COMMUNITY DEVELOPMENT BANKERS ASSOCIATION

October 23, 2017

The Honorable Kipp Kranbuhl
Deputy Assistant Secretary
Office of Small Business, Community Development & Housing Policy
US Department of the Treasury
1500 Pennsylvania Avenue NW
Washington, DC 20510

Dear Deputy Assistant Secretary Kranbuhl:

On behalf of the Community Development Bankers Association (CDBA) and National Bankers Association (NBA), we wish to thank you for the opportunity to meet on September 11, 2017 to discuss needed updates to the Community Reinvestment Act (CRA). As a follow up to the conversation, below are issues and recommendations that CDBA would like to advance for further consideration.

Background: CDBA is the national trade association of banks and thrifts with a primary mission of promoting community development. There are 137 banks and 86 bank holding companies with the Treasury's CDFI designation – which means at least 60% of total lending, services and other activities are targeted to Low and Moderate (LMI) communities. CDFI banks are distinct from traditional banks because they principally work in impoverished urban neighborhoods, and distressed rural and Native American communities.

The members of CDBA strongly support the purposes and objectives of CRA. Enacted into law 40 years ago -- with a last significant regulatory overhaul two decades ago – we are concerned that CRA is at risk of losing effectiveness for LMI communities. The financial services industry has radically changed in the last two decades, but CRA has not. We believe that the CRA can be a powerful tool to: (1) promote investment in LMI communities; and (2) support and expand the capacity of CDFI banks to serve underserved communities.

In enacting CRA, Congress stated that the purpose of CRA was to ensure that regulated financial institutions demonstrate that they "serve the convenience and needs of the communities in which they are chartered to do business." As such, these institutions have a "continuing and affirmative obligation to help meet the credit needs of the local communities in which they are chartered." While CRA has made great strides in ensuring access to credit in LMI communities and among minority and low-income borrowers, systemic economic and social challenges perpetuate to lack of access to fair services for many and allow predatory providers to thrive. Given growing economic inequity in urban, rural and Native American communities, it is important to get CRA reform right.

1. PROMOTE INVESTMENTS IN CDFIS

A. CRA SHOULD ENCOURAGE LARGE BANKS TO SUPPORT CDFIs

CRA places an affirmative obligation on regulated banks and thrifts to ensure LMI communities in service areas where the financial institutions collect deposits, have access to loans and financial services.

The historic focus of CRA has been, and should be, to ensure financial institutions are providing fair and adequate coverage within the geographies they are chartered to serve. The financial services industry, however, has radically changed since the last regulatory update 20 years ago. The decline in the number of locally based banks and the consolidation of banking assets by a small number of $100-plus billion money center banks has had profound effects on access to capital in LMI communities. As more credit decisions are made by geographically remote corporations and/or credit scoring models replace relationship banking, the ability of LMI communities and borrowers that “don’t fit the box” to obtain adequate access to loans is compromised. CRA is intended to ensure that LMI communities that are a source of bank deposits have fair access to credit from those institutions.

Locally based, mission-focused CDFI financial institutions are uniquely positioned to fill this void. They are highly effective in addressing the credit and service needs of LMI communities because they have deep roots in these markets and understand local needs. As such, they are ideal partners to enable money center banks to reach underserved LMI communities. Historically, however, the money center banks have provided little or no support to CDFI banks. CRA could and should play a valuable role in incenting money center banks to work with CDFI banks.

RECOMMENDATION:

- CRA regulations and guidance should explicitly encourage all banks to support CDFI banks. In the case of banks over $100 billion in total assets, CDBA recommends that CRA include an affirmative obligation to work with CDFIs banks as a complement to their local Assessment Area strategies. Providing banks with specific guidance (e.g. dollar amounts, targeting) on appropriate amount and types of CDFI support activities that will qualify for CRA purposes will help ensure the desired policy outcomes.

