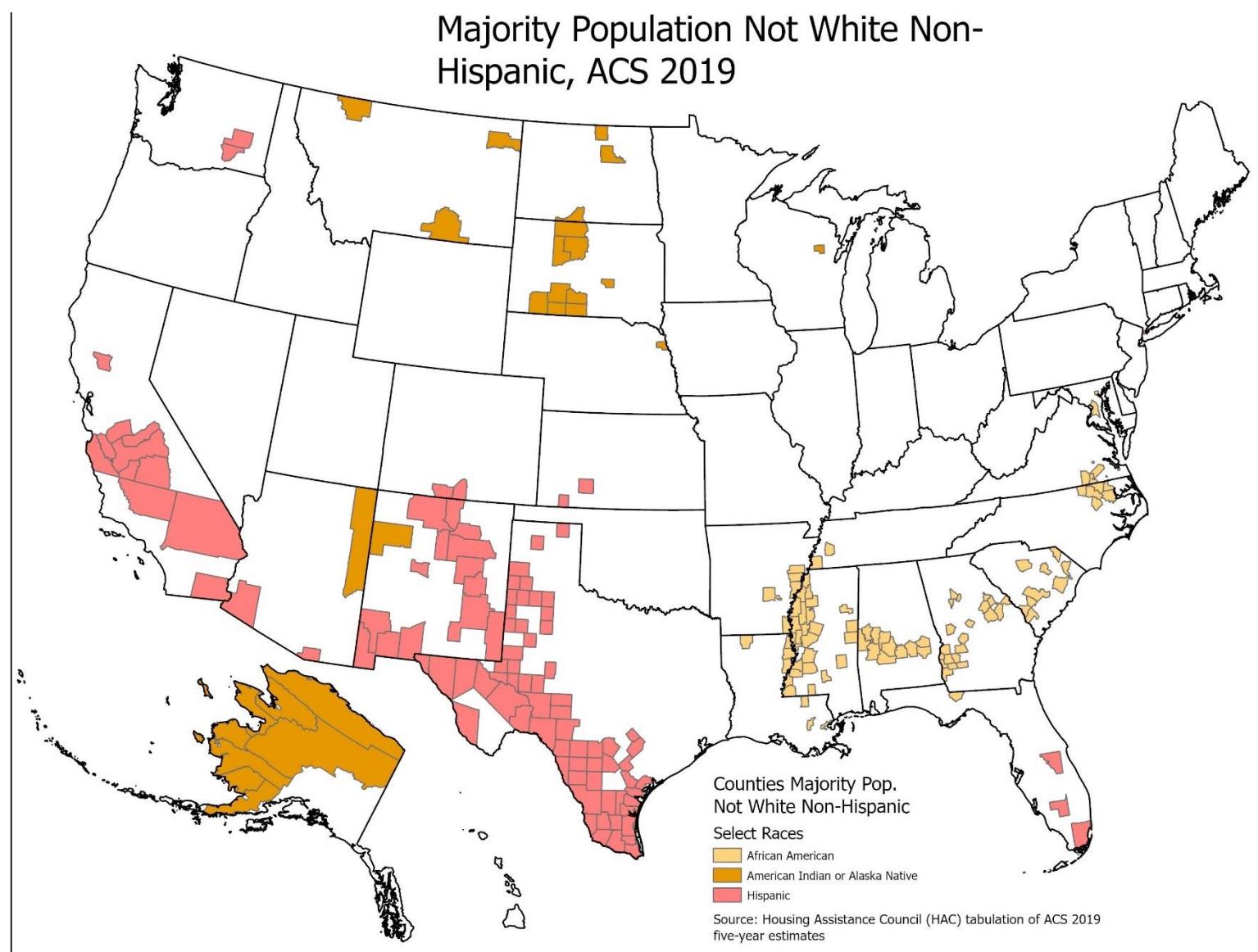
¹⁰ One caveat here is that the USDA, ERS Persistent Poverty designation includes a few counties that are home to large universities, like West Virginia University and the University of Florida. These counties consistently have high poverty rates, but this reflects many full students and temporary economic distress associated with attending school. These areas are in fact relatively prosperous because of these universities. A final check could be including persistent poverty counties with limited or no CRA related activity during previous few years.

Map 1.



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Map 2.



HAC supports the ANPR's efforts to incentivize such partnerships. For example, Native American-owned financial institutions are involved in substantial lending activity on Native American Lands, therefore more collaborations between these entities and large banks will likely increase financial access to underserved communities.¹¹ ***Ultimately, The Housing Assistance Council only supports these activities if they directly impact economically distressed, underserved populations and regions.***

An important consideration is to not simply shift community development and investment activity away from LMI and rural distressed communities that now receive these activities. The goal should be to expand upon these efforts. The ANPR proposes to set the threshold of activity expected for a lender to earn a satisfactory rating to a level where lenders currently earn a high satisfactory or outstanding rating. HAC agrees with setting the threshold high, relative to current activities. If the rate is set at an adequate level, then activities conducted to earn an outstanding rating, such as supporting an MDI that works in a persistently poor county in the U.S.-Mexico Border Colonia region, will not come at the expense of current activities. Lenders would still need to earn a satisfactory rating on their in-assessment area requirement.

The Housing Assistance Council rebuts any notion that these actions would make thresholds too high. Currently, 99 percent of lenders pass their CRA exam with an institutional rating of satisfactory or better.¹² The current levels of activity associated with a satisfactory rating represent a floor or bare minimum that should be raised. Implementing this standard would make an outstanding rating reflect institutions who truly go "above and beyond" in serving overlooked areas and the rating would be more meaningful.

An additional incentive would be to provide some form of regulatory relief to lenders who consistently earn an "outstanding" rating. For example, regulators could expedite bank applications for such actions as opening a branch or merging with another institution.¹³ An outstanding rating would then have a direct dollar value for lenders which, when combined

¹¹ The following HAC report notes the importance of Native American owned banks for mortgage lending on tribal trust lands – accessible as of 2-6-2021: <http://www.ruralhome.org/sct-information/mn-hac-research/mn-rrr/1565-rrr-native-mortgage-finance>

¹² This is looking at the most recent CRA examination institutional rating for all lenders with a rating as of 2016. The distribution as 258 Outstanding, 1677 Satisfactory, 21 Needs to Improve and 1 Substantial Compliance. FFIEC examination ratings data from the following: <https://www.ffiec.gov/craratings/default.aspx>

¹³ This is an idea put forth by Mark Willis in an article entitled "It's the Ratings Stupid: A Banker's Perspective on CRA. As of 2-8-2021, this report can be accessed at the following url:
file:///C:/Users/Keith/Downloads/sr%202020090201%20revisiting%20the%20cra%20perspectives%20pdf.pdf

with the ability to use it to stand out from other lenders, could be a significant enough incentive to encourage “above and beyond” efforts.

Local Capacity Is Needed For CRA To Reach Its Full Potential.

An outstanding rating requirement by itself will not work if communities lack the capacity to plan and engage in credit-worthy projects. The CRA will make a good loan better but not a bad loan good. Therefore, there must be investments in building capacity in underserved communities. A successful CRA relies on all parties being involved in the process.

Large banks should develop plans outlining their approach and involvement, particularly as it relates to persistently poor counties and consistently underserved portions of their assessment area. Lender community development and investment efforts should follow from this plan. The same criteria should be applied for outside assessment area activities that contributes to an outstanding rating. These activities could, even if they do not specifically fit into a community development or investment category, be counted as serving a high need area and reflective of a lender’s efforts.

Bank regulators should support these efforts by identifying and making available information on counties where no community development investments or related activities have occurred. Ideally, this information would be linked with non-profit and CDFI service areas. The goal is to facilitate collaboration between banks and non-profits and CDFIs. In cases where there are no community groups, this information might encourage them to form. Regulators should give special consideration to efforts in these communities where no community groups operate and capacity is limited.

Data on important community services, such as subsidized housing and health care facilities, should also be considered. Lenders, for example, could support projects that preserve and improve health care facilities. These facilities, as the current pandemic has highlighted, are critical community resources. In rural areas, where rental housing is often in short supply and an aging population may be in need of this type of housing, knowing where USDA Section 515 multifamily-housing properties are located and are likely to have a maturing loan could facilitate lender involvement. A concerted effort to encourage lender involvement in areas that receive no investment is needed.

Explore CRA’s Role in Manufactured Housing

Manufactured housing is an important part of the rural housing stock. It represents 13 percent of all rural occupied homes, and over 25 percent of all occupied housing units in 325 counties. This low entry cost form of housing is common in high needs regions like

Central Appalachia and the U.S.-Mexico Border Colonias region where it represents 20 and 23 percent of the occupied housing stock, respectively. Twenty-three percent of the occupied units in rural persistently poor counties are manufactured housing and 19 and 20 percent of rural African American and Hispanic households rely on it for housing, respectively. Efforts to reach these underserved communities often requires addressing manufactured housing finance.

CRA covered lenders do not finance most manufactured home loans. These loans are generally concentrated within a few manufactured home specific lenders. Manufactured home financing typically comes with relatively high interest rates and a substantial number are personal property or chattel loans. FHFA's Duty to Serve regulation has attempted to stimulate this market and expand access to more affordable financing options. To date, these efforts have been of limited impact. While it is not clear if CRA could have a role in trying to increase affordable credit options for manufactured homes, CRA involvement in this space should be considered. Particularly, if the product in question involves putting a borrower of a manufactured home into a standard mortgage loan with lower interest rates. Such efforts would indirectly help chronically distressed areas and low-income households, many of which are minorities.

The CRA Process Needs to be More Transparent and Accessible for The Public and Communities Alike.

Regulators follow a process when performing CRA examinations. This process includes many of the same elements outlined in the ANPR, but the process is often not clear or understandable for many relevant and interested parties. For example, while a similar type of accounting of retail loans is conducted for the retail lending test, the final rating relies "on examiner judgement to draw a conclusion about a bank's level of lending." (pg. 66,420) Similarly, there is no clear designation of what is required to earn a certain rating and limited accessible information. The process is largely a "black box" which produces a static pdf report with limited data included, particularly of the kind that can be easily evaluated by members of the public or a community. This lack of specificity, transparency, and meaningful data leads to confusion on all sides. Banks are often unclear how they will perform on a CRA rating (e.g., will a community development activity be accepted or not?); the public is unsure how a rating is arrived at (why did a lender earn a satisfactory rating when it appears to have not served all service area communities?), and examiners are put in the awkward position of deciding, without clear guidance, whether a lender's activities were sufficient to earn a passing rating (policymaking at the ground level).

This ANPR succeeds in clearly presenting and delineating much of the CRA process. For example, the ANPR improves the process for determining how retail lending is to be

counted and how the level of activities will be accessed (geography and borrower level). HAC supports these efforts, but, as is always the case, there are some potential problem areas. This is particularly true when dealing with rural areas where lending volume is extremely low, and data areas limited. The proposal acknowledges these concerns noting that aggregating data, such as combining low and moderate-income categories into one, could help “small banks and rural banks with relatively few retail loan originations.” (pg. 66,423) That is, for certain calculations categories will be combined to provide enough observations for a meaningful assessment. Of course, aggregating categories dilutes information and can obscure important differences between groups. Fine tuning will need to occur and, in some cases, particularly limited loan rural banks, metrics alone do not work as well as in other areas with more data availability.

Quality and Accessible Data is Essential for Making CRA Work – Especially in Rural Communities

HAC has consistently voiced our support for increasing the public availability of information and data for all policy and regulatory undertakings, including CRA. CRA is inherently complex and often lacks clarity. A modernization which improves the CRA examination processes can go a long way towards addressing these concerns, but without adequate public disclosure of data, in an easily accessible format, this process will still be unclear. Given the importance of public involvement in CRA, a cornerstone of the authorizing legislation is encouraging banks to work with communities to best meet its financial service needs. It is important that all parties are actively involved and available. Easily accessible information is the best way to ensure this dynamic.

