April 8, 2020

Mr. Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20129
Attn: Comments
Re: RIN 3064–AF22
Via email: Comments@fdic.gov

Chief Counsel's Office
Office of the Comptroller of the Currency
400 7th Street SW, Suite 3E-218
Washington, DC 20219
Attn: Comment Processing
Via email: cra.reg@occ.treas.gov

Re: Proposed Rulemaking Regarding the Community Reinvestment Act

Dear Sirs and Madam,

We are writing on the behalf of the members of the Utah Bankers Association (UBA)[1] and the National Association of Industrial Bankers (NAIB)[2] to support the goals of the Community Reinvestment Act. We and appreciate the opportunity to submit the following comments on the proposed changes in the implementing rules and ways in which we believe the programs could be further improved.

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[1] The Utah Bankers Association (UBA) is the professional trade association for Utah's commercial banks, savings banks and industrial banks. Established in 1908, the UBA serves, represents and advocates for the interests of its members, enhancing their ability to be preeminent providers of financial services.

[2] The National Association of Industrial Bankers (NAIB) is a national trade association for industrial banks. These specialized banks operate under the titles of industrial banks, industrial loan corporations (ILCs), and thrift and loan companies. NAIB champions innovative and safe financial services for Americans, including the underserved. ILCs comply with the Community Reinvestment Act. First chartered in 1910, ILCs provide a broad array of products and services to consumers and small businesses nationwide. They do not offer demand checking accounts, but do accept time deposits, savings deposit money market accounts and NOW accounts. Industrial banks are regulated by state chartering authority and the FDIC at the federal level. Currently ILCs are state supervised in California, Colorado, Hawaii, Indiana, Minnesota, Nevada, and Utah.

Before turning to our specific comments, we fully support and join the comment letter submitted by the American Bankers Association (ABA). The following comments are intended to supplement the ABA letter.

Regulatory Reporting and Data Gathering

While we appreciate how acquiring more data is intended to help demonstrate the benefits and impact of CRA programs on communities across the nation, our members uniformly object to the proposed data gathering and reporting requirements in the Notice of Proposed Rulemaking (NPR) relating to the Community Reinvestment Act (CRA). Each member states that gathering and reporting this data will be very expensive and time consuming and in some cases they question whether the data required is available or reliable. Some said it will be a "major IT project" with cost estimates ranging from tens of thousands to millions of dollars while the benefit is negligible or academic. Although banks already have much of the data, such as depositors' addresses, they do not have systems to select, compile and report the data the rule will require. In some cases, the data will need to be extracted from literally millions of records. Additionally, banks do not have some of the data described in their own records and will need to undertake community-based studies when it is not clear if that can be done or which specific data will be required to comply with the reporting requirement.

Some of these reporting requirements presume that other new requirements will be adopted, such as deposit-based assessment areas. Those will be discussed below and also are strongly opposed. If they are not adopted, most of these reports will not be needed.

Additionally, as described in more detail below, using deposit based secondary assessment areas will tend to obscure the benefits of CRA programs by out of state banks with no other presence in the largest urban areas. Our members believe publicizing CRA programs and benefits is an important goal to help gain support and trust for banks and the banking system, but that would be best achieved by distributing CRA programs among more areas and in the CRA deserts described in the NPR. By all means, let these programs be conspicuous, but for that purpose it makes no sense to force banks in Utah to initiate CRA programs in the largest urban areas where the banks are otherwise unknown and when many of the programs will be largely unnoticed because they will be dwarfed by programs run by much larger banks based in those areas.

Instead, the cost to develop systems to collect and report this data will potentially reduce the amount of CRA activities. The amount of resources a bank can devote to CRA is limited by simple economics. It will vary depending on the size and complexity of each bank, but the cost will be significant for every bank, and it will be a cost that only banks incur. The costs will increase the competitive cost advantages nonbank competitors such as credit unions already enjoy, which is an especially sore point for bankers. Regulators need to more carefully evaluate how a bank's ability to develop and maintain CRA programs is dependent on its ability to compete generally and how unique costs such as this will erode the viability of its business. Typical comments from our banks also emphasize how current CRA programs, which are rated satisfactory or outstanding, will need to be essentially redesigned from scratch. Here are some of the comments we received:

"The economic impact of the proposed CRA Modernization rule if implemented as presented is significant for a community bank our size. . . . Currently our bank has one FTE assigned for all CRA data collecting, reporting and monitoring; keep in mind that CRA is not the only function this employee is responsible for. The CRA officer's time is shared with other assigned responsibilities which splits time by 50 percent or greater. The new CRA proposed rule is not improving the existing program which means that everything we currently have in place, all monitoring, reporting and any other control that has been implemented and refined is now no longer a part of the program or will have massive changes and adjustments for validation purposes. This means we are starting over from scratch.

“We do not have a hard figure calculation for the cost of the implementation, our best estimate is the cost for CRA modernization to be implemented will cost the bank $100k plus in the following areas: . . . 2 additional employees. . . systems – IT . . . reporting . . . monitoring . . . validating [and] training.”