B. CRA SHOULD GIVE CDFIs EQUAL TREATMENT

Federal policy makers first formally recognized CDFIs 20+ years ago with the enactment of the CDFI Fund. For decades, CDFIs have consistently demonstrated strong performance in serving low-income markets. Yet, banking regulators do not recognize CDFIs under CRA in the same manner as Minority Depository Institutions (MDIs) and Low Income Credit Unions. Currently, any bank can get CRA consideration for providing financial or other support to an MDI or Low Income Credit Union – regardless of whether or not the entity is located within or serves a bank’s Assessment Area. By contrast, a bank providing similar support can only be assumed of getting CRA credit if the recipient CDFI is located in or substantially serving a bank’s designated Assessment Area.

Regulators have not historically recognized CDFIs because they were not explicitly cited in the 1977 CRA statute - which predated the 1994 CDFI Fund authorizing statute. We believe that the statute should be reinterpreted to include CDFIs because their work in targeting low income and underserved markets is substantially the same as the MDIs and Low Income Credit Unions. In fact, the CDFI standard for targeting service to low income communities is far more stringent than the requirements for MDIs and Low Income Credit Unions. For example, there are 156 MDIs – of which only 36 meet the CDFI standard of targeting at least 60% of their lending into low income communities (at 8/31/2017). In recent years, the National Credit Union Administration (NCUA) has significantly revised and relaxed the requirements for qualification as a Low Income Credit Union. Twenty years ago, less than 200 credit unions met this standard. Over the past few years, NCUA has amended the eligibility thresholds for Low Income Credit Unions and now fully one-third (2,000+) of all credit unions qualify. By contrast, only 326 credit unions (5.7% of the nation's 5,696 credit unions) meet the more stringent CDFI requirements.

RECOMMENDATION:

- CDBA strongly recommends that bank investments in CDFIs receive equal treatment under CRA as investments in MDIs and Low Income Credit Unions. We recommend that any revised CRA regulations and/or guidance explicitly state that investments in CDFIs and MDIs are eligible for CRA consideration.

C. CRA ENCOURAGE LONG TERM SUPPORT

The CRA exam cycle creates barriers for banks to invest in CDFI banks. Examiners give the most CRA credit to NEW transactions executed during an exam cycle – which are generally three years apart. For example, a bank can get CRA credit every three years for renewing the same loan to a CDFI loan fund that matures during an exam cycle. Yet, if a bank makes an equity investment in a CDFI bank that are typically held in portfolio over a longer period, they get little CRA credit beyond the original investment. Banks also report significant inconsistencies in treatment of older investment activities by examiner and across regulatory agencies. CDBA recommend that bank investors receive significant and consistent CRA credit throughout the life of the investment.

RECOMMENDATIONS:
CDBA strongly recommend that the CRA examination process be amended to encourage banks to provide long-term support:

- All banks should receive CRA consideration for supporting CDFIs regardless of whether such entity is located in and/or serves the bank's Assessment Area.
- Regulators should encourage banks to make long-term investments, loans and deposits to support CDFIs by giving instruments held in portfolio the same weight as new originations in an exam cycle.

2. ENHANCE POLICY COORDINATION AS A MEANS OF REDUCING CRA REGULATORY BURDEN

CDFI banks are unique within the banking industry because they have a primary mission of promoting community development and/or serving economic disenfranchised populations. They represent only 2% of the 5,787 FDIC insured banks in operation as of 6/30/2017. CDFI banks are among the smallest regulated banks in the United States. The average asset size of a CDFI bank is $341 million. The largest is $2.7 billion and the smallest is $27 million.

CDFI banks are subject to all of the same regulatory and reporting requirements as other banks. Banks with CDFI certification, however, have additional reporting requirements to the US Department of Treasury to maintain their CDFI status – regardless of whether or not they participate in the agency's programs.

Federal banking regulatory agencies implementing CRA and the Treasury Department's CDFI Fund are interested in the same outcomes – improving the economic well-being of LMI communities through access to responsible credit and financial services. Yet, these agencies have very different definitions and standards for CRA and CDFI certification. This lack of policy coordination results in multiple standards and voluminous double reporting that creates unnecessary administrative burden and siphons resources away from entities serving underserved communities. We propose that the agencies work to close the gap by developing common definitions and reporting standards, as well as sharing data.