The introduction of publicly available CRA reports in 1990 is credited with increasing public involvement and improving CRA effectiveness. The same success can occur with CRA modernization if data is made more readily available and accessible. The current process and resources for data dissemination in CRA, either in the disclosure flat file (large bank CRA information on loans and assessment areas) or pdf CRA performance examination report, is not particularly accessible to the public. For example, there is no resource where the public can easily download the most recent data on lender assessment areas (all lenders) to see if a particular community is in a large bank lender assessment area. CRA examinations can currently be accessed at the FFIEC website but the information in them is not in electronic format or entirely complete. If dashboards are developed, it should be possible to make this type of information publicly available in a similar format that is easy to access. While HAC understands the need for some information to be withheld, terms of specific loans, etc., most information evaluated should be put into an organized fashion that the public can easily access.

Another related data concern is the availability of mortgage market data – especially for rural communities. CRA retail tests rely heavily on Home Mortgage Disclosure Act (HMDA). HMDA reporting requirements have changed over the last few years, exempting an increased number of institutions from reporting to HMDA. These limits are related to loan volume and impact small lenders, many of which likely serve rural areas. With the HMDA requirement no longer present, examination costs could increase for obtaining the data.

A Unified Position on CRA Is Essential To Its Effectiveness and Success.

Ultimately, it is important that the federal banking regulatory agencies (Federal Reserve Board, FDIC, and OCC) collectively agree on CRA modernization. It is not in the best interest of any involved parties for multiple and contradictory CRA examination processes. Lenders will not be treated consistently, and confusion could follow. This ANPR is a solid effort from which the other regulators can add their views and concerns and hopefully work towards a unified approach.

THE HOUSING ASSISTANCE COUNCIL'S RESPONSE TO SPECIFIC QUESTIONS IN THE ANPR

The following discussion presents the Housing Assistance Council's responses to specific questions posited in the ANPR. HAC does not address all questions, but instead concentrate on issues and areas directly related to rural communities and where HAC's position adds a helpful voice to the discussion.

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

HAC believes the ANPR generally addresses the most important objectives of CRA modernization with a focus on the “core purpose” of CRA to “more effectively meet the needs of LMI communities and address inequities in credit access.” (pg. 66,410) While CRA has been successful over the years at expanding access to financial services, the regulation continues to have limited impact on certain communities and populations – namely rural areas, minority communities and communities of long-term economic distress. Addressing these shortcomings should be the top priority of any CRA modernization effort.

While other ANPR stated objectives, such as improving regulatory consistency, transparency, and clarity, are important, these efforts should be undertaken with a focus towards improving access to financial services for underserved communities and populations. Providing improved processes and insights on how a lender can earn a specific rating and making the process transparent and information easily available to all, helps both the lender and members of the communities it serves by reducing confusion and improving each entities' understanding of CRA compliance. This modernization effort can achieve these secondary objectives while at the same time expanding CRA's reach and primary objective, which will be more important than ever as communities recover from the health and economic fallout of the COVID-19 pandemic.

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 systematic inequality in credit access for minority individuals and communities?

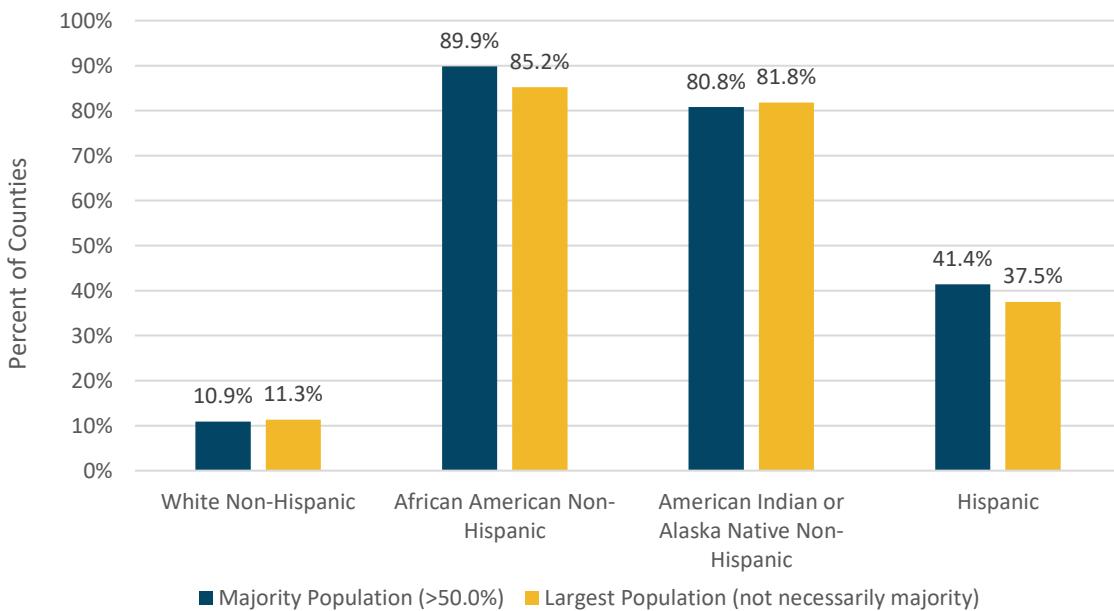
CRA can better address access to credit for minority populations and underserved rural communities by specifically targeting rural communities experiencing long-term economic distress. Minority populations in rural areas tend to be concentrated in counties experiencing some of the nation's most challenging economic conditions (Lower

Mississippi Delta and Rural Southeast, U.S.-Mexico Border Colonia Region, and Native American Lands and migrant and seasonal farmworkers). Lenders typically do not have substantial footprints, in rural areas with persistent poverty. As such, CRA, with its focus on bank branch defined assessment areas, struggles to reach these communities.

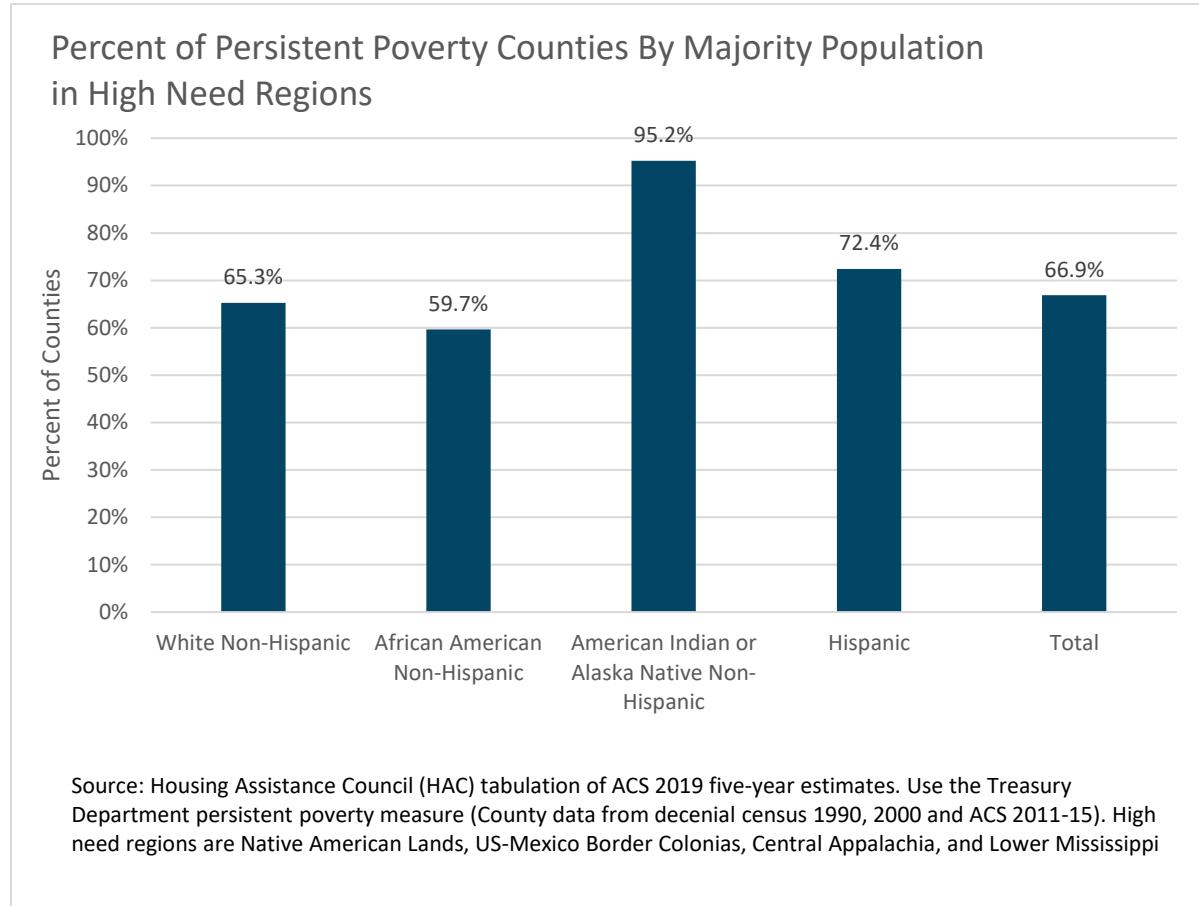
Using recognized high-need regions (historically isolated, exploited, and neglected regions such as the Lower Mississippi River Delta and U.S.-Mexico Border Colonia Regions) to identify areas of concentrated rural minority populations and economic need is useful. However, definitions are not always tied to specific economic conditions but instead reflect geographic and regional characteristics.

The Housing Assistance Council recommends focusing on areas with long-term economic distress. That is, communities that have continually, for decades, struggled with little to no economic growth. In many cases these counties are geographically isolated and often home to majority, minority populations in high need regions – See Figure 1 and Figure 2. below.

Figure 1. Rural Counties by Majority/Plurality of Population and Persistent Poverty Status



Source: Housing Assistance Council (HAC) tabulation of ACS 2019 Five-Year estimate. US. Treasury persistent poverty defintion (County data Census 1990, 2000 and ACS 2011-2015)



The U.S. Department of Treasury's persistent poverty designation, which identifies counties with poverty rates of 20 percent or higher for three decades, can effectively document such communities. Three hundred and one of the 328 persistent poverty counties are outside of metropolitan area ("rural"). Thirty-four percent of these counties have majority minority populations. These counties represent 60, 95, and 72 percent of all rural counties with a majority African American, Native American and Hispanic population, respectively. Sixty percent of all rural persistent poverty counties are in a high-need region too, so this measure directly includes the poorest economic areas in historically left behind geographies.¹⁴

¹⁴ If the high poverty rural southeast is considered as a high need region (as some have done in the past and called southeast crescent and black belt), the percentage of persistent poverty counties in one of these regions goes up considerably. The percent of majority rural African American counties that are persistent poverty in a high need region would go up to 90 percent counting that region.

While no definition is perfect¹⁵, this approach would be easy to administer, understand and avoid complicated new formulas and data requirements. The greatest potential challenge will be to increase lender involvement in these communities without adequately specifying that such efforts must be undertaken.

Assessment Area Changes

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

HAC believes the move from using census tracts to counties for defining large bank assessment areas will help ensure LMI census tracts are not arbitrarily excluded. In addition, there must be disclosure of lender assessment area data in an easily accessible format. Confusion with current practices is partially attributable to the lack of available information.

The ANPR's proposal to change the smallest geography for determining large bank assessment areas from census tracts to counties should help address confusion, make oversight easier, and potentially expand CRA's reach. The current system is more restrictive given that it uses the smaller census tract geography. This unit of geography has positives in that it helps focus efforts, but it can also be limiting because it is so restrictive. If a lender puts its offices primarily in census tracts with higher incomes and fewer minorities, an assessment area could exclude LMI neighborhoods. Research shows this occurs when regarding ATM locations and comparing banks and non-bank facilities.¹⁶ These geographic elements also help explain why relying on bank depositor data for determining service areas likely limits the inclusion of LMI areas. An underserved area, by definition, has limited lender involvement.