Other community banks sent these comments: “I don’t see any added benefit to our institution with these proposed changes. It seems that it’s simply just an expense to the bank with no added benefit to the community we serve. We don’t currently have the resources or programs that would be required to meet these new proposed changes.” “What benefit does the bank or customer get from this expenditure? The bank gets no benefit and the customer will bear the burden with higher loan fees or lower interest on deposits.”

Our members respectfully suggest that data gathering and reporting should be required only to the extent necessary to validate that a bank’s products and services qualify for CRA purposes. Imposing the requirements in the NPR will not provide more public awareness of CRA programs but will more likely reduce CRA activity by diverting substantial resources in every bank that could otherwise be used for actual programs.

Economic Development and Job Creation

The proposed rule will eliminate CRA credit for financing small businesses that support job creation and other kinds of economic development that helps LMI people and communities. This is a key CRA program for many banks and represents a huge change in current CRA programs that have been well received and credited by examiners until now upon the submission of extensive documentation of the requisite job creation, retention, and/or improvement. We strongly agree with the more thorough discussion of this issue in the ABA Comment Letter, but want to add our specific voices reinforcing that it is critical for any final rule to retain ***all*** of the categories currently listed in the Interagency Questions & Answers Regarding Community Reinvestment (CRA Interagency Q&A).[3] In light of the severe economic distress on our small businesses from the recent coronavirus pandemic, now more than ever it is critical that banks continue to finance small businesses, and to continue to receive CRA credit for doing so.

For that reason, many of our members, especially community banks, strongly oppose eliminating job creation as a criterion for qualifying a community development loan. They point out that creating jobs is perhaps the most impactful way to address the problems of LMI people and communities. Those banks point to current programs they have to obtain borrower level data on the number of employees that qualify as LMI to attest to the important role that CRA programs play in the community. Since one stated goal of the proposed new regulation is to expand what qualifies for CRA purposes, our members believe eliminating job creation is counterproductive.

Typical comments include:

“Eliminating the Economic Development piece of the Community Development Test in the CRA Modernization proposal will have a significant impact on the total number of loans that are being reported as a Community Development (CD) loan within our current exam cycle.”

“. . . economic development, i.e., showing job creation/job retention is important in qualifying a commercial loan for community development credit . . . the nature of these loans impacts in a positive way LMI individuals and an institution should receive CRA credit for them. It is important to show where

[3] *See* CRA Interagency Q&A, Section___.12(g)(3)– 1, which specifically lists the following activities as “economic development” if they support “permanent job creation, retention, and/or improvement” for (1) low-or moderate-income persons; (2) in low-or moderate-income geographies; (3) in areas targeted for redevelopment by Federal, state, local, or tribal governments; (4) by financing intermediaries that lend to, invest in, or provide technical assistance to start-ups or recently formed small businesses or small farms; or (5) through technical assistance or supportive services for small businesses or farms, such as shared space, technology, or administrative assistance.

the loan funds will be used. Generally, collateral will be located in an LMI census tract but you still need to show the potential financial impact on the community and what better way than show the number of jobs created and/or retained as a result of the loan."

A rural community bank sent this comment: "Another concern for our institution is the negative impact the rule appears to have on the number of loans that will qualify as Community Development Loans. Currently the majority of our Community Development loans qualify under either . . . the job creation/job retention piece or because the current Q&A's state all SBA 504 loans qualified as Community Development loans. Neither of these appear to be included in the list of qualifying activities in the proposed rule."

Here is another comment from a community bank: "In my mind, one of the important reasons for having a CRA regulation . . . is to get bank funds out into the communities we/they serve so that it helps create and/or retain jobs for LMI people, regardless of the census tract. At our bank, we use a form that addresses how we handle job creation/job retention on new loans. Over the last three CRA examinations, the examiners have given our form great reviews as it shows value in how we qualify a business loan for CRA CD credit.[4] We have the form signed by the borrower as an attestation that this loan will have this impact, i.e., jobs created or retained, as a result of this new loan. Our form is similar to the SBA 504 credit memorandum question that asks for the number of jobs that will be created over the next two years as a result of the new SBA 504 loan. Our form is more specific, we address the total current jobs, the total number of current employees making under 80% AMI, the number of jobs to be created or retained as a result of this new loan and finally it addresses how many employees will be hired for jobs paying under 80% AMI for the CT where the funds are targeted. This form strikes to the core of community development loans, whether they be loans over $1,000,000 (current small business loan limit) or over $500,000 (current small farm loan limit). In fact, we collect employment information on all new commercial loans under these limits because we want to know the total impact that all of our loans have on the communities we serve regardless of census tract."

