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Reforming the Community Reinvestment Act Regulatory Framework

Comments by the National Disability Institute on Advanced Notice of Proposed Rulemaking (ANPR)

Agency: Office of the Comptroller of the Currency (OCC) "Docket ID OCC-2018-0008"

National Disability Institute (NDI), a 501(c)3 nonprofit corporation, is dedicated to inclusive communities and community development where people with disabilities have the same opportunities to achieve financial stability and security as people without disabilities. For the past 13 years, NDI has led the creation of new knowledge about financial behavior and banking status of individuals with disabilities and their families with the analysis of data collected by the FDIC, the US Census Bureau and the FINRA Investor Education Foundation. NDI reports have brought into focus the challenges of this economically vulnerable population that, when compared to people without disabilities, is twice as likely to be living in poverty, twice as likely to use costly nonbank lending and twice as likely to be unbanked. As part of a new CRA regulatory framework, banks should be expected and encouraged to provide more lending, investment and financial services "where they are needed most" and to who needs them most to the intentional inclusion of LMI populations with disabilities.

With the publication of the Advanced Notice of Proposed Rulemaking (ANPR) (Docket ID OCC-2018-0008) by the Office of the Comptroller of the Currency (OCC), there is the opportunity for public comment to advance an updated framework to modernize the regulations that implement the Community Reinvestment Act of 1977 (CRA). An updated framework would help regulated financial institutions of all sizes (banks) more effectively serve the convenience and needs of their communities (physical locations and online) including low- and moderate-income (LMI) populations with and without disabilities.

Our public comments below will provide empirical evidence of the facts that people with disabilities make up a significant share of LMI neighborhoods, tend to be worse off than other LMI populations in their access and use of financial services and achievement of valued financial outcomes. NDI offers a multifaceted approach to defining community development activities and evaluation of bank performance more consistently to address the specific needs of people with disabilities. Unless the financial needs of people with disabilities are addressed intentionally as a focus of a modernized CRA framework, the target group will continue to be unintentionally excluded from the financial system and overlooked as a target of inclusive community development activities.

The following comments are in response to the specific sections below of the ANPR.

ANPR Section IV. Current CRA Regulatory Approach

C. Questions Regarding Current Regulatory Approach

1. Are the current CRA regulations clear and easy to understand?
2. Are the current CRA regulations applied consistently?
3. Is the current CRA rating system objective, fair, and transparent?
4. Two goals of the CRA are to help banks effectively serve the convenience and needs of their entire communities and to encourage banks to lend, invest, and provide services to LMI neighborhoods. Does the current regulatory framework support these goals in light of how banks and consumers now engage in the business of banking?
5. With the statutory purpose of the CRA in mind, what aspects of the current regulatory framework are most successful in achieving that purpose?
6. If the current regulatory framework is changed, what features and aspects of the current framework should be retained?

Since 1978 with the first publication of CRA regulations and subsequent amendments in 1995 and 2005 and interpretations of the CRA regulations, there has been an intentional and consistent focus on evaluation of a bank's record of meeting the credit needs of its entire community, including LMI neighborhoods. At the conclusion of CRA evaluation, a report is provided that is a public document that presents the regulatory agency's conclusions regarding a bank's overall performance for each assessment factor identified in CRA regulations (12 USC 2906(b)(i)(A).

Banks with different levels of assets have different levels of evaluation of CRA performance, which includes:

- The Lending Test, which includes an analysis of borrower characteristics including distribution to borrowers of all income levels and flexible lending practices;
- The Investment Test, which assesses the dollar amount, complexity and responsiveness of qualified community development assessments that benefit a bank's assessment areas;

- The Service Test, which examines the availability and effectiveness of retail banking services in the designated assessment areas.

All three tests have focused on the target audience of low- and moderate-income individuals and LMI communities traditionally underserved by the nation's financial system. In any changes to the current regulatory framework, it is essential that banks be held accountable for credit and financial services for LMI borrowers and communities traditionally underserved by financial institutions. Within this framework, it is essential, for the first time, to address the financial needs of LMI populations with specific attention to people with disabilities.