The move to use counties could potentially address this problem since all portions of a county would be in a lender's assessment area. It would be easier for a bank examiner to judge lender compliance because, at most, there are 3,142 counties compared to over 73,000 census tracts. Since most counties contain multiple census tracts (median of 6 and a mean of 23 census tracts per county) the expansion of coverage should be large.

¹⁵ For a few counties, the designation the rating reflects the presence of a large university community rather than economic distress. College students with limited incomes distort ratings in places like Monongalia County, West Virginia and Alachua County, Florida.

¹⁶ PR Newswire: Cision. 2018. New Study Shows Independent Operators Provide Majority of U.S. ATMs & Serve Under-Banked. Article published 2/16/2018 and accessible (as of 2/5/2021) from the following url: [New Study Shows Independent Operators Provide Majority of U.S. ATMs & Serve Under-Banked \(prnewswire.com\)](https://www.prnewswire.com/news-releases/new-study-shows-independent-operators-provide-majority-of-u-s-atms-&serve-under-banked-300780001.html)

CRA evaluations, however, should continue to focus on LMI individuals and census tracts when assessing impact. Using a larger geography for evaluating impact could dilute efforts to reach LMI areas. For example, granting CRA credit for a project that provides infrastructure improvements in a wealthy portion (census tract) of an otherwise economically challenged county would be problematic.

An improvement that could have a large impact on CRA assessment area confusion is the release of information and data on lender assessment areas. Currently there is no central resource or clearinghouse with readily and publicly accessible assessment area data for all lenders. The only resources, outside of disclosure act data files which cover only the largest lenders and are difficult to access, are lender CRA examination reports (pdf format document with less than complete data included). This format limits scrutiny and understanding of the CRA process. If more data were available, it would be possible for the public to take on a greater role in assessment area oversight. It is difficult for a single examiner to thoroughly explore a lender's service area when it contains hundreds or even thousands of census tracts. Increased public involvement could provide greater insights and understanding for all parties in the CRA process.

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

HAC recommends more guidance as to what constitutes a less than de minimis amount of lending. Small bank lenders, in most cases, can simply follow their current practice for delineating assessment areas and that should suffice. Banks can, as the ANPR proposes, continue to use census tracts for assessment area designations. There should, however, be a more clearly presented explanation for what constitutes a de minimis amount of activity. There also needs to be consideration given to the role the lender plays in a local credit market.

HAC believes it matters if a lender is the primary source of financing in the area, even when it is a small-asset lender. If a lender is the overwhelming source of finance in a county, then the lender's assessment should include the entire county. A process using mortgage lending data, possibly like the one used to determine market monopoly status¹⁷, could be used to identify counties and institutions where this situation occurs. Bank regulators should make

¹⁷ Potential consideration for a Herfindahl - type index that pools mortgage lending data over three years to identify markets where a single lender was dominant. [Herfindahl-Hirschman Index \(justice.gov\)](https://www.justice.gov)

this information available similar to the CFPB's list of underserved mortgage lending counties. A lender could refer to this information if in doubt.

Large asset lender's assessment areas should include counties where they are the overwhelming source of lending activity even if they have no bank branch.

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?

As noted in HAC's response to question 3, using the county geography for large bank assessment areas could help address questions of LMI census tract exclusion and potentially expand CRA's impact. The change would essentially reflect that service areas are larger today due to online activity, than they were in the past. At the same time, this approach maintains the connection between assessment areas and branch offices which is important. Low- and moderate-income customers, particularly in rural areas, have a greater reliance on bank offices for information and services. CRA examination focus should still be service to LMI individuals and census tracts.

Small banks defining assessment areas delineation is acceptable. This limits the burden on small-asset lenders and reflects their more limited capacity to serve an area. The one exception, described in Question 4, is an instance where a bank is the predominant lender in a county. To limit compliance burden, the regulator should supply a list identifying markets where banks are the predominate lenders.

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

HAC recommends that most LPOs should be included in a lender's assessment area. An LPOs is defined as "a staffed facility, other than a branch, which is open to the public and provides lending-related services such as loan information and applications."¹⁸ This criteria constitutes serving a community. The default position should be to include such areas with an LPO unless substantial information is brought forward to make the case that exclusion is warranted. For example, if a lender can show that the LPO has no connection to the public

¹⁸ Kagan, Julia. 2020. Loan Production Office. Investopedia, March 20, 2020 [Loan Production Office \(LPO\) Definition \(investopedia.com\)](#). Article quotes Federal Reserve Board definition of LPO.

and nearby lending activities it should be permitted to exclude them from their assessment area.

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

HAC recommends that banks should delineate assessment areas around deposit-taking ATMs, if these machines are being actively used. Similar to HAC's response to Question # 6, if the machine is a point of contact between the public and banking the community around it is part of a lender's service area, it should be included in the assessment area. In sparsely populated rural areas or economically struggling rural neighborhoods, a single ATM often serves as an important financial access point, so it is important that they not be excluded from the process entirely.

An exemption from this rule could be made if customers no longer use an ATM. This may become an issue as internet and mobile banking grow in popularity; however, if an ATM is still in operation it is likely being used which indicates there are bank customers in the community.

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?

HAC believes that new deposit- or lending-based assessment areas should be delineated if needed to accurately identify the communities where a lender does business. Currently, this circumstance is likely limited to internet-based banks. This circumstance will change over time, however, as banks increasingly move to more mobile and internet banking. Lender assessment areas should reflect where a bank does a substantial amount of business, regardless of bank type. If a substantial share of a lender's activity occurs outside of its assessment area, then additional communities/neighborhoods should be added to reflect this activity. Identifying a single threshold for making such a determination is difficult. An approach that uses several elements would be most effective.

A three-part threshold system is suggested to determine whether a bank needs to consider additional assessment area counties:

- 1) First, identify lenders with 33.3 percent or more of their business occurring outside of their facility-based assessment area. This initial threshold indicates that, under the current system, one out of every three loans would be outside of the CRA evaluation.

2) Second, identify lenders with an outside assessment area activity totaling more than 100 loans. This is one of the thresholds the ANPR proposes and HAC deems it reasonable. It is important that the amount of activity involved is substantial enough to identify an additional assessment area.

3) Third, identify clusters of outside assessment area activity where the average number of loans per county matches or exceeds the lender average for its location-based assessment areas. The Federal Reserve's research finds that, as of now, a similar type of approach would not change assessment areas significantly, but the primary goal should not be the degree of change, rather that assessment areas truly reflect where a lender conducts business.

Additional consideration should be given to situations where the volume of lending is relatively limited, but it still represents an overwhelming majority of lending in that market. (Please see HAC's response to Question #4). In those instances, which primarily tend to be rural, a lender should include the community in its assessment area.

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?

HAC believes nationwide assessment areas should only be used for internet banks, as well as wholesale and limited purpose banks, where lender activity is too dispersed to identify concentrated areas of activity. An initial evaluation of an internet or wholesale bank's activity should be undertaken to determine the type of assessment area. If an internet lender's activity¹⁹ is concentrated, this information could be used to create assessment area(s) using an approach similar to that discussed in Question #8. Using counties, a larger geography than census tracts, should ensure these assessment areas are large enough to capture the communities where lenders provide services.

In instances where a lender's activity is extremely dispersed, it may be necessary to draw a national assessment area. This method is acceptable for either wholesale or limited purpose banks, but it should only be accepted if an assessment area cannot be determined from lender activity.

From HAC's perspective, it would be extremely challenging to evaluate national assessment areas. It would be necessary for such lenders to develop a strategic plan describing how

¹⁹ Retail loans would probably be preferential due to limitations associated with depositor data.

they plan to fulfill their community development/investment obligations so there is some cohesion to their efforts. CRA examiners would refer to the plan to evaluate the degree to which a lender's efforts fit. Meaningful goals and measures from which comparisons could be made and evaluations determined would need to be developed.

It must be noted that these types of considerations will become more common in the future as financial activities are increasingly conducted online. Current efforts, along with future refinements, will lay the groundwork for future standards for CRA examinations in a world where in-person banking is much more limited. The current COVID-19 epidemic has potentially accelerated this shift.

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?

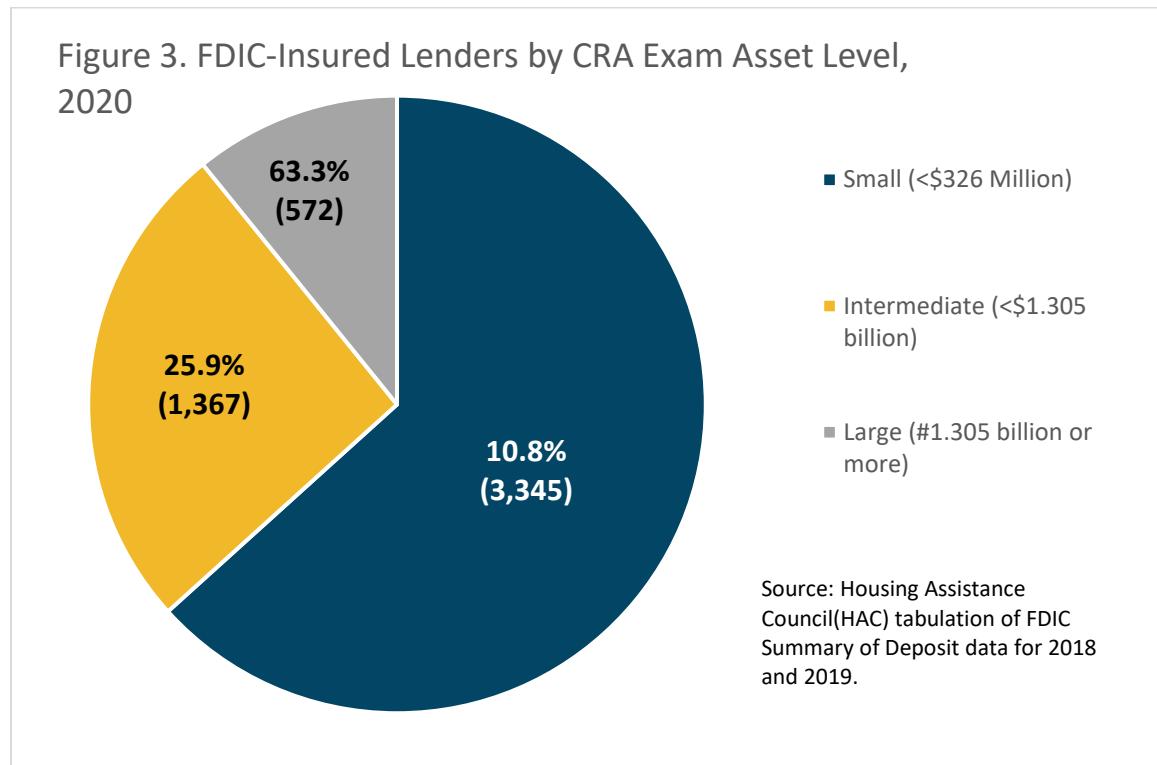
HAC believes that nationwide assessment areas should require a strategic plan from which regulators can evaluate lender actions. This plan should set out specific goals and provide a clear strategy for achieving these goals based on lender activities. Strategic plans should be based on lending patterns and specifically identify areas where the lenders will concentrate efforts to meet low- and moderate-income service obligations. The plans must include specific targets from which to judge a lender's actions, quantitative, as well as qualitative indicators.

HAC reiterates that national assessment areas should be avoided if possible. Making sure a lender fully serves all the residents in the communities where it usually does business should serve as a fundamental element of CRA examination. Lender assessment areas should be determined by lender office and activity. While basing assessment areas on lender activity is likely to reinforce hotspots to some degree – underserved areas are underserved for a reason. Using counties instead of census tracts for defining assessment areas should ameliorate the problem. Bank plans should also include an explanation for their plan to expand service to underserved areas, both in and outside of their assessment areas. Additional consideration, possibly tied to earning an outstanding rating, should be given to banks for providing services in these other underserved areas and populations.

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 current framework?

