capital for healthy
families & communities

February 16, 2021

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

Re: Community Reinvestment Act Advance Notice of Proposed Rulemaking
Docket No. R-1723 and RIN 7100-AF94

The Low Income Investment Fund (LIIF) is pleased to respond to the advance notice of proposed rulemaking (ANPR) on the Community Reinvestment Act (CRA) issued by the Board of Governors of the Federal Reserve System (Board).

LIIF is a certified Community Development Financial Institution (CDFI) with a mission to mobilize capital and partners to achieve opportunity, equity and well-being for people and communities. Since 1984, LIIF has deployed more than $2.8 billion to serve more than two million people in communities across the country from its five offices. An S&P-rated organization, LIIF innovates financial solutions that create more equitable outcomes for all by building affordable homes, quality educational opportunities from early childhood through higher education, health clinics, healthy food retail and community facilities. In 2020, LIIF refined its mission to focus on mobilizing capital by putting racial equity at the center of investments. As part of this new strategic direction, LIIF and Stewards of Affordable Housing for the Future (SAHF) entered into a joint venture with National Affordable Housing Trust (NAHT). We aligned this partnership around a shared commitment to housing equity, which encompasses building quality, safe affordable housing with an approach that centers resident voice and community choice to achieve our vision for more equitable, opportunity-rich communities. LIIF has offices in San Francisco, Los Angeles, New York City, Washington, D.C. and Atlanta.

CRA has motivated a substantial majority of the private sector capital that banks have made available to LIIF over our 37-year history. With support from banks, LIIF and our CDFI partners combine loans, grants and technical assistance to make possible high-impact projects in low-income communities that lack access to traditional bank financing because the transactions are perceived as too risky, costly or small. CRA has been transformational to the community development industry, encouraging successful public-private partnerships and elevating best practices in the delivery of critical community assets like affordable housing, community health centers, affordable grocery options, and much more.

As we submit these comments during a global pandemic that has disproportionately impacted low- and moderate-income (LMI) people and communities, and particularly communities of color, LIIF is focused on strengthening CRA's ability to mitigate inequities and promote the ongoing resilience of LMI people and places. As we discuss below, we are pleased that the Board has requested specific feedback on CRA's relation to race given that racial inequities continue to create barriers to fully creating or sustaining opportunity among LMI individuals and communities. We have experienced these challenges in our charter school financing efforts, which led us to develop and apply a racial

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equity screen in order to address inequities inherent in the existing system.[1] We are also striving to intentionally introduce greater racial equity into our affordable housing investments.[2] More recently we have been dismayed by the financial sector's treatment of the early care and education (ECE) sector. Many of these small business entrepreneurs are women of color, and the financial sector's failure to adequately support ECE providers during the current crisis has exacerbated decades of underinvestment.[3] Fortunately, CRA presents an opportunity to strengthen the connection between ECE providers and banks, as detailed in recent research from the Federal Reserve Bank of Minneapolis.[4]

LIIF is encouraged by the direction articulated in the ANPR and we are eager to offer feedback on many of the questions posed by the Board. We also take this opportunity to reiterate the importance of the three federal regulators coalescing around a joint rulemaking process. The fragmented approach over the last couple of years has caused unnecessary confusion, and we appreciate the Board's leadership on addressing this issue.

More detailed information is provided in our comments, as well as specific responses to questions posed in the ANPR. We highlight the following recommendations as LIIF's top priorities to reform the community development components of CRA:

- Proceed with the proposed Community Development Test and ensure appropriate guardrails are in place to incent ongoing investment in the full range of community development products and services—particularly community development equity investments.
- Enact the proposed provision that would offer CRA consideration for community development activities conducted with certified CDFIs anywhere nationwide.
- Explicitly encourage banks to improve outcomes for people and communities of color in order to fulfill their CRA obligations on the Community Development Test, including partnering with CDFIs who have developed specific products and services targeted to communities and borrowers of color.
- Collect and report comprehensive community development data—including community development loans, investments, and services—as well as overall CRA data disaggregated by race.

RACIAL EQUITY

QUESTION 2: *In considering how the CRA's history and purpose relate to the nation's current challenges, what modifications and approaches would strengthen CRA regulatory implementation in addressing ongoing systemic inequity in credit access for minority individuals and communities?*

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[1] Catherine Dun Rappaport, Olivia Rebenal, Alexis Dishman, Eliisa Frazier, Tsegaye Yilma Dessalegn, Hannah Taylor, Sybil I. St. Hilaire, Sooyoung Hwang, Molly Melloh, Khaliff Davis, and Brittany Bennett, *Learning to Change: Reflections of the CDFI Racial Equity Collaborative on Education*, October 2020, https://www.liifund.org/justgoodcapital/2020/10/12/reflections-of-the-cdfi-racial-equity-collaborative-on-education/