RECOMMENDATIONS:

- CDBA strongly recommends greater policy coordination between the bank regulatory agencies' implementation of CRA and the Treasury's CDFI certification and reporting requirements with the goal of reducing overlap, tailoring reporting requirements to fit the CDFI bank business models, and making CRA more effective for these organizations.

A. ASSESSMENT AREA VERSUS TARGET MARKET TEST

One of the most prominent differences between CRA and CDFI certification are the definitions and methodology for determining areas qualifying as Assessment Areas and Target Markets.

<u>Assessment Areas</u>: For CRA purposes, a bank must designate a geographic area(s) as its Assessment Area(s) and demonstrate its effectiveness in serving such areas. Assessment Areas are tied to bank branch and ATM locations. Assessment Areas include census tracts that are (1) Low (less than 50% of area median income) and Moderate (50-80% area median income) Income; (2) a designated disaster area; or (3) distressed or underserved non-metropolitan middle income areas based on (a) poverty, unemployment, and population loss or population, or (b) population size, density and dispersion. Under CRA, banks provide documentation of lending and community development activities undertaken within their designated Assessment Areas. At least a majority of a bank's lending needs to be in its Assessment Area(s) to earn a "Satisfactory" rating. The evaluation, however, is subjective as community development activities must be considered within the context of a bank's overall activities, market, and other factors.

<u>CDFI Target Market</u>: To become a certified CDFI, a bank must demonstrate that at least 60% of its total activities (e.g. lending and financial services) meet the CDFI Fund's Target Market test. A Target Market can be an Investment Area or Target Population – or a combination of the two. Banks must report activities in ALL census tracts that it serves. An Investment Area can be comprised of census tracts meeting one or more of several criteria (i.e. 80% or less area median income, poverty rate of 20% or greater, unemployment rate of 1.5% times the national unemployment rate). A bank can serve multiple Investment Areas. A Target Population can be Low Income individuals (earning 80% or less of median family income) or Underserved Population (e.g. race, ethnicity, disabled). The vast majority of CDFI banks meet the Target Market test using the Investment Area designation. In 2016, the CDFI Fund launched a new annual certification report. To complete the report, CDFI banks need to geocode all loans and services within its entire service area every year.

<u>Differences</u>: The requirements of the CDFI Target Market and Assessment Areas -- while sharing similarities -- do not directly align. This circumstance creates additional compliance burden as CDFI banks must create separate sets of data and documentation for each. For most CDFI banks, their Assessment Areas are a subset of their total service area and their Investment Areas are larger than their Assessment Areas. Investment Areas do not need to correspond with branch and ATM locations. Yet, branches and ATMs are often present in significant portions of a bank's Investment Area(s) and lending and services are likely to be more concentrated around branches due to their ease-of-access for customers. CRA evaluations focus on activities proximate to a branch and ATM locations whereas the CDFI Target Market test looks at activities across a bank's entire service area. CDFI banks typically go above-and-beyond the requirements of CRA to meet community needs both within and outside their

Assessment Area. Yet, they are often frustrated that examiners do give adequate CRA consideration for activities outside of their Assessment Areas.

The CRA examination is more subjective whereas the CDFI Target Market test sets a strict numeric threshold. Given its subjectivity, most banks feel they need to collect substantially greater documentation for Assessment Area activities than data for a CDFI Target Market despite the fact that it is typically a smaller geographic area. Given the significantly greater costs for CRA compliance, CDFI banks are very reluctant to have examiners subject their entire Target Market service area to CRA evaluation.

RECOMMENDATION:
CDBA recommends that the Treasury, CDFI Fund and bank regulatory agencies work together to create a new CRA test for CDFI banks (discussed below) that reconcile the different geographic approaches for designating and reporting on community development activities.

CDFI BANK CRA TEST OPTION

In 2016, the CDFI Fund launched a new annual certification report that requires geocoding of all loans and services within a bank's entire footprint. The CDFI Fund considers activities across a bank's entire service area in making its certification compliance determination. Meanwhile, bank regulatory agencies have a very different set of CRA reporting and compliance requirements that measure lending and service in a more geographically limited Assessment Area.