HAC believes it is preferable to allow at least some small banks to use the current framework, with the option of moving to the new metrics-based approach. HAC seeks

greater uniformity in CRA examinations to reduce confusion. The move to a primarily metric-based approach would be difficult, however, particularly for extremely small-asset lenders. These lenders, in many cases, serve as an important point of access to financial services particularly in rural small towns and sparsely populated areas. The resources required for such a move simply might not be available and, even if they are, the volume of lending these institutions engage in might not work well with a metrics-based approach. A more targeted approach for allowing lenders to continue using the traditional exam methods, one that is reserved for extremely limited asset lenders, could work best. A threshold of \$100 million in assets is recommended as a better threshold than the current or newly proposed small bank threshold.



Optimally, all lenders would adopt the new CRA examination approach. The ANPR seeks to improve clarity and consistency in the CRA process, and this is limited when some lenders operate under a different framework. Assuming this ANPR impacted all FDIC-insured lenders, if 75 percent of small banks retained the current framework, then less than half of all CRA exams would use the new approach. This lack of consistency will make comparison and analysis of bank activities difficult. As a result, bank regulator efforts should focus on facilitating small lender adoption of the new approach. These efforts should include granting an extended grace period for the move, encouraging peer-sharing of ideas and

resources, and quickly addressing any ambiguities in the new process. For many small banks, the move should be achievable, and may even be preferable given the improved clarity of process.

Even with bank regulator efforts, however, it may not be possible for extremely, small asset lenders to easily make the change. Of the estimated 3,345 small-asset, FDIC-insured depository institutions in 2020, 1,223 have less than \$100 million in assets of which 454 have under \$50 million. Three-quarters of the lenders with less than \$100 million in assets are rural headquartered. In many cases, these banks have less than 5 employees²⁰, and few other resources from which they could use to adopt the new CRA exam approach. These lenders also engage in a limited amount of lending so the new retail exam, based primarily on lending metrics, may not fully reflect the role they play in a community.²¹ The number of these small lenders has declined significantly over the last 40 years, accounting for all such declines in community banking during this time.²² While much of this activity is related to mergers with larger institutions and not financial hardship, these changes ultimately take away local bank decision making from communities which can limit credit opportunities.²³ The presence of local institutions is important.

More refinement to the criteria for the small bank exam requirements is needed. Consideration should be given to limiting continued use of the current approach to those lenders that fall below \$100 million in assets. This threshold would ensure more banks adopt the new approach and that only those banks least able to withstand the costs of a transition continue operating under the current approach. As such, CRA modernization would move forward with more uniformity and consistency without sacrificing important small-asset financial institutions.

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

²⁰ FDIC bank data based on summer of deposit (SOD) information which includes 85,050 bank offices. Over 5,000 lenders operated these offices of which more than 1,000 had assets totaling 100 million or less in June 30, 2020 (See text above for specific count). Data accessed 2/5/2021 from the following url: <https://www.fdic.gov/bank/statistical/>

²¹ The retail lending metrics-based exam relies on resources such as the Home Mortgage Disclosure Act (HMDA) for its data. Over the last few years more and more lenders have been exempt from reporting based on the number of loans. The limit is going to become 25 loans which many of these extremely small lenders is unlikely to originate. What will happen when they no longer must report this information? If they are using this metrics-based approach would they still have to collect the data in the same format even if they are not reporting it? The same problem will exist for lenders that have even more assets. The new approach attempts to limit reporting burden by relying on already collected and reported data. What if that data is now not being collected? In the case of an extremely small-asset bank that could be seen as an unfair burden.

²² Council of Economic Advisers. 2016. The Performance of Community Banks Over Time. Council of Economic Advisors Issue Brief August 2016. As of 2/9/2021, available at the following url: [20160810_cea_community_banks.pdf \(archives.gov\)](https://www.archives.gov/files/2016/08/10_cea_community_banks.pdf)

²³ Goodrich, Terry. 2014. Small Businesses in Rural Areas Must Hustle for Loans from Far-Off Banks, Baylor Study Shows. Baylor Media and Press Relations. February 25, 2014 - [Small Businesses in Rural Areas Must Hustle for Loans from Far-Off Banks, Baylor Study Shows | Media and Public Relations | Baylor University](https://www.baylor.edu/study-shows/small-businesses-in-rural-areas-must-hustle-for-loans-from-far-off-banks-baylor-study-shows-media-and-public-relations-baylor-university)

subtests: Retail Lending Subtest, Retail Lending Services Subtest, Community Development Financing Subtest, and Community Development Services Subtest?

HAC believes the answer to both questions is yes, with an important distinction on the threshold to determine large and small banks. Yes, small banks should be examined only under the retail lending subtest and large banks should be subject to the four retail and community development subtest. The limited capacity of small-asset lenders justifies the limited expectations. While banks with assets of \$100 million or less are most challenged with complying with the requirements (As noted in the response to Question 11), a higher threshold is acceptable. Small banks should also receive consideration for community development and investment activities with the possibility of earning an Outstanding Rating.

The challenge is setting a threshold for determining which banks are considered small. The Housing Assistance Council believes the threshold should be lower than the ANPR proposes. ***HAC recommends a threshold of \$500 million, adjusted for inflation annually, be used to make the bank size distinction.*** but Moving to \$750 million or \$1 billion would shift too many lenders into the small bank exam category.

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?

HAC recommends that the small bank threshold should be lower than the ANPR proposed \$750 million and automatically adjusted for inflation. Both of the ANPR proposed thresholds go too far and would result in reduced CRA oversight because they shift too many lenders into the less demanding small bank category and examination. This would worsen a problem that already occurs in some rural communities where, due to limited large-asset lender presence, CRA provides few incentives for community development investments. A threshold closer to \$500 million, although less than ideal²⁴, would at least produce a more balanced outcome that limits regulatory demands for the most limited capacity lenders while ensuring the reach of community development oversight remains broad.

The ANPR's proposed thresholds are part of a broader change in approach, moving from three primary CRA exams (small-, intermediate-, and large-asset) to two (small- and large-

²⁴ The OCC proposed a \$500 million dollar threshold and HAC opposed that again in support of maintaining the current small bank threshold \$326 million. However, in comparison to the ANPR's two proposed thresholds, \$500 million would generate a much more balanced approach. It would be less than ideal but certainly much more acceptable.

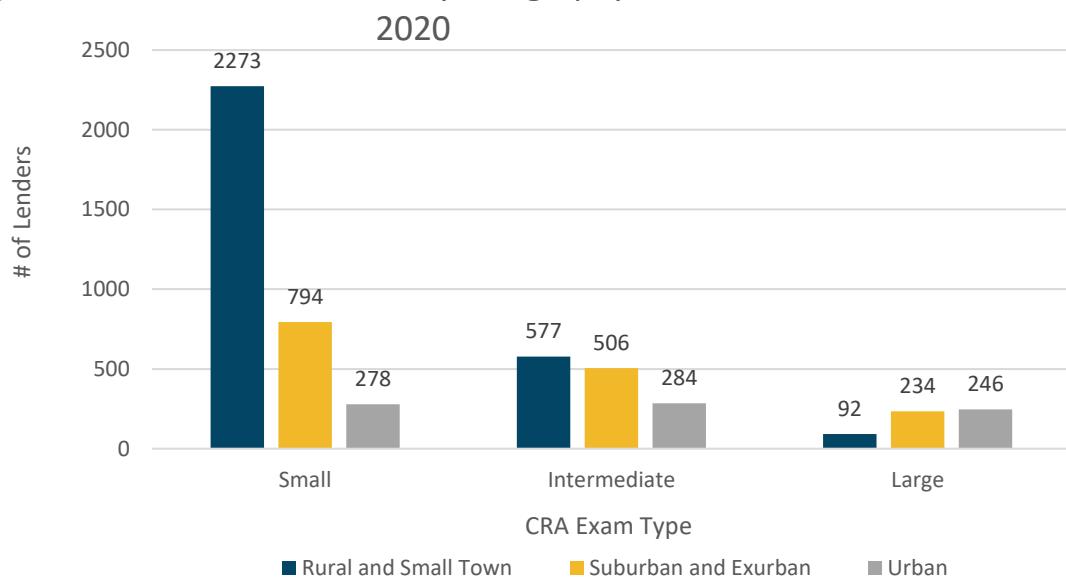
asset). CRA exams. The new approach would evaluate similar activities as the old examinations (small exam = retail activities and large exam = retail and community development activities), however, the intermediate exam category (includes small bank retail exam and a streamlined version of large bank community development test without community investment consideration) would be eliminated with lenders in this category receiving either a small or large bank exam depending on the final threshold.

The ANPR proposed thresholds are set within the current intermediate exam limits. As a result, the new threshold will increase both small and large-asset lenders. The challenge is setting the threshold to reduce compliance burden for truly limited capacity lenders without compromising the effectiveness of CRA oversight. The Housing Assistance Council believes a lower threshold best achieves these goals.

Based on an analysis of Summary of Deposit (SOD) data for 2018 and 2019, changing the CRA exam approach will impact approximately a quarter of all FDIC-insured lenders (intermediate exam lenders) – See Table 1.²⁵ The ANPR proposed thresholds would result in an overwhelming majority of banks receiving the less demanding small bank exam which evaluates only retail lending activities. The move from intermediate to small bank exams would result in no CRA evaluation of community development activities, unless the bank seeks its inclusion, which could weaken CRA incentives in communities served either solely by or overwhelmingly by small and currently intermediate-asset lenders.

²⁵ SOD data covers the period ending June 30th for 2018 and 2019 [the December 31st point was not available, but the approach is the same). The 2020 thresholds were applied: less than \$326 for small bank alone, \$326 to less than \$1.305 billion for intermediate-small bank, and \$1.305 billion or more for large bank. The determination considers the previous two years. A lender needs to have less than \$326 million in 2018 or 2019 to be considered a small bank. If a lender exceeded the small bank asset threshold both years and its assets were below the \$1.305 billion large bank limit at least once it is an intermediate, small bank. As of 1-14-2021, the SOD data is accessible (click on “Branch Office Deposits”) at the following url: https://www7.fdic.gov/idasp/advSearch_warp_download_all.asp?intTab=1. As of 1-14-2021, the CRA threshold information is accessible here: https://www.ffiec.gov/cra/pdf/2020_Asset_Size_Threshold.pdf

Figure 4. FDIC-Insured Lender by Geography and CRA Exam,



Source: Housing Assistance Council (HAC) tabulation of FDIC Summary of Deposit data for 2018 & 2019.

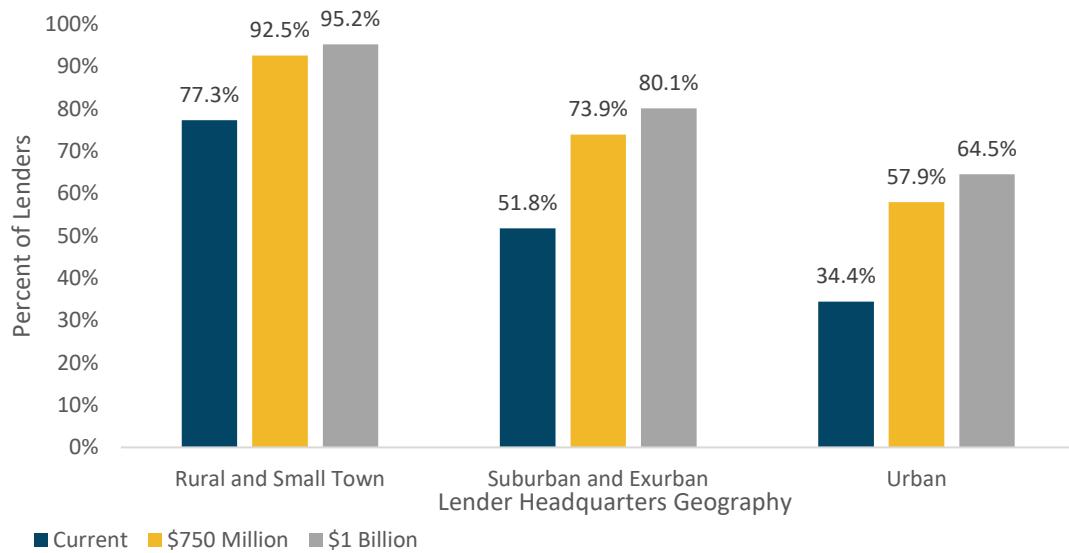
Table 1. Lenders by Various CRA Exam Asset Thresholds

CRA Examination Threshold Categories	Current	Proposed \$750 Million Threshold	Proposed \$1 Billion Threshold	Alternative \$500 Million Threshold
Small	3,345	4,323	4,550	3,926
Intermediate	1,367	-	-	-
Large	572	961	734	1,358
Total	5,284	5,284	5,284	5,284

While the largest change in CRA exams would occur for urban headquartered lenders, the greatest impact would be in rural areas. There are proportionally fewer large and intermediate lenders headquartered in rural areas as currently 77 percent are small asset banks. The ANPR \$1 Billion threshold would result in 95 percent of all rural headquartered lenders receiving a small bank exam. Rural areas are not solely served by rural

headquartered lenders. Yet, these are lenders for which rural communities are likely to be one of their primary service areas—particularly low- or moderate-income areas.