Another commentator said: "The NPR purports to be generally "expanding the types of qualifying activities," but **explicitly states that it is *eliminating* the CRA credit for activities that "promote economic development by financing small businesses.**" The Preamble states the following reason for exclusion:

> *[Fed. Reg. page 1213]: Further, as stated above, the intended effect of the proposal is to expand the type of activities that qualify for CRA credit. Although the agencies chose not to include in the proposal certain ambiguous or unclear terms used in the current regulations, **the agencies do not intend to reduce the activities that qualify for CRA credit**…. Similarly, rather than including the term **"economic development,"** the proposal employs more detailed CD criteria to capture the type of activities that currently qualify as economic development activities, such as activities that finance (1) SBDCs, SBICs, New Markets Venture Capital companies, qualified Community Development Entities, or RBICs; (2) businesses or farms that meet the size-eligibility standards of the SBDC or SBIC by providing technical assistance and supportive services; or (3) Federal, state, local, or tribal government programs, projects, or initiatives that partially or primarily benefit small businesses, or small farms. The proposal does not include the more general aspect of economic development that involved a bank having to demonstrate that its activities that finance businesses or farms that met the size test support job creation, retention, and*

[4] From a documentation perspective, we urge that the final rule include the same guidance on documentation of job data that is in the Interagency Q&A, which specifically instructs that "[e]xaminers will employ appropriate flexibility in reviewing any information provided by a financial institution that reasonably demonstrates that the purpose, mandate, or function of the activity meets the "purpose test" (the "purpose test" consists primarily of "job creation, retention, and/or improvement" (CRA Interagency Q&A, Section___.12(g)(3)– 1).

> *improvement for LMI individuals, LMI census tracts, and other areas targeted for redevelopment by Federal, state, local, or tribal governments.* ***This aspect of the economic development component of the current CD definition was not retained because the agencies could not identify an objective method for demonstrating job creation, retention, or improvement for LMI individuals or census tracts or other targeted geographies, other than by determining if the activity would create additional low-wage jobs****.* [bolding added]

"The stated reason for eliminating the economic development component is that there is ostensibly no objective method for demonstrating job creation, retention, or improvement for LMI individuals or other targeted geographies "**other than by determining if the activity would create additional low-wage jobs**." [emphasis added] This phrasing seems to indicate in a somewhat dismissive tone that the OCC/FDIC do not believe that job creation, retention, and/or improvement for LMI individuals is important. However, millions of people are at 80% or below of AMI, and jobs are extremely valuable to those people.

"For the past 20+ years, banks have routinely received credit for financing (through loans and investments) small businesses by documenting and providing to regulators the number of jobs created, retained, and/or improved (and CRA examiners have routinely given CRA credit for such loans to and investments in small businesses). From a policy perspective, financing small businesses that create/retain jobs is an essential component of a bank's "meeting the credit needs of the community," and there is no sound policy reason for removing that as an activity for which banks can receive CRA credit.

"Small businesses have traditionally been the largest creators of jobs in the US, and it would be contrary to the policy underpinnings of CRA to eliminate financing (including equity investments) to small businesses that promote job creation, retention, and/or improvement for LMI persons or in LMI areas.

"It would be inconsistent to give CRA credit for virtually *any activity in an Opportunity Zone* (which are based on the theory of economic development), and then <u>not</u> give CRA credit for financing small businesses that create jobs.

"The NPR is silent on its deletion of activities that promote job creation, retention, and/or improvement "by financing intermediaries that lend to, invest in, or provide technical assistance to start-ups or recently formed small businesses or small farms," which provision had actually been *added* in the 2016 revisions to the CRA Interagency Questions & Answers (which set forth a number of policy reasons for adding the provision to the Interagency Q&A). There is no discussion to explain the agencies' complete reversal of position.

These comments show how job creation is a key part of CRA programs among most, if not all, community banks in Utah. Eliminating that category will essentially require all of these banks to terminate their current CRA programs and develop entirely new programs. None of these banks understand the justification for such a significant change. The benefits to LMI communities are clear and examiners have found these programs satisfactory or outstanding. Eliminating this category is not required by any change in the law and is certainly not "fine tuning" the current standards. Such a drastic change requires more consideration and justification.

For these reasons, our members believe "[b]anks should continue to receive CRA credit for (1) financing small businesses that promote job creation, retention, and/or improvement for LMI people and communities, and (2) by financing intermediaries that invest in or lend to start-ups or recently formed small businesses. These "economic development" provisions should be added back into the NPR in their entirety, both in the text of the regulation and also to the list of qualifying activities.

Secondary Assessment Areas

The banking industry in Utah is somewhat unique. It is home to a large number of banks, ranking number top ten in the aggregate assets of state chartered banks nationwide. Because of this disproportionate concentration of banks, Utah is also a hot spot of CRA activity, especially in community development programs. All Utah banks are concerned about their ability to develop programs in secondary assessment areas when they are unable to meet their goals because their primary assessment areas are saturated.

Many of these banks are branchless banks that provide specialized products and services nationally. Most are owned by and affiliated with entities based in other states. Because they offer products nationwide and do not have branches, these banks do not compete with community banks or larger commercial banks for local loans or deposits in their assessment area. They rely instead on electronic delivery of their products and services and other funding strategies including brokered deposits and deposits offered over the Internet.