[2] Low Income Investment Fund, *Announcing Our Commitment to Drive $5 Billion to Advance Racial Equity*, September 2020, https://www.liifund.org/news/post/announcing-our-commitment-to-drive-5-billion-to-advance-racial-equity/

[3] Linda Smith and Manami Suenaga, *Child Care, Essential to Economic Recovery, Received Just $2.3 Billion in PPP Funds,* July 2020, https://bipartisanpolicy.org/blog/child-care-essential-to-economic-recovery-received-just-2-3-billion-in-ppp-funds/

[4] Rob Grunewald and Ben Horowitz, *How early care and education intersects with the CRA*, January 2021, https://www.minneapolisfed.org/article/2021/how-early-care-and-education-intersects-with-the-cra

As the Board notes in the ANPR, "Congress enacted the CRA in 1977 primarily to address economic challenges in predominantly minority urban neighborhoods that had suffered from decades of disinvestment and other inequities." Common among these forms of "disinvestment and other inequities" were racist redlining practices that disproportionately impacted Black households and have had lasting impacts on wealth and opportunity in Black communities. While directing billions of dollars into low-income neighborhoods and communities of color, CRA has not fully lived up to its intended purpose, largely because using income as a proxy for race is not sufficient to target institutionalized systems of racism.

Simply ending the practice of redlining is a necessary but insufficient step to fully address the "economic challenges in predominantly minority urban neighborhoods." Concerted efforts must be taken to undo the decades of lending discrimination that have compounded and contributed to the nation's current challenges. This will require a strong commitment from the federal regulators to affirmatively enforce equity within the sector.

LIIF is encouraged to see the Federal Reserve Board explicitly consider its role in updating CRA to address systemic inequity, specifically for people and communities of color. We offer the following recommendations in an effort to strengthen CRA's emphasis on addressing systemic inequity and advancing racial equity:

- **Provide CRA credit for banks that invest in CDFI products designed to directly address racial inequity**. Examples may include more flexible products that take steps to mitigate racialized perceptions of "risk" associated with borrowers of color; efforts that seek to remediate racialized disparities in application approvals and cost of capital; mixed-income housing developments with a focus on racial and income integration; diverse by design charter schools; and other products targeted specifically to people and communities of color and delivered through certified CDFIs.

- **Include racial demographic data in Performance Context** to explicitly require banks to consider measures of racial equity in their community development lending and investments and articulate efforts taken to improve outcomes for people or communities of color.

- **Enforce anti-discriminatory activity across all elements of CRA,** including avoiding arbitrarily excluding communities of color when banks designate assessment areas. This may also include incentives to invest in areas that meet certain criteria, like majority-minority census tracts, to explicitly support communities of color.

LIIF also encourages the federal banking regulators to work with the Treasury Department's CDFI Fund as it implements the new Minority Lending Institution definition created in the Consolidated Appropriations Act of 2021.

ASSESSMENT AREAS

The mismatch between where banks do business, where communities have the most needs, and where banks have assessment areas causes consistent challenges for our work. Most recently, we have been raising capital for a new initiative focused on Black-led affordable housing developers. The initiative's goals are to support Black affordable housing developers to build wealth, invest in developers that are representative and reflective of the communities we serve and support the growth of Black developers in the affordable housing field. We are seeking both debt capital and Low Income Housing Tax Credit Equity to advance this initiative.

While initially receiving eager excitement from one bank that issued a major national public commitment to advancing its impact on racial equity, this bank ultimately chose not to participate in the initiative after learning that none of the targeted communities fell within its CRA assessment areas. Even in a situation that offered the opportunity to partner on a highly-impactful and innovative product that was sure to be an eligible CRA activity—while *also* advancing a bank's commitment to racial equity—the power of CRA geography ultimately prevailed. Fortunately, the bank has acknowledged this conflict and is taking internal steps to review approval processes for funds that are focused on racial equity, but this will take time and we hope that in the future CRA regulations will be sufficiently flexible to avoid this challenge altogether.

LIIF's comments are informed by this example, which is simply the most recent in a long line of similar experiences LIIF and many of our partners face as a result of the current CRA regulations. We thank the Board for its efforts to modernize assessment areas and address the inefficiencies that too often impede progress on impactful community development opportunities.

QUESTION 8*: Should delineation of new deposit- or lending-based assessment areas apply 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?*

CRA is intended to require banks to serve LMI communities in areas where they engage in significant amounts of business, not simply in areas where the bank has a branch location. However, creating either new deposit-based or lending-based assessment areas may worsen the CRA hot spot issue by creating new concentrations of capital in larger metropolitan areas.

Instead of delineating new deposit- or lending-based assessment areas, we believe the Board should encourage the use of nationwide assessment areas for community development activities. This should apply to internet banks, wholesale and limited purpose banks, industrial loan companies, and large banks with substantial activity beyond their branch-based assessment areas. Banks will not be required to undertake community development activities outside of their assessment areas, but for those that do, full credit should be made available at the institution level.