Figure 5. Share of Bank in Small Asset Category Thresholds



Source: Housing Assistance Council (HAC) analysis of 2018 and 2019 Summary of Deposit FDIC-Insured lenders applying current and proposed exam thresholds to identify small-asset lenders. Organized by HAC rural

Ideally, the current, annually adjusted CRA threshold (\$326 million) would delineate small and large banks. This change would dramatically increase the number of lenders based in rural communities receiving the more detailed large bank, community development test. Regulators currently evaluate these (intermediate) lenders under a streamlined version of the large bank community development test that does not explore community investments.

At \$500 Million in assets a lender is assumed to have a significant level of resources and to engage in more advanced auditing and FDIC reporting requirements.²⁶ This level of capacity indicates a lender can effectively engage in community development activities. Banks falling below this asset point, on the other hand, may have more limited capacity – often due to small numbers of employees, and community development requirements

²⁶ Henekem, David and Liz Rider. 2018. What to expect when your bank goes of \$500 million or \$1 billion in assets. BKD. Preparation for Transition. [What to Expect When Your Bank Reaches Either \\$500 Million or \\$1 Billion in Assets: 2018: Articles : Resources : CLA \(CliftonLarsonAllen\) \(claconnect.com\)](#)

might be too burdensome.²⁷ The Housing Assistance Council believes a more detailed analysis is needed, but a \$500 Billion threshold is a more balanced approach.

Retail Lending Tests (Pages 66,419 – 66,437)

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

HAC believes a retail lending metric is appropriate although there are concerns about data availability. While metrics alone cannot fully account for the entire impact of any individual activity, it is the best method available. Clearly delineating the process reduces confusion. The current process uses similar calculations, but the information evaluated is not provided to the public (only via pdf of the program evaluation is available for all lenders) and the process is not well understood by the public. This proposal improves upon the current CRA exam by promoting transparency and relying on loan counts instead of loan dollar values, which disadvantages rural communities where small dollar lending is more common.

A significant concern, however, is the degree an adequate amount of information(data) is available for the retail calculations. It is difficult to calculate a metric for a lender that engages in few activities. Concerns persist even if types of loans are combined, and data pooled for multi-year periods as the ANPR suggests. The risk with this approach is that pooled data will obscure important differences within the pooled groups. In this process it is necessary to incorporate a greater degree of examiner involvement.

An additional concern is data requirements becoming more difficult to meet due to other policy changes that limit lender data reporting. For example, HMDA reporting requirements implemented over the past three years, increasingly exempt smaller lenders from reporting. There were no specific loan amount limits until 2018 when a 25 close-end loan limit went into effect which will now increase to 100 loans. For many small and even some intermediate-asset size banks, there is no longer a need to report the data so they may discontinue these data collection efforts.

Question 15. Are the retail lending distribution metrics appropriate for all retail banks, or are there adjustments that should be made for small banks?

²⁷ Governor Michelle W. Bowman. 2020. Empowering Community Banks. Comment at Federal Reserve Board Conference of Community Bankers in Orlando Florida on February 10, 2020. [Speech by Governor Bowman on empowering community banks - Federal Reserve Board](#)

The retail lending metric is problematic for small asset, low activity lenders due to a lack of data. Data are limited based on the amount of activity engaged by many smaller institutions. Combining loan types and pooling data will help but could also result in obscuring differences across loan products and time. In addition, new HMDA reporting exemptions limit the amount of rural home loan data which is a significant part of the CRA retail lending exam.

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

Combining low- and moderate-income categories for retail lending distribution metrics should only be undertaken in circumstances when it is absolutely necessary due to data limitations. Combining data can obscure differences between groups. While the practice reduces complexity, it sacrifices the understanding of differences which can be important. If a lender is underperforming in a particular category, combining data may obscure this reality.

In the case of small, limited volume, lenders it may be necessary to combine data for metrics purposes. The ANPR states:

“another benefit of aggregating the metrics in this manner is that, for small banks and rural banks with relatively fewer retail loan originations, this approach would more likely capture a sufficient number of loans for use in the metrics.” (pg.66422)

While combining or pooling data can be useful, this will also limit understanding in some markets. If these problems are concentrated in rural communities, it could effectively lessen rural CRA oversight. This is an important issue. The Housing Assistance Council recommends a closer review of the metric for small asset and rural lenders.

A basic review of data by the examiner is also necessary when combining information. The examiner should review the combined categories closely and identify any possible differences. This process should be routinely conducted over time as pooling can obscure immediate change.

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

HAC believes it would be preferable to use standardized community and market benchmarks developed that are based on other sources of data. Using a clearly delineated approach, as the ANPR has provided with the other retail lending benchmarks, is preferred.

HAC understands the data challenges with identifying benchmarks and evaluating consumer lending activities. While credit bureau data may be useful, the Board could, as noted in the ANPR, purchase additional market data. This increased effort would likely provide sufficient information for calculating geographic benchmarks. Caution, however, needs to be maintained regarding rural market data. Rural data has historically been less complete.

If it is not possible to develop borrower benchmarks for particular markets or products, then a more qualitative approach such as the method employed currently would be necessary. The approach should be clearly laid out. Reviews would include scrutiny of the type of consumer loans originated, borrower costs, and repayment rates. These data should be collected and presented in a standard format.

An overarching consideration during this process should be the degree to which these activities promote access to affordable loans. It is clearly preferable to have a reputable lender in the small dollar lending market, but this should not minimize the importance of loan types and lending practices. High default rates and elevated financing costs should be noted and documented.

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

HAC is concerned that a presumption of “satisfactory” rating could be set too low for underserved communities/markets. Communities that are underserved receive less than optimal lending activity. HAC has a concern that an over-reliance on current market lending patterns could essentially freeze low expectations in place. This is particularly true since the ANPR notes “the lower of the community or market threshold would be selected as the binding threshold.” (pg. 66424) Finally, in the case of rural areas information from which market metrics would be calculated is much more limited (both to limited lender activity and incomplete information in general) which could result in inaccurate assessments of these markets.

Accurately identifying chronically underserved markets is a challenge because a change in market metrics should not be driven by a localized, non-permanent, market change. In addition, it is not only necessary to identify underserved communities but there must be

some understanding of how much a community/market is being underserved and its optimal amount of activity. Market metrics should be set with an eye towards achieving these levels over time. Simply using averages based on current levels of service in underserved markets are unlikely to encourage change. In this situation the primary concern is artificially low benchmarks.

To obtain widespread acceptance, the Board should consult an independent and a well-respected entity such as the National Academy of Sciences, to identify the best approaches for identifying and assessing lending levels in underserved markets. Using an independent and unbiased group to identify the best approaches to address these concerns.

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

Yes, this approach would improve clarity, consistency, and transparency. The approach would particularly address lender concerns about confusion and not knowing where they stand with regards to a rating. The success of such an approach is dependent on benchmarks and thresholds being set with a clearly defined process that is easily accessible. A process of accounting for underserved areas that reflects the need to increase activity should be a component. There also needs to be some examiner application of lender context as well so that an overarching concern, which may be overlooked with a metric, can be considered. The presumption of satisfactory though is a solid baseline from which to start.

Question 20. 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?

HAC supports the use of a clearly delineated approach, but we are concerned about possible ratings inflation given the reliance on past examination results in creating the new thresholds. The ANPR approach is clearly delineated and based on data analysis which is an improvement over the current approach. The threshold is based on generating similar results as those associated with lender's who earned either a high satisfactory or outstanding rating. This suggests a somewhat higher required level of activity than is currently used. This is a positive development and represents an acknowledgment of a need to raise expectations for lender activity above previous levels. The Housing Assistance Council is still concerned; however, that thresholds will be too low for underserved areas as noted in Question 18. Of course, much of this apprehension could also be addressed if lender benchmarks for underserved communities were adjusted to reflect the need for

more lending activity. The concern is that benchmarks and thresholds will combine to ensure low levels of services in certain areas.

Question 21. Will the approach for setting the presumption for “satisfactory” work for all categories of banks, including small banks and those in rural communities?

HAC has concerns that the ratings approach will work well for small-asset and rural banks. Our concerns are primarily related to issues of data availability and lender capacity. The ANPR notes that their analysis of lender ratings, using the new approach, had data constraints for small-asset institutions. The banks did not provide the detailed data needed when it related to assessment areas. (pg. 66427)

It is hard to address or overcome these limitations in the data. In cases where only a few loans were originated, metrics can vary substantially. Likewise, pooling data over multiple years may result in an inaccurate picture of lender activities now. A final issue may be the increasing use of HMDA reporting exemptions for small asset lenders. The necessary data may no longer be collected in the same easy to use format that fits with a data dashboard. In cases where data is considerably limited, it will be imperative to supplement the evaluations with a greater reliance on examiner review. Given that the lenders and markets that HAC is most concerned with involve only retail lending oversight (which is less frequently undertaken) the amount of regulator work should be limited. Again, there would still need to be data collection through a clear process that was followed, and information made public that shows how a rating is achieved.

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

HAC believes there is a benefit to performance ranges because they provide lenders with important information. The ranges can help lenders understand where they truly stand and how their performance relates to moving from one rating to another. Delineating the information by product (possibly even by income category if enough information is available) could inform lenders of their deficits. Such information is most important for small to intermediate-asset lenders who do not have the same resources and capabilities as other lenders to assess such elements on their own.

As it relates to determining the performance ranges, previous ratings should guide these efforts. Any new ranges should be based on the distribution of previous ratings, assuming

there is enough variability to do so. In other words, if there was an average of 10 to 20 percent more activity between “needs to improve” and “satisfactory” ratings then the ranges between the two could reflect these differences at least initially. A review of data should be undertaken after implementation to assess how well these ranges fit.

The determination of a satisfactory rating should be the baseline from which ratings ranges are derived. Question 20 response notes the approach of setting the satisfactory rating level at the amount of activity associated with the current high satisfactory and outstanding levels of activity. The distribution of the other ratings categories should reflect the current distributions between ratings with the satisfactory level of investment as a base. A review of ratings after examiners have rated all lenders under the new approach at least once should be undertaken to ensure any problems are addressed.

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?

HAC believes that qualitative considerations, made by the regulator, should be considered. The processes, however, should be clearly presented with information provided. Qualitative research does not mean the absence of process, data, and consistency of documentation. The same can be said for regulator judgement. There might be cases where regulator judgment and performance context matter. In such cases there should be adequate documentation. If a lender's metrics suggest one rating but the final rating is different, there should be data and information that explains, in an organized fashion, the outcome. This is not the case now. Modernization of the process should move away from ratings without explicit and easy to access data and explanations.

Activities that could propel a lender into an outstanding rating would have to involve directly supporting underserved populations and communities. A regulator, at a minimum, should include the activity type(name), (category-housing, infrastructure, etc.), the population assisted (geography specifics), its value in metric terms (if possible per capita assisted, etc.), and why it was not fully considered in the metric (try and identify shortcomings of metric approach). Obviously, the information would not be complete, but must identify what occurred, where it happened, and place a value on it. Over time, regulators could use this information to refine their CRA metrics.