Because these banks do not focus their lending in their local assessment area, a lending test does not work well for CRA purposes. In many cases as few as 1% of a branchless bank's loans are made in its primary CRA assessment area. In addition, LMI people have little need for some of the core specialized loans offered by branchless banks. The needs of LMI people are better served by providing different types of credit and investments through a separate CRA program.

The FDIC and state regulators have done a good job of adapting CRA programs to this type of bank over the past more than 40 years. As branchless banks began to develop in the 1970s and 1980s the regulators used community development to measure CRA performance. As the current regulation requires, each bank must still designate a primary assessment area near its main office, usually in or near Salt Lake City. But because of the large number of banks competing for CRA qualified loans and investments in Utah it is not always possible to fulfill a bank's overall CRA goals in its primary assessment area alone. To resolve that problem, regulators currently give credit for community development activities in adjacent areas after a bank has done all that it can in its primary assessment area.

The main problem our branchless members have encountered is limiting these secondary assessment areas to geographies adjacent to the bank's primary assessment area. Areas outside of the cities in the West are sparsely populated and opportunities for community development are limited. For example, Utah is one of the largest states in terms of geographic area but 82% of its population lives in a 100 mile long urban corridor called the "Wasatch Front" that runs north and south of Salt Lake City in the valleys on the west side of the Wasatch Mountains. That is the primary assessment area for most Utah based banks. An interesting factoid is that Utah has the largest percentage of its population residing in urban areas in the nation. Much of the remaining population in Utah resides in a growing city named St. George in the southwest corner of the state. In the rest of the state there are only a few small towns spread many miles apart. In some places drivers encounter signs on interstate freeways saying there are no services for the next 100 miles. The small towns and Native American reservations in the state provide some community development opportunities but may still not be enough to meet the CRA goals of many banks based in the Wasatch Front.

It would not work to expand the secondary assessment area further into adjacent states. Most Utah banks have no facilities or affiliates in surrounding states and don't know what opportunities for community development lending and investment exist in those places. The distances are cultural and economic as much as geographic.

Our members continue to support designation of a local assessment area that must be fully served for CRA purposes before credit is given for CRA activities in other areas. The banks are a part of these communities and want to play a prominent and substantive role in the places that support their operations.

These connections are also crucial to developing good community development programs. Good CRA programs begin by understanding the needs and opportunities in any community. In Utah the senior executives of almost all banks serve on boards and provide other kinds of support to community development organizations. The banks' CRA officers network extensively with those organizations to understand their specific needs and collaborate in developing programs to serve those needs. The importance of these contacts and networks cannot be overemphasized in providing the most impactful CRA programs in a community.

For that reason, our members strongly oppose the proposal to create additional assessment areas based on deposits. That will invariably create assessment areas where economic activities are most concentrated. We can reasonably expect that all deposit-based assessment areas will be in New York and Los Angeles. Most of our members have no other link to those urban areas. They have no people on the ground to develop the networks and do the kind of needs assessments critical to good CRA community development programs.

This tends to be a significant concern only for branchless banks, not traditional banks that still gather most of their deposits in their primary assessment areas. Very few branchless banks are national banks regulated by the OCC so this issue may not even appear on the OCC's list of priorities, but for branchless banks this point is of paramount importance and the FDIC needs to carefully consider the implications for the branchless banks it regulates.

Part of the problem is understanding how a Utah bank would develop qualifying, let alone meaningful, CRA programs in a distant urban market about which it knows little or nothing. Will it be required to hire people who reside in that area to assist in developing CRA programs? Will they have to open CRA offices in those places? They wonder how much of the bank's resources will be spent assessing needs instead of implementing programs.

The proposed changes in the NPR also present a glaring contradiction regarding the need for CRA programs in certain "CRA deserts." By definition, the deserts have the least economic activity and are most in need of community development assistance. Designating secondary assessment areas based on deposits gathered by a bank serving a national market, both for depositors and borrowers, means the deserts will be the last places qualified as a secondary assessment area. Instead, the secondary assessment area will likely be the largest urban areas, many of which will be hot spots.

Equally arbitrary is triggering the deposit test for an assessment area when a bank obtains more than 50% of its deposits outside its primary assessment area. Most of the largest banks raise deposits nationwide but also maintain extensive branch networks that create primary assessment areas that gather more than 50% of deposits for the bank. Because of their size, those banks may gather most of the deposits in a CRA desert but have no obligation or ability to designate a CRA desert as a secondary assessment area.

This is why Congress rejected a deposit based assessment area standard and replaced it with a facilities based criterion when it enacted the CRA law. That point remains equally valid today.

Our members agree that CRA programs work best when the bank has some connection to the assessment area, but that should not be deposits, or, at least, not deposits alone. Deposit based banking models generally used to inherently involve lending as well. Prior to the advent of credit cards and electronic banking in the 1980s, all banks served specific communities and provided a full range of financial services to the businesses and residents in that area. This was intended to ensure that deposits benefited the community where the depositors lived. Today the nation's financial markets have become much more segmented. There is no longer always a connection between depositors and borrowers. A bank that has no branches and raises deposits nationally may not market any of its loans to its depositors. A major credit card issuer or branchless bank that makes home improvement loans or finances retail sales nationwide is likely to have no other relationship with its borrowers. Even for traditional community banks, the percentage of depositors who obtain credit cards, auto loans, mortgages and financing for other large purchases such as furniture and appliances from other lenders has grown dramatically with the advent of computerized networks.