We appreciate the proposal that more than 20 percent of a bank's deposits collected from outside of branch-based assessment areas would trigger a national assessment area. This may be the appropriate threshold, but we recommend looking at bank data from the past several years to understand what this threshold has looked like in practice. A lower threshold may be prudent to avoid perpetuating the hot spot issue.

For large banks with substantial activity beyond their branch-based assessment areas, the Board must also ensure community development activities considered at the institution level have sufficient weighting to incent bank participation in these broader geographies, while maintaining a primary focus on local communities through strong weighting at the assessment area level. Additional data may be necessary to make an informed decision. In question 85 we also provide support for a statewide metric that would consistently incorporate out of assessment area activity into a final rating in states where the bank has at least one facility-based assessment area.

The Board's approach to this question will likely set the rules for at least the next decade, so it is prudent to set CRA obligations in a manner that is consistent with the reality of bank business models and the expectation that trend towards branchless and internet-based banking continues to evolve. Deposits may be sourced from one area, but they are ultimately used to finance an array of activities in a wide range of places, and regulations should acknowledge this reality.

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?*

Consistent with our response to question 8, we believe nationwide assessment areas should apply to internet banks, wholesale and limited purpose banks, industrial loan companies, *and* branch-based banks with substantial activity beyond their branch-based assessment areas. We also reiterate that 20 percent of deposits from outside of branch-based assessment areas may be the appropriate threshold, but we recommend looking at bank data from the past several years to understand what this threshold has looked like in practice. A lower threshold may be prudent to avoid perpetuating the hot spot issue.

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?*

Consistent with our response to question 8, we recommend applying a national assessment area to evaluate internet bank community development activities. We recommend using total domestic deposits as the best measure for internet bank community development activity. This is the simplest measure of capacity and would create a consistent approach across banks.

We also support pairing this national flexibility with incentives for serving traditionally underbanked communities. The Board has already developed an initial list of designated areas of need, which could be the starting point for geographic specifications.

RETAIL TEST

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

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?*

We recommend retention of the $326 million threshold, with an automatic mechanism to adjust with aggregate national inflation over time. A $750 million or $1 billion threshold would exclude banks currently making a substantial number and volume of community loans and investments from evaluation going forward.[5]

Section VI: Retail Lending Subtest Definitions and Qualifying Activities

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[5] Adam Dettelbach, Josh Silver, and Bruce C. Mitchell, *Intermediate Small Banks: The Forgotten but Significant Resource for Affordable Housing and Community Development,* October 2017, https://ncrc.org/intermediate-smallbanks-forgotten-significant-resource-affordable-housing-community-development/

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?*

LIIF supports the Board's effort to limit the churning of mortgage loans for CRA credit, and suggest the Board provide CRA credit for the origination of the loan as well as credit upon sale into the secondary market. Any additional trading should not warrant CRA credit. We also support that the ANPR would include the purchase of mortgage loans under the Retail Test, rather than the Community Development Test, which is a recommendation we previously shared with the OCC.

COMMUNITY DEVELOPMENT TEST

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

QUESTION 42*: Should the Board combine community development loans and investments under one subtest? Would the proposed approach provide incentives for stronger and more effective community development financing?*

We support the proposal to combine community development loans and investments under one subtest as long as there are sufficient incentives and requirements to ensure a continuation of bank participation in community development equity investments.

Separating community development and retail activities is a sound policy decision given the distinct difference between these products and services. However, we echo a common industry concern that banks may favor community development debt products over community development equity products given that debt products have a lower cost of capital and are traditionally more attractive to lenders for a number of reasons. Ensuring robust community development equity investments must be a top priority in this new regulatory framework.

We support the Board setting a minimum threshold of a bank's total community development activities that must be in equity investments. The Board should consider prior levels of community development equity investments when creating this threshold. We also support additional incentives to encourage banks to do more equity investing than the minimum threshold. One example may be impact scores, which could include a measure of how responsive the bank's financing mix (e.g. debt, equity, services) is to local needs.

We also recommend that the Board commit to making data publicly available for stakeholder evaluation on the percentage and dollar amount of a bank's community development activities that are loans, investments and contributions. This data would be most effective if reported on an annual basis.

Finally, we stress the importance of considering both prior period community development activities as well as new originations. This approach would recognize the value of longer-term community development lending and investing while still prioritizing new activity.

QUESTION 43: *For large retail banks, should the Board use the ratio of dollars of community development financing activities to deposits to measure its level of community development financing activity relative to its capacity to lend and invest within an assessment area? Are there readily available alternative data sources that could measure a bank's capacity to finance community development?*

We support the use of deposits as the denominator of the community development financing ratio. Although we have previously expressed concern that a dollar-based metric will not appropriately measure impact and responsiveness, we believe these concerns will be tempered by the Board's comprehensive proposal for impact scores and other qualitative measures.

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?*

LIIF urges the Board to consider using assets as the appropriate measure of financial capacity for wholesale and limited purpose banks given that these banks do not have a large base of deposits.