All of the Federal agencies are essentially interested in the same outcomes – improving the economic well-being of LMI communities. Yet, the lack of policy coordination results in multiple standards and double reporting that is costly to manage and which reduces capital that could otherwise be deployed in LMI communities. This cost burden is particularly acute considering that CDFI banks are among the smallest institutions in the sector serving the most needy people and places.

Given the important public policy objectives that CDFI banks fulfill, CDBA recommends that the bank regulatory agencies and Treasury Department jointly design an alternative special CRA evaluation methodology option for CDFI banks that utilizes the same data used for CDFI certification. The regulatory agencies have previously recognized distinctions between different types of banks by creating alternative CRA evaluation methodologies (i.e. small bank, wholesale bank, strategic plan). Today, bank examiners do not distinguish or recognize the CDFI certification when it considers a CDFI bank's performance under CRA – despite the fact that CDFI banks dedicate a greater portion of their overall activities to the lowest income communities.

We believe more information sharing among Federal policy makers could reduce reporting overlap. For example, in early 2016, Treasury and the National Credit Union Administration (NCUA) announced an initiative to share data collected by the NCUA that can also be used for CDFI certification. Banking regulators and Treasury should initiate similar information-sharing efforts to reduce the combined burden of compliance for CRA and CDFI certification.

RECOMMENDATIONS:
CDBA recommends that Treasury, CDFI Fund, and the banking regulatory agencies create a special purpose CRA test tailored to the unique business models of CDFI banks with the goal of streamlining data collection, simplifying compliance and reporting, and supporting work in LMI communities. Such a test should:

(1) Maximize alignment of definitions used for CRA and CDFI certification, geographic service areas, program application, service tests, and reporting.
(2) Reduce reporting burden by streamlining and sharing data submitted by CDFI banks for Call Reports, CRA, HMDA, CDFI annual re-certification, and CDFI award compliance.
(3) Give consideration for all activities performed within Assessment Areas, Investment Areas and that benefit Low Income or Underserved Target Populations.
(4) Give extra credit for collecting social impact data and actively participate in CDFI Fund Programs or other Federal, state or local programs that offer tools to enhance service to their Target Market or to reach deeper to serve low-income people and communities.

3. OVERHAUL AND UPDATE CRA REGULATIONS

CRA is critical to the economic life blood of LMI communities. Yet, dramatic changes in the financial services industry are making current implementation outdated. We believe that the CRA can be a powerful tool to support disinvested communities, but we urge the Treasury Department and other bank regulatory agencies to update CRA lest it risk becoming functionally obsolete. The following are suggestions for updating the CRA regulatory framework:

A. NEW DELIVERY MECHANISMS/ CONVENIENCE AND NEEDS

CRA needs to be updated to reflect the movement toward mobile, internet and other digital delivery mechanisms and away from a sole focus on bricks-and-mortar branches. The CRA statute requires banks to serve the "convenience and needs" of the communities in which they are chartered to do business and have a "continuing and affirmative obligation to help meet the credit needs of the local communities in which they are chartered." As technology disrupts and unbinds financial service delivery to geography, regulators need to rethink its interpretation of the "convenience and needs" of the communities. CRA regulations should view services delivered via technology as a new form of a bank branch office.

Assessment Areas currently focus on census tracts in which a bank has a branch or ATM presence. Over the past 20 years, technology has radically changed how many consumer access financial services. While studies show some customers still prefer to go to a branch or ATM for services, online banking, mobile banking, debit cards, and other mediums are rapidly gaining popularity. Federal Reserve and FDIC research reveals un- and under-banked consumers are more likely than other demographics to access financial services through mobile devices, prepaid debit cards, or other nontraditional means.

RECOMMENDATIONS:

- CDBA recommends updating the Assessment Areas framework to reflect the evolution in the financial services sector. Specifically, we recommend that services delivered to LMI residents via mobile, online, or other digital technology be considered as part of a CRA evaluation.

A. FINANCIAL INCLUSION

Access to credit and financial service needs are critically important to the economies of physical places. Thus, CRA should continue to ensure LMI places have good access to such services. Given the rise of payday lenders and other predatory providers who target vulnerable people, CRA needs a complementary prong that focuses on financial inclusion.