Question 24. In addition to the number of branches and the community and market quantitative benchmarks discussed above, how should examiners evaluate a bank's distribution?

HAC believes the ANPR puts forth viable quantitative tools from which to evaluate a lender's bank branch network. Given the decline in number of bank branches and the change in how bank services are accessed (mobile, etc.), it is not easy to evaluate the distribution of services based on bricks-n-mortar offices resulting in the ANPR's hesitation to apply a metric only system. The Housing Assistance Council recommends a metric-based approach as a baseline from which additional considerations are applied. The process of refining this measure, while most likely based on qualitative considerations, should again be clearly laid out and documented to promote clarity and transparency.

An additional or alternative quantitative approach based on distance to bank office would address concerns about branches in middle-income census tracts serving low-income census tract populations not receiving credit for doing so because of census tract boundaries. Efforts at identifying food deserts provide a potential approach to this issue. The USDA defines food access (food deserts) based on distance to a grocery store. In rural areas, 'access' is defined as being within 10 miles, and in an urban/suburban area it is being within 1 mile of a large size grocery store.²⁸ This approach could conceivably be applied to CRA and is relatively easy to operationalize with standard GIS software and mapping tools.

A straightforward method to this distance approach could be implemented as follows:

The base unit of analysis is census blocks (much smaller than census tracts). Access to bank offices would be determined by census block proximity (set distance of 1 (urban), 5 (suburban) and 10 (rural) miles depending on rurality) to bank office. If a census block falls within that distance, at least a portion of the block and its population would be considered to have access.

Since census geographies nest within each other, census block data can be aggregated to the census tract level. It would be possible then to estimate the share of a lender assessment area population that lives within an accessible distance to a bank office. The specifics of how access is measured (e.g. distance) could vary to ensure it accurately captures a branch office's service area.²⁹ This approach could be used to supplement the other

²⁸ The approach is used to identify food deserts in this case. [Food Deserts in Minnesota & the Twin Cities \(arcgis.com\)](http://Food Deserts in Minnesota & the Twin Cities (arcgis.com))

²⁹ It could be based on absolute distance (use a buffer around facility) or it could be based on road mile distance. The actual distance might more precisely be set based on consumer surveys.

measures when there are claims that the current approach does not work well, or it could be fine-tuned to replace it altogether.

HAC also recommends that lenders should include a plan for altering their bank office networks in the future. This plan should include how lenders will ensure certain communities and populations are not left without banking services. The COVID-19 pandemic has already revealed, particularly with access to education, that internet access is critical. This important dynamic needs to be addressed in banking so that inequities in access to financial services are not exacerbated. It is important to address banking deserts and access in any CRA modernization process.

Question 25. How should banking deserts be defined and should the definition be different in urban and rural areas?

HAC believes it is critically important that the problem of access to financial services and bank deserts is effectively addressed in CRA modernization. Bank deserts, which most commonly occur in economically distressed and sparsely populated rural communities, are areas for which the CRA is currently unlikely to have much impact. Understanding the location and prevalence of bank deserts will help address these challenges. An acceptable definition must account for differences between urban, suburban, and rural communities.

A general approach would be to identify and classify bank desert counties that have either no access or extremely limited access to banks. The first set of counties are ones with no bank branches. Using 2020 Summary of Deposit data, 140 U.S. counties have no bank branches. The second group include counties that lack the presence of a large-asset bank branch. Counties without a large asset bank branch will lack CRA community development/investment oversight. One set of counties would receive no CRA consideration and the other no community development consideration.

Such an approach would be a conservative designation. Yet, this method identifies areas where bank deserts clearly exist, but it will overlook areas where they exist but do not represent the entirety of a county. While parts of a county may have access to financial services many communities may not. County-level geography is often too large to make this determination accurately.

An additional adjustment or approach would be to base bank desert determination on proximity to a bank branch. As Question 24 notes, a distance-based approach, similar to those used to identify food deserts would be an improvement on more general county-based geography. Using Census block geography, a method could be based on customers'

location within a certain distance to a bank branch (e.g. 1 mile urban, 5 miles-suburban and 10 miles rural). Using this approach, the methodology would identify clusters of census tracts or block groups without access (not within a certain distance). Additional analysis would be needed to determine what level of clustering is needed to be considered a bank desert (e.g., 4 contiguous census tracts and/or 6 census block groups).

It should be noted that as banking services increasingly shift to mobile and online activity and bank branches close, it may be necessary to use loan activity to make bank desert determinations. Such an assessment should include a communities' volume of home lending, for example, at the census tract level and identify tracts where little to no lending occurred.

Question 26. What are the appropriate data points to determine accessibility of delivery systems, including non-branch delivery channel usage data? Should the Board require certain specified information in order for a bank to receive consideration for non-branch delivery channels?

For bank offices/branches, “distance to” is a reasonable measure for accessibility. As noted in the previous question, distance is used to identify accessibility for other commodities such as access to food. An important element is to appropriately set distances, so they accurately indicate accessibility. To improve precision, a smaller geographic unit, such as census tracts, census block groups or even census blocks, should be used. The nesting of Census geographies generally provides a level of aggregation if needed.

For non-branch delivery channels, determining accessibility is more difficult. At a minimum, there needs to be an accounting of services rendered through these channels. Lenders would need to identify loans that were made via non-branch-based methods. The same would be the case for customers using mobile services for actions such as depositing checks or paying bills. While such information may not be widely available currently, future improvement in this technology will improve services – and understanding of those services - to its customers. Based on this information, regulators will know how to weight retail services. If most activity is done online, then access to those services should receive the most consideration.

Question 27. Should a bank receive consideration for delivering services to LMI consumers from branches located in middle- and upper-income census tracts? What types of data could banks provide to demonstrate that branches located in middle- and upper-income tracts primarily serve LMI individuals or areas?

HAC believes that the location of a bank's facility/office should not disqualify services that reach low- and/or moderate-income populations and communities from CRA consideration. The best way to document these services would be through data on loan product usage and deposits. Unfortunately, it is unlikely that a lender collects such information. This dynamic is at the root of challenges with defining assessment areas for lenders that do not have bank branches.

A solution to help address these data issues would be to define an office's service area based on distance. As described in Question 24, GIS or mapping technologies could be used to identify all census block groups or census blocks within a set distance of a bank branch. If the share of population in this area comes largely from low- or moderate-income census tracts then, at least in part, a lender could consider this office as serving these communities. The challenge would be in how to define "largely from a low- or moderate-income" census tract (over half, two-thirds, etc.). The actual determination itself is relatively easy due to today's technology so this would be an imminently doable approach.

A distance-based approach is another option. Banks and bank regulators should work together to either use SOD data or possibly develop a better method of data collecting that addresses this dynamic. This issue is of such importance that a significant research effort should be undertaken to identify potential solutions. Current events, such as the COVID-19 pandemic, are accelerating the level of bank transactions that occur outside of a physical office or storefront. CRA must increasingly adapt to this dynamic as well.

Question 28. Would establishing quantitative benchmarks for evaluating non-branch delivery channels be beneficial? If so, what benchmarks would be appropriate?

HAC believes it would be beneficial to establish quantitative benchmarks for evaluating non-branch delivery channels. Because no such data are available currently these measures will be of limited practical use in the near term. Identifying such benchmarks could; however, be part of an effort to better understand how CRA implementation will work when in-person transactions are not the norm. Identifying possible benchmarks could be done as part of an effort to set the general guidelines for a significant research effort as noted in Question 27.

Question 29. What types of data would be beneficial and readily available for determining whether deposit products are responsive to needs of LMI consumers and whether these products are used by LMI consumers?

Similar to Questions 28 and 29, HAC believes that there is not sufficient data from which to answer this question. If there were information on consumer loan or deposit accounts that highlight borrower income, it might be possible.

As is the current practice, it should be possible to determine the range of services offered by a lender. This at a basic level provides some idea of what a bank offers, but it does not directly relate to actual service provision and whether low- or moderate-income residents use them.

Question 30. Are large banks able to provide deposit product and usage data at the assessment area level or should this be reviewed only at the institution level?

HAC believes a review of product usage should be at the smallest geographic unit possible. It is currently difficult to discern subtle differences when looking at institutional level data. The data generally do not explicitly show where problems occur. At the very least, examiners should review assessment area data and preferably the data could be produced at the county level. Percentages should be used, and certain specifics excluded to ensure individual information is not publicly disclosed.

Question 31. Would it be beneficial to require the largest banks to provide a strategic statement articulating their approach to offering retail banking products? If so, what should be the appropriate asset-size cutoff for banks subject to providing a strategic statement?

HAC agrees that it is beneficial for large asset lenders to develop a strategic plan describing how they will provide services. This requirement will be particularly important going forward as more and more bank activity is done by mobile apps and online. There should be a plan that ensures all communities continue receiving high levels of service and detail on how lenders plan to reach underserved populations and communities. The plan should also detail how a lender proposes to identify assessment areas as the change occurs. Meaningful goals and timelines should be included to help focus efforts. Examiners would be able to refer to these plans in evaluating lender performance on retail service examinations.

The large bank asset threshold could also serve as the retail plan strategic service threshold. This is the asset level at which lenders are expected to be of significant size that they can engage in community investments, so it seems reasonable that they could develop a plan for retail services. For lenders toward the lower end of the large bank asset category, the plan should be easier to compile as they likely conduct business in fewer communities.

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?

HAC agrees with the ANPRs suggestion to consider only home mortgage loans purchase directly from an originating lender (or affiliate) in CRA evaluations (pg. 66436). Purchasing loans can help expand the credit pool and increase liquidity in a market. This is especially true if it involves the direct purchase of a newly originated loan made in an underserved market or to low- or moderate-income household. HAC supports these efforts.

The practice of purchasing loans over-and-over again to earn a favorable CRA examination, so-called “churning”, reflects a gaming of the system. This does not help expand access or ensure all communities and populations receive financial services. To limit this practice, it is preferable that CRA consideration be reserved for purchases of newly originated loans.

Question 40: Should CRA considerations be given for retail lending activities conducted within Indian Country regardless of whether those activities are located in the bank's assessment area(s)?

The Housing Assistance Council believes CRA consideration should be given to retail lending activities conducted within Indian Country regardless of a bank's assessment area. To ensure activity reaches the most in-need areas, CRA consideration should be restricted to low- or moderate-income or distressed and underserved census tracts.

Our nation's Native American Lands suffer from a lack of access to credit which is reflected in the dearth of bank offices. Many of these communities are geographically isolated, sparsely populated, predominately rural, and struggle economically with poverty rates of 20 percent or more.

Question 41: Should all retail lending activities in Indian Country be eligible for consideration in the Retail Lending Subtest or should there be limitations or exclusions for certain retail lending activities?

As noted in Question 40, HAC Recommends that CRA consideration should be restricted to low- and moderate-income and distressed or underserved census tracts. The goal should be to encourage investment in communities where access is most limited.

Community Development Tests (page 66,437 – 66,453)

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?

HAC agrees that combining the community development and investment tests into a single subtest would better facilitate lenders engaging in the most optimal community development/investment activities. This combination should limit the degree to which lender actions reflect regulatory preferences versus the most efficient and/or effective way to achieve the desired outcome. This situation is analogous to the dichotomy of policy choices for reducing carbon dioxide in the atmosphere: carbon pricing or permit trading versus command-and-control regulations.³⁰ The most efficient method, if possible, avoids rigid regulations and relies on the industry to find the best way to achieve the reduction. An underlying assumption with this dynamic is that the amount of community development/investment activity is set at an appropriate level, which is an open question, and that there are no unintended consequences associated with allowing lenders more discretion.