We also echo the Affordable Housing Tax Credit Coalition's recommendation that the Board undertake an analysis of such banks' historic community development activities (both loans and investments) to establish peer comparators; and from this data, create thresholds for banks to achieve in order to receive Satisfactory or Outstanding ratings. This strategy would effectively harness banks' ability to manage risk and compete efficiently for high-quality business.

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?*

LIIF acknowledges the complexities associated with using local and national benchmarks in evaluating large bank community development financing performance, including the challenges articulated in the ANPR. We support the use of local and national benchmarks, but we remain unclear how these benchmarks will be applied or weighted in a final score. We also reiterate the concern noted in the ANPR that the benchmarks "could result in performance standards that are very low in some assessment areas and very high in others" as a result of existing hot spots and deserts. It is clear that implementing such a proposal will require a level of precision not yet possible given data and other information constraints. As a result, we recommend that the regulators first develop guidelines to assess large bank community development financing over a few years before implementing thresholds for the local and national benchmarks. We also recommend prioritizing the local 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?*

We strongly support using data as the basis for these thresholds and, as noted in question 45, we support the Board's proposed gradated approach to setting thresholds until more data permits a presumption of satisfactory approach. We recommend that the Board use this data to establish a minimum amount of community development required to achieve a Satisfactory or Outstanding rating, which will provide critical certainty about the amount of activity necessary to achieve a particular rating.

To ensure an emphasis is placed on local conditions, we recommend that the Board integrate performance context into the thresholds and calibrate the thresholds closely to the local benchmarks. Performance context serves as a proxy for need and opportunity in a particular community, rather than the benchmarks, which are simply a proxy for the level of activity that other banks have completed.

Finally, we recommend that the Board apply performance ranges with five ratings to the community development financing subtest such that banks are evaluated on the range of Outstanding, High

Satisfactory, Low Satisfactory, Needs to Improve, and Substantial Noncompliance. Performance ranges provide more incentive for banks to strive for higher ratings than simply a presumption of Satisfactory, and could also increase bank accountability to participate in more community development financing.

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?*

While we have remaining questions about how the impact scores would be operationalized and incorporated into a final rating, LIIF does support the ANPR's proposal to use impact scores. The Board's effort to quantify the subjective notion of "impact" is an incredibly important step in strengthening CRA regulations and we applaud the progress articulated in the ANPR.

We have spent a considerable amount of time contemplating the most productive implementation of impact scores, weighing the competing demands that impact scores should be both transparent and objective while also sufficiently flexible to account for local needs. We have ultimately come to the conclusion that impact scores can have the most value by quantifying the existing evaluation criteria of responsive, innovative, and complex.

- Responsive: the extent to which a bank's products are directly responsive to the local needs, as determined by performance context.
- Innovative: activities that involve flexible underwriting, or a program or product that may already be in the market but is new for that particular institution.
- Complex: degree of difficulty of the particular loan or investment. May also be considered complex if it is not routinely provided by the private sector.

We believe that these qualitative criteria have been an effective means of determining impact but could be improved if greater objectivity was attached to the definition of each concept.

LIIF recommends that the Board consider assigning an impact score between 1-3 for *each* of the three qualitative terms: responsive, innovative, and complex. This would ultimately create a 9-point scale, which allows for more gradations to capture the nuance of community impact. LIIF believes impact scores should be additive. The Board could consider incorporating the impact scores into the overall rating such that a score between 8-9 would be considered the most impactful, a score between 5-7 would reflect a secondary tier of impact, and an impact score below 5 would have a nominal effect on the bank's overall rating at that level (assessment area or institution, as applicable).

For example, a Low Income Housing Tax Credit (Housing Credit) transaction in a neighborhood with access to jobs but limited affordable housing or child care options could finance a child care center on site of the affordable housing development. This may result in a 3 on 'responsive to local needs' because lack of access to housing and child care are two common barriers to parents finding and keeping work. It may also receive a 3 on the 'complex' criteria because the co-location of child care with affordable housing has not yet become a common practice given a myriad of financing and other programmatic challenges. Finally, financing the physical space for the child care facility requires flexible underwriting due to child care centers often having thin operating margins, meaning the transaction may also receive a 3 on the 'innovative' criteria. As a result, this activity may warrant a 9 on the scale of impact, thereby corresponding to the most impactful rating in the overall qualitative evaluation for that particular assessment area.

We do not believe that any individual activity should automatically receive a particular impact score because this negates the importance of performance context and local needs. Further, measuring the impact of community development activities will always have some level of subjectivity and complexity due to the nature of this work. Relying too heavily on a quantitative or objective measure of impact treads closer to the fraught concept of multipliers. We recommend that the Board proceed with the expectation that some level of subjectivity is appropriate, and that providing greater clarity and transparency—as proposed in the 9-point scale above—is an improvement over the existing system.