Our nation needs both strong local communities and an inclusive financial service sector that is fair, serves everyone, and provides opportunity. A revised CRA that includes a focus on financial inclusion will need to recognize a broader range of alternative financial services and delivery mechanisms and develop proxies for measuring financial inclusion – particularly among vulnerable populations. This change will likely mean expanding the definition of CRA qualified activities to include an enhanced emphasis on consumer credit, credit building products, and financial literacy. In addition, this shift will necessitate development of new methods and proxies for measuring service to low income, unbanked, underbanked, rural communities with limited broadband, and other vulnerable populations. For example, several CDFI banks have launched technology-driven consumer products (i.e. debit cards, online small dollar loans) intended to provide un-banked and under-banked customers with access to responsible products. While the products are accessible and benefit customers that might otherwise not be served -- or fairly served -- if the customer lives outside of the bank's current Assessment Area, they may eventually detract from a bank's CRA performance if demand for the products grows. Regulatory agencies should encourage, not discourage, product innovation that promotes financial inclusion.

RECOMMENDATION:

- CDBA recommends that CRA be a tool for promoting financial inclusion among LMI populations, unbanked, underbanked and other vulnerable populations. As such, the definition of CRA qualified activities should be amended to include greater emphasis on consumer credit, credit building products, and financial literacy activities.

B. RURAL COMMUNITIES & LIMITED SCOPE EXAMS

Rural communities are underserved by large banks' CRA community development activities. The Housing Assistance Council, a rural housing advocacy organization, documented this trend in its 2015 report (http://www.ruralhome.org/sct-information/mn-hac-research/mn-rrr/1090-rrr-cra-in-rural-america). For large banks, nearly all rural assessment areas are considered limited scope and they typically have very few have CRA Community Development activities reported in their Performance Evaluations. As the CRA Officer for a large bank explained, large banks are motivated to conduct CRA community development activities in locations where they will count the most. Because most of the large banks' branches are clustered in metropolitan areas, those locations get the most attention, generally leaving very little to share with rural Assessment Areas.

RECOMMENDATION:

- Given the long standing declining economic trends and retraction of financial services in rural areas, CDBA recommends that regulators revisit the use of limited scope exams for the largest banks. Allowing the largest banks to satisfy their CRA obligations based only on activities in metropolitan areas only exacerbates the lack of access to capital and services to rural populations. In addition, as recommended above, more explicitly encouraging money center banks to support CDFIs serving distressed rural communities can also help address this challenge.

C. SPECIAL PURPOSE CHARTERS:

CRA allows a bank to apply to its primary federal regulator to be designated as a wholesale or a limited purpose bank. Such institutions are permitted to designate Assessment Areas only in places where they are headquartered despite the fact that they may serve customers nationally. Technology has only advanced this inequitable application of CRA and created a significant loophole for these institutions to avoid meaningful CRA obligations. Limited purpose, on-line and wholesale banks that principally make loans and take deposits outside of their branch locations, should have CRA obligations in the places where they do business. Such institutions should not be permitted to select Assessment Areas that are local and significantly smaller in scope than their real regional or national service areas. Investments in CDFIs should be explicitly CRA eligible to such institutions regardless of proximity to their Assessment Areas or service areas.

RECOMMENDATION:

- CDBA strongly recommends that limited purpose, on-line and wholesale banks that principally make loans and take deposits outside of their branch locations: (1) have CRA obligations in the places where they do business; and (2) investments in CDFIs should be CRA eligible to such institutions regardless of proximity to their Assessment Areas or service areas.