CRA programs involve much more than deposits and are needed the least in the large urban areas already served by a broad array of banks. The primary targets of CRA programs is areas where the financing is most needed to support economic development. Our members believe it would work much better, and conform more to the spirit of CRA, to allow each bank to designate secondary assessment areas where the bank has affiliates or in a designated CRA desert. Most of the branchless banks based in Utah have parents and affiliates based in other places that know about needs and community development opportunities in those areas that would clearly qualify for CRA purposes but for the requirement that those areas be adjacent to the bank's assessment area. For example, one of the largest Utah based branchless banks is owned by a parent in Detroit. Detroit could benefit from extensive CRA programs, but the Utah bank must put its resources elsewhere because it would get no CRA credit for helping people in Michigan.

Allowing assessment areas to be designated where a bank has affiliates or in a designated CRA desert would have many additional benefits.

Our members agree with the goal of directing CRA funds where they are most needed, but designating secondary assessment areas by deposit concentrations will prevent that unless the CRA desert is located in a large urban area. A place like Detroit may be one of the biggest CRA deserts in the nation. The best way to get community development CRA programs of a Utah bank directed to that particular desert is by allowing the bank to use the presence of its parent and other affiliates based there as the link to an assessment area.

Additionally, allowing the presence of affiliates to be the basis for designating an assessment area is the best way to spread community development based CRA programs around the nation. Our member banks have parents and affiliates in many states. A quick survey in a recent meeting of some CRA officers revealed connections to Nebraska, Delaware, Michigan, Connecticut, Minnesota, Indiana and Virginia. Only one of those banks had any connection to New York and none had a connection to Los Angeles. Why direct CRA money to areas that a bank doesn't know and would have to struggle to figure out how to deploy CRA targeted efforts when there are areas it does know through its affiliates and could immediately begin directing CRA efforts where they would be beneficial?

Our members also believe it is important for the community to understand the benefits CRA programs provide. Obviously, benefits of CRA programs are welcome everywhere but it is unlikely that CRA activities of a bank in Utah would be recognized in a large urban area even if some of the bank's depositors reside there. Let the banks direct their activities outside of their primary assessment area where their efforts will be recognized and appreciated. That will create good will and support for the banks and the banking system. In contrast, no public benefit will be gained by requiring a Utah bank to play a negligible role in areas where it is virtually unknown and will be unnoticed.

Another problem with the proposal to create secondary assessment areas based on deposits is that the area may change from time to time. Many CRA programs ideally run over the long term. Developing low income housing is difficult when the financing must be short term to meet CRA requirements. It will be just as difficult if a housing development starts in an area that ceases to qualify as an assessment area when another area produces more deposits for the bank.

For these reasons, our members encourage the agencies to revise this proposal to allow much more flexibility to designate secondary assessment areas. It would work much better to continue requiring each branchless bank raising deposits nationwide to first do all it can to meet the needs of LMI people and communities in its primary assessment area and then give added credit for community development loans and investments anywhere in the nation where the bank or its affiliates have a presence that can be leveraged to develop the most impactful CRA programs and in designated CRA deserts.

To facilitate the goal of assisting CRA deserts, our members recommend developing a formal system for public officials such as regulators, governors and other local officials to formally designate CRA deserts then give credit for programs designed to assist LMI people and communities in those areas.

Community Service Hours

Some of our members expressed support for the proposed changes in valuing community services activities. Others expressed strong objections, such as the following:

"Under the CRA Modernization proposal, it is very difficult, inordinately time consuming and meaningless to calculate the "value" of compensation for the type of work performed in community organizations. As stated in the CRA Modernization proposal: ". . . there is no stated quantity of CRA activities that correlates to a particular rating category. With respect to qualifying services, the current framework does not quantify their value, and the agencies undertake a qualitative analysis of the range of such services." Value is the quality of service not some qualitative calculation. When the financial institution documents the qualified non-profit and how it qualifies, the type of service, the location of service and the hours of services then value is the report back from the non-profit as to how the financial institution is helping them."

Our members do not believe it is possibly to fairly and precisely calculate through the Bureau of Labor Statistics the value of many services such as teaching financial literacy. How is it possible to put accurate values on serving on the board of an organization that teaches financial literacy as opposed to participating in programs offered through that organization to assist LMI people who want to start a small business?

There also appears to be some discrepancy in what counts for community service among different banks. Some are given credit for hands-on assistance while others are not. That makes monetizing these otherwise beneficial activities even harder.

One member suggests: "[m]easure services by the number of people serving divided by the total full-time equivalent employees (FTEs). This ratio can be a separate item on the performance context and it can be easily compared to what the peer banks are doing if your goal is to make sure banks are serving their communities through board or committee service. It does not need to be tied to some financial complex and time consuming "value" determination.