We do request that the Board provide additional information as to how impact scores would be incorporated into the final rating structure. Rather than using impact scores to adjust a bank's rating when two potential scores are possible, the Board could consider opportunities to more deeply integrate impact scores into the primary evaluation framework. For example, as an incentive to go beyond Satisfactory-level activity, it may be valuable to specify that some minimum amount of total bank activity meet the highest level of impact in order to achieve an overall Outstanding rating. The Board may also consider assigning an impact score to the mix of activities that would capture how responsive the financing was to priority needs. For example, if performance context demonstrated a community needed community development equity investments more than community development lending, the Board may incorporate a percentage of its overall assessment of impact (such as 20%) to measure how responsive the financing mix was to priority needs.

In order for any evaluation of impact to be successful, LIIF strongly recommends that Federal Reserve economists and community affairs staff collaborate to develop a standardized method for developing performance context for metropolitan areas and rural counties. The current process in which banks set their own performance context is insufficiently rigorous and will impede the successful implementation of any proposals like impact scores that hinge on strong performance context criteria.

And because community development finance is incredibly complex, even when there are guidelines in place to quantify the notion of "impact," examiner training is incredibly important to ensure examiners have the requisite background to make appropriate subjective evaluations.

Section VIII: Community Development Test Qualifying Activities and Geographies

QUESTION 52: *Should the Board include for CRA consideration subsidized affordable housing, unsubsidized affordable housing, and housing with explicit pledges or other mechanisms to retain affordability in the definition of affordable housing? How should unsubsidized affordable housing be defined?*

LIIF supports the definition of affordable housing included in the ANPR, and we appreciate the Board's efforts to consider unsubsidized affordable housing. We support the National Association of Affordable Housing Lenders' recommendation that unsubsidized affordable rental housing, defined as rental housing not subject to tenant income restrictions, should receive favorable consideration as affordable housing if most (i.e. more than 50 percent) of the property's rents are affordable when the financing is committed and the property meets one of the following three additional standards:

1. The property is located in a LMI neighborhood (i.e., census tract).
2. Most renters in the neighborhood are LMI and most rents in the neighborhood are affordable.
3. The owner agrees to maintain affordability to LMI renters for the life of the financing.

Recognizing that maintaining affordability to LMI renters is our ultimate goal, LIIF offers the additional recommendation that banks should be eligible for additional credit, perhaps through impact scores, if the financing meets the third criteria or some similar commitment to retaining affordability.

Further, as noted in question 38, we suggest that the Board provide CRA credit for the origination of non-securitized home mortgage loans, as well as upon sale into the secondary market, but additional trading should not receive CRA credit.

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

LIIF supports the Board's proposal that both transit-oriented development and energy conservation be considered particularly responsive to affordable housing needs. LIIF has supported equitable TOD projects in major markets that have increased low-income people's access to employment opportunities and saved families money through reduced housing and transportation expenses. Further, as the climate crisis exacerbates inequities for LMI people and communities, investments in housing that is energy efficient will benefit both residents and the broader community.

LIIF also recommends that the Board consider specifying the preservation of existing affordable housing as an activity that is particularly responsive to affordable housing needs. A 2018 report that studied the looming preservation challenges in the Housing Credit program found that nearly 500,000 Housing Credit units will reach Year 30 between 2020 and 2029 and have no subsidies in place to extend their affordability. This accounts for nearly a quarter of all current Housing Credit units.[6] Further, the study found that a majority of units reaching Year 30 between 2020 and 2029 are located in low opportunity neighborhoods. Preserving these units as part of a comprehensive neighborhood revitalization strategy should be considered particularly responsive to the nation's looming affordable housing preservation challenges.

The Board may also consider the following as additional candidates for inclusion: equity investments, including those in both the Housing Credit and unsubsidized affordable housing; affordable housing that provides affirmative opportunities to desegregate racially excluded communities; affordable housing in conjunction with a concerted neighborhood stabilization or revitalization plan; affordable housing sponsored by nonprofit organizations; and affordable housing that also provides supportive services to vulnerable populations, such as the homeless, the disabled, and the elderly.

We recommend that activities deemed to be particularly responsive to affordable housing needs receive a correspondingly higher Impact Score, as discussed in question 47.

QUESTION 55: *Should the Board change how it currently provides pro rata consideration for unsubsidized and subsidized affordable housing? Should standards be different for subsidized versus unsubsidized affordable housing?*

Mixed-income housing developments are an important tool to increase affordable housing options for LMI people in higher opportunities communities, while also working to reduce neighborhood segregation. LIIF strongly supports incentives to invest in mixed-income housing. We are supportive of the Board's proposed approach to provide 50 percent consideration for buildings that meet a minimum of 20 percent of the total units set at rents affordable to LMI people. We believe this approach will incent greater investment in mixed-income housing while avoiding an inappropriate situation in which banks receive undue CRA consideration for financing market-rate housing.