As noted in the ANPR, a potential unintended consequence could result in less CRA-related activity in low-income housing tax credit projects. Regulators should evaluate the impacts of this change to see what shift, if any, occurs in community development/investment activities and how this change may impact the CRA's goals. Similarly, allowing banks to count long-term projects for more than one examination cycle could encourage the most efficient use of capital, but it could also result in the support of fewer projects over time. It should also be noted that the current distribution of activities should not be the status quo. For example, a concentration on LIHTC investments, if it did occur, is not necessarily the best outcome for all communities. LIHTC projects are less prevalent in rural areas.³¹

The move to one test should result in stronger and more efficient community investment. The costs of engaging in such activities should be lower (less cost of regulatory compliance) so there should be an expectation for lenders to do more in the CRA space.

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

³⁰ For an example of the policy choice debate, see the following article: Kaufman, Noah. 2016. Carbon Tax vs. Cap-and-Trade: What's a Better Policy to Cut Emissions? World Resources Institute, March 1, 2016. As of 1-20-2021 the article can be found here: [Carbon Tax vs. Cap-and-Trade: What's a Better Policy to Cut Emissions? | World Resources Institute \(wri.org\)](https://www.wri.org/blog/2016/03/carbon-tax-vs-cap-and-trade-whats-better-policy-cut-emissions)

³¹ Copeman, Fred, Matthew Barcello, and Cindy Fang. 2013. Study Credits CRA for Motivating LIHTC Investment. Affordable Housing Finance, 7-2-2013. Article accessed 1/20/2021 at the following url: [Study Credits CRA for Motivating LIHTC Investment| Housing Finance Magazine](https://www.housingfinance.com/article/study-credits-cra-for-motivating-lihtc-investment/)

financing activity relative to its capacity to lend and invest within an assessment areas? Are there readily available alternative data sources that could measure a banks' capacity to finance community development?

HAC agrees that the ratio of dollars of community development financing activity to deposits is the best way to measure community development/finance activity.

Deposit data, with its challenges (depositor location questions for SOD data should be reduced by shifting from census tract delineated assessment areas to the larger county level geography), provides a sound estimate of lender capacity and relying on this mechanism helps scale individual assessment area ratios. A particular challenge is that deposit data in underserved areas, regardless of the lender's role in the market, are limited as little community development activity will occur. Using other data, such as assets; however, is likely to overlook under-served area capacity (fewer loans and holdings) more than deposits.

The numerator being dollar value of community development/investment activities is concerning. Dollar values tend to hurt smaller-sized projects which are more common in rural areas. Dollar values are also not always the best indicator of impact, and these considerations need to be made in the qualitative portion of the test. The use of geographic focused benchmarks and requiring a lender to score satisfactory or better for the overwhelming majority of their individual assessment exams), can alleviate these issues.

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?

HAC believes that because wholesale and limited purpose banks do not have depositor data, which reflects lender involvement in a market, the use of assets is likely the only viable option for assessing capacity.

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?

HAC believes the Board should use local and national benchmarks for community development/finance exams but the details of how they will be used need to be more fully explored. It is important to consider both local and national activity and to include a separate national benchmark for outside of metropolitan areas. This is a considerable improvement from current efforts that, due to limited scope review, tend to overlook rural areas. While using dollar amounts will have a negative impact on rural activity – which tends to be small dollar, the use of geographically different national benchmarks can

hopefully ameliorate the problem. The use of a clearly presented metric also improves upon the process which right now is not well known. All involved parties can appreciate the clarity.

The details will be most important as to the actual application of these benchmarks and the ANPR does not provide adequate detail. For example, would a lender's assessment area score have to pass/exceed both benchmarks to pass? For areas where lender activities are almost universally limited, a local assessment area factor would likely be small. If no or few large bank lenders engage in activity in the Lower Mississippi Delta or Border Colonias regions, for example, the local benchmark would be consistently near non-existent. This would more commonly be the case in rural areas where CRA is traditionally less effective. In such cases, primary consideration should be given to the national benchmark. This should be limited to cases where the amount of activity is chronically limited and not simply reflect variation in local conditions.

Another concern relates to operationalizing the national benchmarks when an assessment area contains both metro and outside metropolitan area counties? Would the benchmark be a combination of the two, possibly weighted and based on the population distribution? Would the area be segmented in which the outside metropolitan area county activity compared to non-metropolitan area benchmark and the rest to the national metropolitan area benchmark?

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?

HAC recommends a more graduated approach for implementing a new rating system for lender community development financing activities. This approach is necessary for rural communities where, as the ANPR notes, data are limited at best. HAC would prefer a standard approach with clear metrics. Another concern is that local benchmarks could freeze in place current service levels and conditions in underserved markets. This is particularly a concern for chronically underserved areas such as Central Appalachia or Native American Lands. In cases where the local benchmark consistently lags the comparable geographic national benchmark, these are likely underserved markets.

It is understandable that using national level thresholds alone will not work because assessment areas, like local markets, are different. Having local benchmarks is important for ensuring local conditions are considered. A problem arises when there is no or limited

local data from which to determine local markets. This dynamic is most common in rural areas and communities. Additionally, when local conditions reflect permanently suppressed activity, local market thresholds could result in a continuation of inadequate service.

More research is needed to identify the best data sources for determining community development thresholds. This will be a challenge in many rural communities because there simply are not many current investments. A potential approach is setting market estimates based on CRA disclosure data, using area demographic, social, economic, and housing characteristics with adjustments for cost-of-living differences. But this methodology is still not sufficient. Research should identify chronically underserved areas. While local area adjustments for thresholds would be acceptable in many markets, these indicators would not be adequate in many underserved markets. Once these markets are identified then analysis can explore how thresholds can best be determined.

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?

HAC recommends that the Board use impact scores to fully capture the impact of community development activities. Using dollar values alone, particularly in rural markets, will undervalue projects because funds involved are relatively limited, yet the impact can be quite large. Expanding access to a small rural health care facility ramps and bars, could involve limited financing costs, but have a dramatic impact on the region because it is the only facility of its type in the region. A dollar amount value cannot reflect the true impact of such a project; therefore, impact scores are needed.

Clearly establishing and presenting how impact scores are determined should help ensure the process is more transparent. Many of these same considerations are already made but the process often lacks consistency and clarity. Keeping the impact scoring system simple - as is accomplished with a 1-3 rating - avoids confusion.

Supplemental information on these activities should be collected and made publicly available. The data collected should include, if, at all possible, an assessment of the number of consumers impacted per service area population. The information collected could take the form of the current disclosure data reporting but should be more accessible and not presented in a single flat file.

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

Quantitative metrics alone cannot adequately capture the impact and importance of community development services. A service that is considered minor in one market may be highly impactful in another community. Dollar value ratings are an incomplete measure, especially in low-income, sparsely populated rural areas.

The ANPR notes the importance of community development services in building capacity which is an effort HAC has focused on in our 50 years of assisting rural communities. The skills and expertise provided by a financial institution and its employees can be critical to improving area capacity, but such efforts will likely be undervalued using most metrics. A bank executive's expertise could be instrumental to a small rural non-profit's efforts winning a grant for improved water services but the dollar value of her or his time may be very small. As such, qualitative considerations are integral to the consideration of community development services.

While qualitative considerations are important, improvements in the process can be implemented and reinforced. Reliable qualitative research follows a well-documented process with activities organized and information presented in a standard format. The same effort should be applied to a CRA Community development services subtest. The subtest should involve data collection in a standard format that covers the basic elements involved in all CRA credited activity. This information should, at a minimum, include target population (per capita impact), dollar expense (hours worked), and short description of impact. All activities given consideration for a community development activity should be included in these data. Bank regulators should, as stated in the ANPR, provide a template for how this information is to be collected and/or presented.

Ultimately, the regulator should provide impact scores for each community development service which indicates how activities were valued and how the combination of activities relates to a given rating/score. Impact scores should be relatively straight forward, and the regulator should set out clear guidelines on their meaning. Regulator discretion is important in the evaluation qualitative considerations are undertaken, but the process must be clearly presented.

Making this information available to the public at the end of an examination, in a usable and easily accessible format, along with the program evaluation report, could help address areas of confusion and improve clarity. Large flat files that require significant data science skills to access limit public involvement. This situation limits an important role in this

process, public oversight. Public scrutiny should be leveraged to improve qualitative evaluations not discouraged, which creates mistrust and confusion.

Question 49. Would an impact score approach for 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?

HAC believes an impact score would be helpful and is necessary to understand a final rating. Impact scores allow the public and practitioners to see how a final rating was derived. Meaningful impact scores can easily be made available to the public in a data set rather than requiring this information to be laboriously accessed from individual program evaluation narratives.

An impact score should consider the standard aspects of a project, number of people involved, hours spent, population impacted, and contextual considerations. For example, contextual considerations would include availability of service in an area: Was it instrumental in the activity's success? and did it address an important community need? The contextual elements would be qualitative, but a numeric value could be applied for calculation purposes. Like an index, an activity would receive scores on each element and then in the end a final three or four rating impact score would be provided. In many ways this process is being conducted currently, as examiners conducted such calculations to arrive at a final value for an activity. The improvement should include greater clarity on the process and availability to data and information. These enhancements do not remove subjectivity, but instead makes the process clear.

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?

To provide an effective incentive for CRA-related investments in MDI and women-owned financial institutions, that are outside of lender assessment areas, there must be some special consideration of such efforts. The ability to earn extra credit for these activities is unlikely to be a strong incentive if it is not tied to a meaningful activity. Linking an outstanding rating to working with MDIs and women owned institutions would provide such an incentive.

HAC's position is that these relationships should still be related to activities in areas and for communities outside of assessment areas that are in need of financial access and would

otherwise not be served (CRA designated low- and moderate-income and distressed and underserved census tracts). Giving credit to MDIs will not necessarily ensure this occurs.

A more effective approach would be to link serving high need areas, communities, and populations to an outstanding rating. Then, if these activities involved a minority or women owned financial institution, more credit should be given. A lender in turn would be required to engage in a certain amount of activity in these underserved communities to receive an outstanding rating.

To ensure these efforts do not simply result in a shift in activity from service area to non-service area communities, CRA thresholds should be set so that more service area activity is required than what is currently being undertaken. The service area threshold should be set to a level of investment closer to what previously outstanding rated lenders received. If these conditions are met, then lenders need to engage in a certain amount of investment in these areas to earn an outstanding rating.

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

HAC recommends that credit should be granted for investing in MDIs and women-owned financial institutions regardless of the entity involved in the investment. The only stipulation is that the investment must be related to activities that impact low- or moderate-income or distressed and underserved areas and/or populations.

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

The Housing Assistance Council suggests incentives for serving high need communities in general would be to provide some regulatory relief for lenders that perform at an outstanding level. Allowing a lender to receive credit for conducting a particular activity does not necessarily mean they will do it. The requirement that an activity be conducted to earn an outstanding rating could have limited impact since a lender may be content settling for a satisfactory rating. There are no repercussions for not being rated outstanding.

A regulatory benefit could prove more impactful. For example, if the process of applying for opening offices or merging with another institution could be expedited, that incentive may represent a real, immediate, benefit. The time and resources that a lender would save have

value. The degree to which they would offset the cost of earning an outstanding rating are not known, but it certainly would raise the value of engaging in such activities. The same could be said of working with MDIs.

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?

The suggested changes should help clear up confusion as to which activities will be given CRA consideration by expanding eligible areas. Cases where a project was not given credit because it was in a census tract adjacent to an assessment area should rarely occur. Given that the community development test applies only to large asset banks, which usually serve multiple assessment areas and states, these changes would expand the geography for CRA consideration considerably which is helpful.

Restricting the community development financing metric to assessment area activity will maintain the emphasis on service area activity. This requirement should help ensure that the changes to eligible state and region activities do not replace service area efforts. It is important to ensure changes to CRA modernization do not simply shift financial access and investments from one neighborhood to another, but instead expand CRA impact.

The challenge lies in increasing activity in underserved communities that are not part of a lender's assessment area. These activities, even if they are considered for an outstanding rating, are essentially an add on component. This provides little incentive to engage in them because they are often in the hardest to reach where lender's do not operate offices or have close working relationships. This means such projects could cost lenders more to engage in them and offer less profits. The challenge then is finding a balance of providing a significant benefit that is not at the expense of current efforts.