D. ELIGIBLE COMMUNITY DEVELOPMENT ACTIVITIES

The CRA regulations outline the types of activities that are considered "Community Development" activities. Over the past two decades, there has been a growing understanding of the role of the environment and health of LMI communities in contributing to underlying causes of poverty and economic inequity within the community development finance field. In addition, Executive Order 12898 (issued February 11, 1994) requires all Federal Agencies to make Environmental Justice a part of their mission. The order states that *"[a]gencies are to identify and address disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority and low-income populations."* Since this 1994 order and the last significant update to CRA, the Environmental Protection Agency (EPA) has conducted or supported numerous studies and analysis that document that *"sources of environmental hazards often are located and concentrated in areas having majority populations of people of color, low-income residents, or indigenous peoples[i]"*

Community development practitioners directly observe how these hazards negatively impact economic vitality. For example, lack of access to healthy foods, concentration of sites with environmental contamination, and the harmful effect of lead paint on young children are disproportionately occur in LMI communities and affect the aforementioned populations. All of these factors influence the economic vitality of communities and should be considered as part of a community development strategy. The CRA regulations should be updated to recognize the growing understanding of the complex interrelationship between the environment and the economic outcomes of LMI communities.

RECOMMENDATION:

- CDBA recommends that lending, investment and service activities that promote environmental justice for the benefit of LMI communities and low-income and minority populations be added to the list of CRA eligible Community Development activities.

In closing, we wish to reiterate the strong support of the members of CDBA in the purposes and objectives of CRA. A strong and effectively implemented CRA is critically important to the LMI communities that our members serve. We thank you for the opportunity to discuss how CRA can be updated to better serve low-income people and communities.

---

[1] Environmental Justice Research Roadmap, Environmental Protection Agency, Office of Research and Development, 601/R-16/006, December 2016

We welcome the opportunity to continue this dialogue with the Treasury Department. Thank you for considering these important matters. Please contact Jeannine Jacokes at (202) 689-8935 ext. 222 or *jacokesj@pcgloanfund.org.*

Sincerely,

Jeannine S. Jacokes
Chief Executive Officer
On Behalf of the Membership of the Community Development Bankers Association

ABC Bank (IL)
Albina Community Bank (OR)
BankFirst Financial Services (MS)
Bank of Anguilla (MS)
Bank of Commerce (MS)
Bank of Kilmichael (MS)
Bank of Lake Village (AR)
Bank of Montgomery (LA)
Bank of Rio Vista (CA)
Bank of Vernon (AL)
Bank of Winona (MS)
BankPlus (MS)
Beneficial State Bank (CA)
Broadway Federal Bank (CA)
Carver Federal Savings Bank (NY)
Carver State Bank (GA)
Central Bank of Kansas City (MO)
Century Bank of the Ozarks (MO)
Citizens National Bank (MS)
City First Bank of D.C., N.A. (DC)
City National Bank of New Jersey (NJ)
Commercial Bank (MS)
Commercial Capital Bank (LA)
Community Bancshares of Mississippi (MS)
Community Bank of the Bay (CA)
Farmers & Merchants Bank (MS)
First American International Bank (NY)
First Eagle Bank (IL)
First Independence Bank (MI)
First National Bank & Trust (AL)
First Security Bank (MS)
First SouthWest Bank (CO)
FNBC Bank (AR)
Guaranty Bank and Trust Company (MS)
Illinois Service Federal (IL)

Industrial Bank (DC)

International Bank of Chicago (IL)
Legacy Bank and Trust (MO)
Mechanics and Farmers Bank (NC)
Merchants and Planters Bank (MS)
Metro Bank (KY)
Mission National Bank (CA)
Mission Valley Bank (CA)
Native American Bank, N.A. (CO)
Neighborhood National Bank (CA)
NOAH Bank (PA)
Northern Hancock Bank & Trust (WV)
OneUnited Bank (MA)
Pan American Bank (IL)
Peoples Bank (MS)
Planters Bank (MS)
PriorityOne Bank (MS)
Richland State Bank (LA)
RiverHills Bank (MS)
Security Federal Bank (SC)
Security State Bank (OK)
South Carolina Community Bank (SC)
Southern Bancorp, Inc. (AR)
Spring Bank (NY)
Start Community Bank (CT)
State Bank & Trust Company (MS)
Sunrise Banks (MN)
Sycamore Bank (MS)
The First, A National Banking Assoc. (MS)
The Jefferson Bank (MS)
United Bank (AL)
United Bank of Philadelphia (PA)
Urban Partnership Bank (IL)
Virginia Community Capital (VA)