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[6] Andrew Aurand, Dan Emmanuel, Keely Stater, and Kelly McElwain, *Balancing Priorities: Preservation and Neighborhood Opportunity in the Low-Income Housing Tax Credit Program Beyond Year 30*, October 2018, https://nlihc.org/sites/default/files/Balancing-Priorities.pdf

QUESTION 56: *How should the Board determine whether a community services activity is targeted to low- or moderate-income individuals? Should a geographic proxy be considered for all community services or should there be additional criteria? Could other proxies be used?*

LIIF supports the Board's suggestion that it could more specifically define the different categories of eligible community services activities, including child care which is a critical community amenity and should be explicitly noted as an eligible activity. We also support the use of geographic proxies to determine if an activity meets the "targeted to LMI individuals" standard, in addition to other criteria like federal subsidies. For child care programs, examples may include Head Start funding or subsidies through the Child Care Development Block Grant (CCDBG).

QUESTION 57: *What other options should the Board consider for revising the economic development definition to provide incentives for engaging in activity with smaller businesses and farms and/or minority-owned businesses.*

We are pleased to see the Board focus on revising the economic development definition to better encourage activities most supportive of small businesses. As the pandemic and ensuing government response have demonstrated, child care programs are some of the nation's smallest businesses and are often owned and operated by women, many of whom are women of color. These small businesses face systemic barriers to accessing financial support, and CRA has an important opportunity to explicitly support child care businesses through strong economic development regulations. LIIF recommends that the Board use impact scores and performance context to incent economic development activities that focus on the smallest businesses and minority-owned small businesses, like child care programs. We also note the importance of collecting data through Section 1071 for this reason.

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

LIIF does not support the Board providing credit for workforce development activities above the small business "size" test. Workforce development should be focused on the sectors most in need of support, like the child care industry, which is disproportionately comprised of women of color and is underpaid by an average of 31 percent of the U.S. median income.[7]

QUESTION 60: *Should the Board codify the types of activities that will be considered to help attract and retain existing and new residents and businesses? How should the Board ensure that these activities benefit LMI individuals and communities, as well as other underserved communities?*

LIIF supports codifying activities that help attract and retain existing and residents and businesses. In general, these activities should align with CRA eligibility both in terms of type of activity and income targeting. Examples might include a grocery store, pharmacy, fitness center, restaurant, or urgent medical care business even if it does not meet the small business test.

QUESTION 61: *What standards should the Board consider to define "essential community needs" and "essential community infrastructure," and should these standards be the same across all targeted geographies?*

LIIF believes the definition of "essential community needs" and "essential community infrastructure" should include a primary purpose of community development, as well as a primary benefit to LMI people.

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[7] Marcy Whitebook, Caitlin McLean, Lea J.E. Austin, and Bethany Edwards, *The Early Childhood Workforce Index 2018*, June 2018, https://cscce.berkeley.edu/early-childhood-workforce-2018-index/

We have previously shared a concern that large infrastructure projects may have minimal benefits for local communities and may crowd out more impactful activities given the size and availability of such infrastructure projects. We also recommend having some standard criteria and definitions across geographies, but note that the extent to which activities revitalize and stabilize LMI communities will be dependent on performance context.

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

LIIF appreciates the Board codifying these activities to provide greater clarity and consistency. We support the inclusion of disaster preparedness and climate resilience as a qualifying activity and, given that the climate crisis is a national emergency, we recommend that these activities qualify in all geographies as long as the benefits are primarily to LMI individuals. In certain targeted geographies, such as those most impacted by climate change, investments in disaster preparedness and climate resilience that have a primary LMI benefit could receive a higher impact score.

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 of 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?*

LIIF supports the proposal to provide credit at the institution level for investments in MDIs, women-owned financial institutions, and low-income credit unions that are outside of assessments areas. As noted below in question 67, we also recommend including certified CDFIs in this category. In question 85, we also articulate our support for a supplemental statewide community development financing metric to incorporate out-of-assessment area community development activities into a final rating.

We do have concerns about elevating a bank's performance from Satisfactory to Outstanding without specifying the amount of activity required to warrant that increase. As noted in question 89, we recommend that the Board provide greater clarity about the types and level of activities necessary to elevate a "satisfactory" rating to "outstanding."

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

LIIF strongly supports the Board's proposal to provide CRA consideration for activities completed in conjunction with a CDFI operating anywhere in the country. CDFIs are intermediaries specifically intended to provide products and services and cover geographic areas where banks do not operate. We provide smaller loans, take on additional risk, cover broader geographies, and serve segments of a community that banks cannot or do not reach. As the financial services system evolves and these gaps increase, CDFIs are growing increasingly important to reaching LMI people and communities in underserved markets. Rather than detracting from the emphasis on assessment areas, providing as-of-right credit for CDFIs whether inside or outside of an assessment area is additive to the community development sector. Currently, confining CDFI activity to bank assessment areas often results in unnecessary competition between banks and CDFIs. Instead, it is more prudent to apply CDFIs' flexibility to markets where banks are not working, while holding the bank accountable to adequately serving its assessment areas through the community development financing metric.