"Measuring service under "value" will discourage employees away from the real purpose of CRA service. It sets up a type of class warfare, a board member service counts more than a committee member service and banks will place more executives in community service just to meet the service ratio needed to pass the service test. In reality, I can argue that committee service is more important than a board position. A board does set the direction of the organization; however, the committee service represents the "boots on the ground". Committee service touches the lives of individuals, not the board service. You will end up with only a handful of executives [directly] serving [people] because their "value" on a board position will earn the bank significantly more points than a teller serving on a committee, where the real work gets done.

"What we have been successful in doing for some 41 years in my banking in Utah banking is getting a full range of bank employees serving in the communities, not just for CRA purposes, but for the attitude of giving back. This is an area in CRA that is not broken. Don't try to put a "value" on service."

For these reasons, we recommend pulling out the CD services calculation of quantitative "value" from the equation. Let it stand alone as number of hours served. The number of employees serving and comparing that total of the financial institution's full-time-equivalent number of employees off the Call Report and comparing those numbers to the peer banks."

Strategic Plans

Many of our members feel the new provisions in the NPR relating to strategic plans are inadequate and confusing.

Several banks indicated that the NPR does not adequately set standards for a strategic plan. Those who currently operate under a strategic plan cannot tell how the new rule would impact their plan. Would it be grandfathered? If not, what will the process be to provide a new plan?

The UBA commends the FDIC and OCC for recognizing the need to preserve the strategic plan option as a method of evaluation of CRA performance for banks. The UBA represents a significant number of banks currently operating under a strategic plan, or desiring to do so, due to their business strategies and/or size.

Unfortunately, many of our members do not feel the proposed rule goes far enough in providing clear and consistent guidance across all the agencies for strategic plans. Now is the time to clarify guidance for the strategic plan option as it is becoming an increasingly popular method of evaluation among banks.

Simply confirming there will be a strategic plan option is not enough. Our members agree that this method of evaluation, like many other elements of the CRA, needs modernization and clarity**.** What was once introduced to provide flexibility for banks and to tailor plans to achieve CRA objectives has turned into a method often to standardize and use the same measurements of the small bank, ISB or large bank tests with predetermined goals.[5]

One member provided a good summary of most members' concerns: "Many online institutions maintain very exclusive business models. The Strategic Plan option has historically been effective in helping these institutions partner with their community organizations and meet the credit needs of their community. Below are areas of the CRA NPR we believe should be modified to ensure the credit needs of these communities are met and that Strategic Plans remain a viable option for banks with non-traditional business models.

1. **Remove the requirement for banks with Strategic Plans to create new assessment areas based on concentrations of deposits**:
   Many online institutions operate very small deposit programs which may include a customer base that spans the country. An initial review of the proposed changes would suggest that even the smallest online deposit customer base could cause the creation of expanded assessment areas. It would be unlikely that these same institutions could adequately serve those new assessment areas the way they serve their current assessment areas. The primary concern is that the geographic concentration of these online depositors will not typically align with the concentration of the diverse nature of an online lending platform. While we believe this proposed change could provide certain institutions flexibility when developing their CRA assessment areas, we do not agree that a statistical number of depositors will consistently be an accurate reflection of every institution's geographies in which the bank "*has its main office, its branches, and its deposit-taking ATM's, as well as the surrounding geographies in which the*

[5]FDIC Consumer Compliance Examination Manual, September 2015, CRA, Institutions with Strategic Plan. "A strategic plan enables the institution to tailor its CRA goals and objectives to address the needs of its community consistent with its business strategy, operational focus, and capacity and constraints" and "Generally, the plan should emphasize lending and lending-related activity. Nonetheless, a different emphasis may still be appropriate, provided that this emphasis is clearly explained and substantiated based on the characteristics and needs of the assessment area and the institution's financial capacity, product offerings and business focus."

bank has originated or purchased a substantial portion of its loans". The proposed changes won't also not address the issue of "CRA deserts" as these same online institutions will not likely have large concentrations of deposits in areas that could benefit from additional CRA loans and investments.

2. **Provide greater clarity surrounding the publication, review, and approval processes of Strategic Plans:**
   The NPR proposes publication of Strategic Plans under development on agency sites, which will create a central repository of proposed Strategic Plans. We agree that a central repository of Strategic Plans is beneficial to both the general public and the banking community; however, publishing Strategic Plans under development to a central repository opens those proposals to criticism from individuals and groups who may not support the interests of a bank's assessment area. We are of the opinion that the current standard of publishing proposed Strategic Plans is enough to establish public assessment area consensus. Secondly, as currently outlined, the NPR is unclear on the agencies' responsibilities related to the treatment and speed of review of proposed Strategic Plans. We recommend implementation of a maximum review timeline (no greater than 60 calendar days) for agencies to review and provide feedback to banks on proposed Strategic Plans."