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?

The Federal Reserve Board should expand geographic areas of community development activity to include designated areas of need. The expanded geography should be refined and restricted to capture areas and populations experiencing chronic economic distress or insufficient financial service access. It is not necessarily preferable that a lender gets extra points for these activities in general terms, but they received extra importance with

regards to earning an outstanding rating. The goal should be to expand CRA impacts not simply shifting them from one in-need area to another.

One possible approach to identifying high need areas would be to use already identified high need regions as the Federal Housing Finance Agency (FHFA) does for its Duty to Serve program. This includes Central (Middle) Appalachia, Lower Mississippi Delta, and Native American lands. From these areas, those communities with limited access to finance and chronic economic distress could be targeted.

Areas of need should include locations with limited or no large bank presence. These are areas for which the CRA does not fully cover. Communities with no large bank deposit taking offices have limited access because they are unlikely to fall under consideration for community development/investment activities. Many of these are in isolated rural areas and often include Native American Lands.

Economic distress can be measured with the Treasury Department's persistent poverty measure (counties with poverty rates of 20 percent or more for the last three decades) identifying chronically poor areas. Nearly two-thirds of the counties in high need regions are classified as persistently poor. Most majority minority rural counties are persistently poor. Using this measure with the high need region classification, or even by itself, helps ensure only the most in need areas are identified.

It is important that the new policy expands activity to reach currently underserved markets. HAC suggests treating CRA investments the same in general terms; however, as it relates to an outstanding rating, the overall threshold could be lower depending on the share of activities involving underserved areas. In other words, the threshold for outstanding is 25 percent lower if a certain dollar amount of activities in high need areas. The same approach could be used for activity on Native American lands or involving MDIs. This consideration could minimize any zero-sum impact that might result in a shifting of activity from one community to another.

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?

HAC recommends the Treasury Department's persistent poverty designation be used to identify economically distressed areas, many of which are majority minority communities. As noted in early comments, persistent poverty counties include 90 and 81 percent of rural counties with a majority African American and Native American population. Two-thirds of persistent poverty counties are in designated high need regions.

The persistent poverty designation then captures many of the rural population and regions that are underserved. This is achieved while at the same time ensuring only communities with chronic economic distress are being targeted.

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 or published, and how frequently should it be amended?

HAC believes an illustrative list of CRA eligible activities will help provide clarity to the process. The list should cover broad categories and provide several specific examples as it is not possible to develop an exhaustive list. The specific method of developing the list should include public input and be conducted on an annual or biannual basis. Conditions and characteristics of communities continually change so the list would require regular upgrading and it should be based on examination data highlighting examples of qualifying projects.

Ratings (pages 66,453-66,459)

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

HAC supports the elimination of limited scope assessments. This practice often results in less oversight for rural areas. The practice minimizes the importance of sparsely populated areas where finance activity, relative to most lender's total activity, is limited. The ANPR proposal to end this practice is important. While HAC understands the reason for using a weighted-average (based on deposits and loan amounts) approach when reviewing assessment areas, we are concerned that the averages will minimize rural areas. Identifying and addressing patterns/trends in inadequate service could help avoid overlooking communities without dramatically overweighting others.

Inequities and asymmetry of lending volume will result in equally similar outcomes in scoping. Moving away from limited scope review to inclusion of all assessment areas in calculating a final institution rating is an important first step.

The ANPR notes considerations that could be undertaken to ensure lenders cannot rate as satisfactory in an institutional rating but rate unsatisfactory in most of its individual assessment areas. This process should be conducted to ensure rural areas are not receiving poor service. Regulators should review a lender's majority rural assessment areas and if a

lender earned less than a satisfactory score on more than 60 percent of them. Such a review and assessment should be noted and considered in a lenders final rating.

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 multi-state MSA if there is a pattern of persistently weaker performance in multiple assessment areas.

HAC agrees with the proposal to limit a banks state or multi-state rating if they under performed in their ratings on individual assessment areas. Consideration needs to be given to whether a lender served to an adequate level most of its assessment areas. Failure to achieve market parity should have consequences. There should be some proportion at which failing to earn a satisfactory rating on individual assessment areas result in a rating downgrade. Similar criteria should be applied for the larger institutional rating. The exact level is currently unclear and should be the subject of additional analysis.

A similar type of consideration should be given based on assessment area geography to ensure lenders do not systematically perform poorly in rural areas. For example, failing on individual ratings for most majority rural assessment areas should not ignored due to success in other areas (even if these areas are a relatively small proportion of overall service area activity any systematic lack of quality service is a problem).

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

HAC supports the ANPR’s proposal regarding the concept of ‘appreciable improvement’ over examinations. A lender should not earn an assessment area rating of “needs to improve” in back-to-back examinations without real improvement shown or a contextual reason. This requirement would create an incentive for lenders to make meaningful efforts to address the problems. A longstanding challenge with CRA is its lack of repercussions. One of the most significant consequences in CRA is to earn less than satisfactory ratings and this would ensure a lender receives the lowest rating in an assessment area.

Performance context, however, is important and if a lender has a justification for the lack of improvement it should be considered. As stated throughout these comments, any changes should be documented. Regulators should develop a template for recording this information that helps examiners classify their actions.

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?

HAC appreciates efforts to simplify the CRA process. A primary reason for confusion is lack of transparency and incomplete data. A simplified approach should address these concerns and make data reporting easier. In the case of simplifying CRA ratings, increased nuance or variation is recommended. A four-scale rating is limited in the amount of information it imparts, providing additional measures or categories for ratings provides some level of nuance that is useful at least for the institutional rating.

New classified categories should be (from low to high): Substantial Non-Compliance, Needs to Improve, Satisfactory, Above Average, and Outstanding. The five categories impart more information which is an improvement, particularly if a goal is to highlight those lenders that truly standout. A high rating should be an incentive representing a way for lenders to distinguish themselves from other institutions.

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?

HAC believes that using weighted averages and matrices does help with transparency if the process underlying it is clearly presented and all information from which results are derived is provided to the public. This does not mean that there is no room for examiner discretion. Regulator discretion is important since metrics may not completely capture lender actions. A lender might perform well on its overall rating score, yet systematically perform poorly in rural areas among certain populations. Regulator discretion identifying this problem is important. In such cases though, regulators need to provide all relevant information as to why these actions were warranted. This information should, if possible, be available to the public in an accessible format (not a written narrative in a pdf document).

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

HAC believes that community development and retail services activities should only augment a small lender’s satisfactory rating. While it is important that all lenders

address the community development and retail service needs of their service areas, this should not become a substitute for meeting the basic retail lending needs of a community. Meeting a satisfactory level of performance on retail lending should come first.

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

HAC supports specifying in Regulation BB that violations of the Military Lending Act, the Servicemembers Civil Relief Act, and UDAAP are considered when reviewing discriminatory or other illegal credit practices to determine CRA ratings.

Data Collection and Reporting (pages 66,459-66,463)

Question 89. Would it be helpful to provide greater detail on the types and level of activities with MDIs, women-owned financial institutions, and low-income credit unions necessary to elevate a "satisfactory" rating to "outstanding"?

HAC believes it is necessary to more clearly state what types of activities would receive consideration. HAC agrees with the concept of placing greater importance of serving underserved populations and communities. An outstanding rating should reflect that a lender has gone 'above and beyond' in serving areas and population in need of improved access. This is only achieved if earning a satisfactory rating ensures lenders still provide high quality services in their assessment area communities.

It is necessary to know the specifics related to CRA eligible activities which include where they occur, and the people served. There should be parameters set so all the involved parties understand what type of activity will be considered acceptable. If there is uncertainty it might reduce large lender involvement. Lenders have expressed concerns about not knowing whether an activity will be accepted, and it may well be a reason why they restrict involvement to activities for which they know they can earn CRA credit. This information would also be beneficial to MDIs and women-owned financial institutions who are working with these lenders.

CRA should also include a requirement that the activities involve LMI populations and/or underserved/distressed communities. If such activities refer to "outstanding" performance, then they should involve helping areas and populations that are underserved. Lender

assessment efforts must also be met before such consideration is given and these assessment area requirements should be unrelated to additional efforts.

Question 92. Which approach for retail lending data collection would provide the best balance between data collection burden and the transparency and predictability of CRA examinations for small banks that opt in to the metrics-based approach—using a sample of bank data drawn from each assessment area to generate the retail lending metrics, or the use of information maintained by a bank in a format consistent with its own internal operating system?

Small-asset banks, particularly those with the most limited assets, should be permitted to use the small sample approach for retail lending evaluations. A strict reliance on the maintenance of data files might be enough to persuade lenders from opting-in to the new approach (assuming the opt in will continue). The goal needs to be, however, that all lenders maintain data in a standard format. The shift to lender data maintenance would promote the CRA's clarity and consistency and likely help lenders in the long run since it would mean data collection systems comport to standard regulator and industry protocols. A reduction in the need for examiners to pull samples of lender activity could save regulators time and resources. Data maintained using a standard format could also more easily be made public thereby promoting public involvement of the process.

An extended grace period and assistance from bank regulators could help lenders shift data collection and maintenance efforts. Bank regulators should, early on, assess how well small-bank transitions are going and attempt to align data reporting and collection efforts to minimize costs. There should also be an effort to identify technologies or other means by which these costs could be reduced.

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

HAC believes that the community development level activity should be reported at the lowest level of geography available. At the very least the county level geography should be used and preferable the much smaller and precise census tract and/or census block group geography. Presenting activity that occurred in the non-metropolitan area of an entire state provides little information as to where an activity happened and who was impacted.

In cases where an impact is judged to be over a larger geography, it is still important to have as much geographic precision as possible. More precise information is preferred and

improves the understanding of patterns and trends that ultimately can help all involved parties ensure CRA is most impactful and reaches underserved areas.

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

HAC believes the burden is generally minimal and that any added effort associated with data collection and reporting is justified to gain consistency in examinations. The current system, where much of the process is unclear and data is not readily available in an easily usable format, hurts the effectiveness of the CRA and creates confusion. By clearly presenting the process and making data and information readily available, lender costs should be lower over time.

There will be upfront costs to adjust to the new system and this could be a concern for extremely small-asset institutions (<\$100 million in assets) so there should be considerations made for these lenders. As HAC noted earlier, there could be a longer grace period for such lenders and possible additional help provided. In most cases, once lenders adapt to these changes, costs should be lower if for no other reason than the reduction of uncertainty.

Question 98. Would collecting information in a Board-provided standardized template under the Retail Services Subtest be an effective way of gathering consistent information, or is there a better alternative?

HAC believes there should be a standardized template/form to collect data for the retail services subtest. While no template will be perfect, it is important that data collection and reporting be standardized as much as possible. If data collection is not standardized, it is difficult to compare and analyze information. This lack of information could result in undermining the ANPR's efforts to promote clarity, consistency, and transparency. A standardized approach should also help with implementation and compliance. Additionally, a form can include open-ended elements that elaborate on an activity or rely more on non-numeric elements. Standardization will ensure that the activities are consistently categorized and employ standard measures.

It will be important to regularly update the template to address concerns and limitations. Over time the process and form will improve.; however, it cannot be set in stone. Things will evolve over time and the CRA needs to be flexible enough to address them. HAC wants the CRA to expand access and opportunity to financial services in the most efficient way.

Federal Reserve Board of Governors
February 16, 2021
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The Housing Assistance Council is pleased to have this opportunity to provide comments on the Federal Reserve Board of Governors ANPR on CRA modernization. HAC looks forward to working with all entities in this process to continually improve and enhance the promise of CRA for all communities – urban, suburban, and rural.

Please do not hesitate to contact me if you need additional information or clarification of our comments.

Sincerely,

A handwritten signature in black ink that reads "David Lipsetz". The signature is fluid and cursive, with "David" on top and "Lipsetz" below it, though the two words are connected.

David Lipsetz
Chief Executive Officer