We recommend that the Board clarify what it means to work in conjunction with CDFIs, including but not limited to lending to or investing in the CDFI directly; lending into a fund sponsored and/or serviced by the CDFI; funding a CDFI's activities and supportive services, such as technical assistance; and more.

QUESTION 68: *Will the approach of considering activities in "eligible states and territories" and "eligible regions" provide greater certainty and clarity regarding the consideration of activities outside of assessment areas, while maintaining an emphasis on activities within assessment areas via the community development financing metric?*

We request additional guidance on community development activity in "eligible states and territories" and "eligible regions" because it is unclear how this relates to the Board's consideration of community development activities made at the state level but outside of assessment areas.

We also echo the Affordable Housing Tax Credit Coalition's recommendation that, in the next stage of rulemaking, the Board provide additional guidance on methodologies for providing banks credit for investing in Housing Credit funds (e.g., multi-state, regional or national funds) in which only a portion of the activities will necessarily lie within the banks' designated assessment areas. Currently, banks in multi-investor funds require side letters to ensure their investments in the fund are tied to projects in their specific assessment areas, which drives up transaction costs, artificially limits investor demand, and further exacerbates CRA pricing inefficiencies. To provide more certainty to banks, and to address the items above, the Board should consider allowing banks to count CRA credit for their investment in a larger geographic Housing Credit investment fund across their assessment areas that are within the geographic reach of the Fund. To prevent "double counting" banks would not be permitted to take credit in excess of the amount of their investment in a fund.

QUESTION 69: *Should the Board expand the geographic areas for community development activities to include designated areas of need? Should activities within designated areas of need that are also in a bank's assessment area(s) or eligible states and territories be considered particularly responsive?*

LIIF supports the Board designating areas of need on an annual basis in which banks could receive consideration for community development activities conducted outside of their assessment areas or eligible regions. This approach could result in sorely needed community development activity in areas of high need, which is both consistent with the law's statutory intent and an effective use of the nation's robust network of community development organizations. The Board could consider the addition of distressed and underserved nonmetropolitan middle-income geographies and Presidentially Declared Disaster Areas to the list of criteria.

We also recommend that the designated areas of need retain their designation long enough to plan for multi-year projects. For example, any designated areas of need identified at the start of a bank's assessment period should receive credit even if they are no longer a designated area of need at the end of the assessment period; the bank should *also* receive credit in any newly designated areas of need that may be selected during their assessment period.

QUESTION 71: *Would an illustrative, but non-exhaustive, list of CRA eligible activities provide greater clarity on activities that count for CRA purposes? How should such a list be developed and published, and how frequently should it be amended?*

LIIF supports the development of a public list of CRA eligible activities to increase the clarity and certainty for banks and other stakeholders to make informed investment decisions. We recommend that the Board make explicit those activities that they have approved in previous exams to provide other banks with greater clarity. The Board could also solicit annual input on the list of CRA eligible activities.

QUESTION 72: *Should a pre-approval process for community development activities focus on specific proposed transactions, or on more general categories of eligible activities? If more specific, what information should be provided about the transactions?*

We support a pre-approval process to provide guidance on transactions that may not fit neatly within definition of an eligible activity.

RATINGS

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?*

We support eliminating the distinction between full-scope and limited-scope assessment areas; we believe this change will increase the emphasis on smaller and more rural communities.

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

A bank should have at least a Satisfactory rating in a majority of the assessment areas within a state and for assessment areas comprising a majority of total assessment area deposits within the state.

QUESTIOB 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?

LIIF strongly opposes eliminating the distinction between "high" and "low" satisfactory ratings. Measuring the full range of performance within satisfactory is incredibly important in maintaining bank accountability.

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?*

The standardized approach articulated in the ANPR does increase transparency in developing assessment area conclusions. As noted above in question 47, we ask that the Board provide more information on the implementation of impact scores and how an impact rating would factor into the assessment area conclusion. In general, we do support examiners having discretion to adjust the weighting since incorporating performance context and qualitative elements is necessary to avoid a purely metrics-based evaluation.

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

The proposed approach is sufficiently transparent. As the Board collects additional data and conducts further analysis to set the associated thresholds and benchmarks described in the ANPR, we recommend that the Board consider how the proposed weighting (60% Retail Test, 40% Community Development Test) reflects historical levels of community development activity. Depending on this analysis, it may be prudent to increase the emphasis on the Community Development Test, perhaps to 50% of the overall rating, in order to ensure community development activity is at least maintained at current levels.