Our members recommend that the agencies consider these five areas in connection with the proposed rule covering strategic plans:

1. Simplify the requirements regarding pre-determined goals in CRA strategic plan;
2. Ensure consistency among all three agencies in review, approval and examination of banks with strategic plans, including the interpretation of CRA-qualified loans;
3. Improve the 60-calendar day timeframe for strategic plan review and approval by regulatory agencies;
4. Improve guidance by agencies regarding minor vs. major amendments to the strategic plan during the term of the plan; and,
5. Implement an escalation and ombudsperson process for banks operating under the strategic plan process

Regarding number 1, some of our members commented that the proposed language regarding an assigned rating introduces more complexity regarding pre-determined goals (see quote below), and does not go far enough to explain why, or how, all these additional measurements are going to work for a nontraditional bank. Strategic plan goals are intended to provide flexibility matched to the performance context and bank's business model. Our members believe the following proposed language conflicts with that intent:

> ***"Strategic plans assigned rating****. A bank operating under a strategic plan will receive, as applicable, assessment area assigned ratings, a bank-level assigned rating, and state-level and multistate metropolitan statistical area assigned ratings of satisfactory or outstanding if it has met the measurable goals in the plan that correspond to those ratings after considering performance context under § 345.14."*

This limits the criterion for goals and somewhat defeats the purpose of a strategic plan. A strategic plan is intended to allow each bank to set reasonable CRA goals based on its unique circumstances and business plan. The list of measures in the foregoing quote is more restricted than in the past. Our members believe this change is counterproductive and unjustified in view of the success of strategic plans up to the present.

Regarding number 2, a review of strategic plans approved by all three agencies over the last several years reveals that some agencies are standardizing the strategic plan option for banks, others have different interpretations of CRA-qualified lending definition, and in some instances, the regulators have exercised overarching control in the establishment of goals by bank. We respectfully request that all regulatory agencies (including the Federal Reserve) collaborate with bankers familiar with the strategic plan option to address the various unclear and inconsistent elements of the strategic plan method among the various agencies.

With regard to number 3, it would help to address the inconsistent treatment and speed of review and approval across agencies. Waiting more than 60 days to hear back from an agency on a strategic plan approval, and various cycle time delays from initial start to final approval, causes undue burden on our banks, and delays the community from benefiting from the good work of the financial institution as well. We recommend the agencies implement a maximum length of time for review and final approval**.** We would expect the agencies be prompt. With these new rules it will be critically important for some banks to operate with a strategic plan, and the timely review, collaboration and approval of a plan is imperative. Banks are busy executing their current plans and making best efforts to plan for the next plan period. Gaps in end dates from one plan to commencement of the next plan should be avoided at all costs

Regarding number 4, banks need increased clarity from regulators regarding interim plan modifications for approved plans. Occasionally after implementation of a plan, measurable goals may need to be adjusted based on economic conditions, changes in business strategy or market conditions. The current regulations provide for a plan amendment but due to the limited number of plans filed and almost near-zero amendments filed in the past, banks need better guidance on how to make minor adjustments vs. major adjustments that may require undergoing the public comment process a second time.

Finally, we feel it's appropriate to develop an escalation and ombudsperson process for banks to utilize for strategic plans that are unnecessarily delayed or subjectively rejected. For example, agencies that raise an institution's goals simply because they feel the bank needs to "do more" than the prior year's goal, and is not considering the performance context, should not have the final word.

We believe the strategic plan option is a critically important evaluation method for many banks with a nontraditional business model. As noted on the OCC's website in January 2020, this *"option provides a bank with the opportunity to tailor its CRA objectives to the needs of the community and to its own capacities, business strategies, and expertise. Therefore, not all of the factors described in the regulation necessarily apply to each strategic plan."* The UBA member banks welcome further collaboration with the regulatory agencies on how this option can not only be preserved in the new rules, but enhanced to allow our nontraditional and very small banks to thrive in their efforts to improve the lives of those in our communities that need our help the most.

Wholesale and Limited Purpose Banks

Some of our members are currently designated wholesale and limited purpose and strongly object to elimination of that category. They feel that best serves their needs, structure and CRA resources. This classification has worked well, and these banks see no justification for eliminating it. In support of retaining those categories they point out the following.

The legislative history of the Community Reinvestment Act ("CRA") reveals a few key points about the intent of Congress, including:

- To offer flexibility to implement and measure a bank's performance under the CRA.
- To advance a concept of "community" that can be flexible enough to permit the use of different criteria for institutions in different regional or national geographic areas or using different business models.
- To eliminate "red tape" and overburden of banks.

- To provide capital supporting housing and economic development, and not to direct the consumer lending activities of banks.

The Agencies (including the Board of Governors of the Federal Reserve System and the Office of Thrift Supervision) thoroughly considered the capacity of banks using a diversity of business models when they drafted the 1995 CRA Regulation. The narrative connected to that rule acknowledged the diversity of business models and the need for different ways to achieve CRA goals adapted to each bank's particular structure and product lines. In particular, the narrative noted how significantly banks that offered only narrow product lines (e.g. credit card or auto loans) and banks that didn't offer *any* retail products differed from other banks and how those differences affected the feasibility of CRA programs. There was a focus on the core intent of community reinvestment – i.e. community development through the provision of affordable housing and the creation of economic and community stability. There was careful consideration of measurement tools to ensure all banking institutions demonstrated reasonable efforts to meet the stated intent and purpose of the CRA.