QUESTION 84: *Should the adjusted score approach be used to incorporate out-of-assessment area community development activities into state and institution ratings? What other options should the Board consider?*

We recommend that the Board consider a supplemental assessment area approach in states where the bank has at least one facility-based assessment area, similar to the statewide community development financing metric suggested in the ANPR. Rather than relying on an adjusted score approach to incorporate out-of-assessment area community development activities *after* determining a state or multistate MSA score, we recommend that all out-of-assessment area community development activities are rolled into one supplemental state assessment area that receives equal weighting to any other facility-based assessment area in the state. Consistent with our response to question 79, the Board should limit how high the state or MSA rating can be if the bank demonstrates a pattern of persistently weaker performance in multiple assessment areas. We believe this approach will increase transparency and consistency around out-of-assessment area community development activities while also providing an appropriate weight at the institution level.

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

LIIF supports the concept of a statewide community development financing metric to capture out-of-assessment area community development activities in states where the bank has at least one facility-based assessment area. We believe this will ensure out of assessment area activities are consistently and fully incorporated into a bank's final rating. As articulated in question 84, we recommend that all out-of-assessment area community development activities are rolled into one supplemental state assessment area that receives equal weighting to any other facility-based assessment area in the state. We do not support relying solely on an impact score to evaluate activities outside of assessment areas. This approach introduces too much subjectivity and uncertainty to incorporating out-of-assessment area community development activities such that banks may continue to express hesitation about committing to these communities. We do, however, support applying impact scores on top of a statewide community development financing metric.

However, we are concerned that using the total deposits from all of the bank's assessment areas in the state, as proposed in the ANPR, may be insufficient to incent meaningful levels of community development activities across the state. For example, if a bank has one assessment area in a state with some nominal level of deposits, that nominal level of deposits should not constrain the denominator of the statewide community development financing metric if the bank identifies additional community development opportunities across the state. This may be particularly burdensome for rural states where lower levels of assessment area deposits could severely constrain potential investments across the state. We recommend that the Board consider an alternative denominator for the statewide community development financing metric.

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 be contingent upon the bank at least falling within the "satisfactory" range of performance?*

As discussed in question 64, LIIF supports the ANPR's proposal that activities with MDIs, women-owned financial institutions, and low-income credit unions be eligible to increase a bank's rating from Satisfactory to Outstanding. It is important to precisely specify the type and amount of activity required to warrant this rating increase. We recommend that the Board review historical bank support for MDIs, women-owned financial institutions, and low-income credit unions to determine an appropriate level of activity that builds on existing investments and avoids potential ratings inflation.

DATA COLLECTION & REPORTING

QUESTION 91: *Is the certainty of accurate community development financing measures using bank collected retail deposits data a worthwhile tradeoff for the burden associated with collecting and reporting this data for all large banks with two or more assessment areas?*

Yes, LIIF believes the certainty of accurate community development financing measures is worth the potential reporting burden. Any potential reporting burden can be mitigated by phasing in the new requirements over a few years.

QUESTION 95: *Are the community development financing data points proposed for collection and reporting appropriate? Should others be considered?*

We support the proposed data points, which include the loan or investment amount (original or remaining on balance sheet), area(s) benefitted, community development purpose (e.g., affordable housing or economic development), and type of investments (e.g., equity investment or mortgage-backed security). We recommend also collecting information on the duration of financing provided. These data are a foundational step to creating a baseline understanding of community development activity.

In pursuit of advancing racial equity, we recommend that community development financing data also be disaggregated and reported by race, when feasible. For example, data on "area(s) benefitted" should include whether the community is majority-minority and other relevant demographic factors. Collecting and making this data publicly available is important to understanding racial disparities and developing solutions to target these inequities.

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?*

We support collecting community development data at the loan or investment level and reporting it at the county level or MSA level. When possible, we recommend that data is also reported at the census tract level. Collecting data with greater granularity is important to discerning patterns of inequity, such as racial disparities in communities of color.

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

One of the most consequential outcomes of the Board's CRA modernization effort would be ensuring full community development data is collected and reported annually. Decades of critical investments in community development activities have gone under-reported and un-analyzed, posing serious consequences for stakeholders' ability to analyze bank investment patterns and strengthen the system.

There is tremendous value in building a comprehensive dataset of community development investment activity; this information will allow stakeholders to better target resources to underserved communities and communities of color, as well as identify efficiencies that strengthen the sector. We believe it is feasible for banks to collect and report this data, and we posit that the widespread benefits—to communities, to overall safety and soundness, to the public, and to compliance with other banking laws—outweigh any short-term data collection or reporting burden. Further, given the fact that the vast majority of the community development proposals in the ANPR rely on improved data, the Board is unlikely to be able to proceed with the proposed framework in the absence of this baseline data.

Finally, LIIF would like to reiterate our appreciation for the tremendous work that went into developing this ANPR. CRA is an incredibly important law and the regulations enforcing it have the potential to strengthen the flow of capital into underserved communities. We are grateful for the opportunity to comment on the ANPR and we are eager to continue the conversation.

If you have any questions regarding these comments, please contact me at dnissenbaum@liifund.org or Olivia Barrow, Policy Manager, at obarrow@liifund.org.

Sincerely,

Daniel A. Nissenbaum
Chief Executive Officer
Low Income Investment Fund