Limited purpose banks focus on a narrow business line such as credit card or auto lending. Rather than offer loans through bank branches in designated geographies, these banks offer their credit products through third-party clients such as retailers, auto dealers, healthcare providers, manufacturers, etc., and over the internet (digitally). Consumer profiles (e.g. location of residence, household income, credit scores, etc.) mirror the channel in which the credit was offered rather than in designated neighborhoods or household income groups surrounding a local bank branch. Accordingly:

- Applying a retail distribution test to the bank based on geographic data or on borrower income levels when the selection of borrowers of consumer credit are controlled by a client or business model focus cannot adequately capture the CRA performance of limited purpose banks.
- Assigning assessment areas based on deposits that are gathered across the entire U.S. digital community does not necessarily match the credit distribution strategy of these unique business models. In fact, consumers who place deposits through a broker or listing service, or digitally over the internet do not necessarily need or want to obtain consumer credit from the same bank where they have placed their deposits, particularly if there are many financial institutions to choose from. This creates a disconnect between the deposit customer and the credit customer and makes evaluating CRA in deposit-based assessment areas troubling, at best. Yet as financial intermediaries, a limited purpose bank can focus on and offer community and economic development products in areas branch banks choose not to place an office, advancing the objectives of the CRA. Accordingly, the Proposal's general framework is ill suited to assess responsiveness to community credit needs.

Wholesale banks focus on non-retail banking. This may include serving institutional customers with custodial and trust activities, some of which is off balance sheet. Because of this focus wholesale banks may lack the infrastructure and balance sheet capacity to originate volumes of retail or community development loans, which are demanded in the Proposed Rules. As a result, wholesale banks may have more difficulty meeting the same numerator of the proposed CRA Evaluation Metric than more diversified retail banks. Further:

- Wholesale banks typically source their deposits largely from corporate and institutional clients in very large amounts, or from high net worth individuals. To the extent that the CRA intends to ensure that banks do not take deposits from LMI communities and fail to reinvest in those communities, wholesale banks do not present this concern. Accordingly, assigning metrics and assessment areas based on factors unrelated to the business model is poorly conceived and cannot adequately evaluate CRA responsiveness to a community. Under the Proposal, the deposit base of a wholesale bank would create artificially large CRA obligations overall and in geographies where its corporate and institutional clients are headquartered, since the definition of "retail domestic deposit" would include deposits from these clients.

- Wholesale banks have a limited branch network, if any branches at all. Their offices are not generally conducting retail lending or retail consumer deposit-taking businesses. While CRA obligations are appropriate, metrics, penetration tests, and measurements common to the bank models offering retail products through branch networks creates an uneven playing field. In short, one set of measurements does not fit all banks.

These fundamental differences in business models have not changed since 1995 and they continue to justify the unique regulatory treatment of limited purpose or a wholesale ("LP/W") institutions. Because LP/W banks cannot be evaluated on a standard lending test, the agencies adopted the "community development test"[6] to evaluate LP/W institutions. That ensures that LP/W Institutions serve their communities and comply with the CRA while maintaining their unique business models. When they adopted the LP/W standards, the agencies said "[t]he final rule provides the necessary flexibility to assess the CRA performance of these institutions and does not require any institution to engage in proscribed activities."[7]

The Proposal will eliminate the regulatory treatment for LP/W institutions that has been in effect for 25 years without any explanation or justification or tangible benefit to the public. Presumably the agencies expect that the banks currently designated as LP/W would convert to a strategic plan. In reality, those banks prefer the LP/W designation. It provides greater flexibility to act on opportunities to provide community development benefits in the most beneficial ways at any point in time without having to amend a strategic plan.

The UBA represents banks using a wider variety of business models than perhaps any other state. Ten Utah banks that have sought and received designation from the Agencies and the Board as either a limited purpose or a wholesale institution. These ten banks serve not only the state of Utah but engage in making community development loans and qualifying investments throughout the U.S. and have consistently received satisfactory or outstanding CRA ratings. Perhaps this was overlooked due to the small number of these banks and the fact that they are mostly state nonmember banks regulated by the FDIC, not the OCC.

Our current LP/W members believe the complete elimination of today's CRA treatment of LP/W institutions, and the effects it would have on the business activities of LP/W institutions and their communities, offers none of the benefits envisioned in CRA modernization, does not resolve the issues of CRA hotspots or CRA deserts, is not a fair treatment of non-traditional and non-branching banks, and does not address other ongoing issues that the Agencies or community leaders have identified. Accordingly, we recommend retention of the LP/W designations and the community development test in a manner similar to the existing CRA Regulations in any final rule modernizing the implementation of the CRA.

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[6] *See* 12 C.F.R. § __.25.
[7] *Id.* at 22,161.

Conclusion

We appreciate the opportunity to submit these comments and hope you find them useful.

Sincerely,

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