Since 1978, with the first publication of CRA regulations, subsequent amendments in 1995 and 2005, and more recent agency published interpretations of the CRA regulations, there has been no mention of people with disabilities as a part of LMI populations despite their disproportionately high poverty rate in all geographic areas nationwide. Without an awareness or explanation of the coverage of people with disabilities as a part of LMI populations, there is no evaluation of bank performance regarding discriminatory lending practices, review of availability and effectiveness of retail banking services to meet this specific population's needs or exploration of targeted community development investments that impact this specific audience.

Historical Perspective

It is important to understand the context of people with disabilities in America at the time the Community Reinvestment Act (CRA) was signed into law, some 40 years ago.

- Children with disabilities, based on a new federal law, were first allowed to attend their neighborhood schools, ending historical patterns of exclusion.
- Individuals who had committed no crime were incarcerated in state and regional institutions (totaled more than 400,000 individuals nationwide). There was no articulated or constitutionally-protected right to humane care and treatment.
- There was no discussion or expectation of community life and participation in the workforce or the financial mainstream.

Twenty-eight years ago, bipartisan support approved the Americans with Disabilities Act (ADA), signed by a Republican president, George Herbert Walker Bush. On July 26, 1990, President Bush, at the signing of the ADA, made this statement of intent:

> "Together, we must remove the physical barriers we have created and the social barriers that we have accepted. For ours will never truly be a prosperous nation, until all within it prosper."

Societal norms change over time. Today:

- Record numbers of students with disabilities are graduating high school and move on to higher education.
- For the past 27 months, Bureau of Labor statistics has consistently reported an increase in workforce participation for individuals with disabilities. Still, two-thirds of working-age adults are not participants in the labor force.
- With the passage of the Achieving A Better Life Experience Act (ABLE), some eight million individuals with disabilities and their families can establish an ABLE account through one of 40 state programs and, for the first time, become savers and investors in a choice of strategies to grow their contributions tax-free, without fear of losing eligibility for diverse public benefits, including healthcare, Supplemental Security Income (SSI) payments, housing and food assistance. It is expected that, over the next 10 years, assets under management will grow to more than $200 billion. However, less than one percent of eligible individuals and families have so far opened ABLE tax-advantaged savings accounts.

CRA modernization is long overdue for some 22 million working-age Americans with disabilities and one in five families with a member with a disability, including individuals over the age of 65.

It is important to understand the population of people with disabilities, their likelihood to be LMI and their significant economic challenges.

Who are people with disabilities?

The term "disability" describes a diverse group of individuals. A person's disability can be related to vision, hearing, movement, communication, cognition and/or psychosocial issues, and can range from mild to severe and be constant or episodic. A disability can occur at birth, old age or anytime in between. It can be congenital or can arise because of chronic illness, injury, malnutrition or aging.

Americans with disabilities are the largest minority group in the nation, comprising 13-20% of the U.S. population (40 to 57 million people). One in four families has a family member with a disability.

The diversity of types and severity of disability, age of onset, income and race have significant implications for developing strategies that promote financial inclusion. For example, a wheelchair user faces different access issues than someone who is blind. An individual born with a disability may have very different needs than one who acquires their disability later in life after they have been educated, gained experience in the workforce and accumulated assets. Low-income individuals may need a different suite of services than those with higher incomes. Individuals of color with disabilities may face negative stereotypes based upon either their disability or minority status, or both.

People with disabilities face significant barriers to financial stability. Low or unstable income and inadequate health insurance coverage complicate financial decisions. Individuals with disabilities often have a tenuous connection with the labor force because they tend to be employed in low-wage or temporary jobs that are less secure. They are often the "first fired and last hired" in times of economic downturn.

The nexus of race, poverty and disability creates additional barriers to financial stability for large segments of the disability community. Individuals belonging to one of these categories — or all three — are especially vulnerable to social stigma. Racism, classism, ableism and other forms of prejudice create barriers that result in social and economic marginalization for these groups. For these individuals, disability is only one of several stigmas they face.

Such marginalization creates challenges to developing financial capability. For example, the poverty rate for adults with disabilities is more than twice the rate of adults with no disability (27% compared with 12%). Nearly 40% of African Americans and 29% of Latinos with disabilities live in poverty.

People with disabilities are more likely than others to be LMI

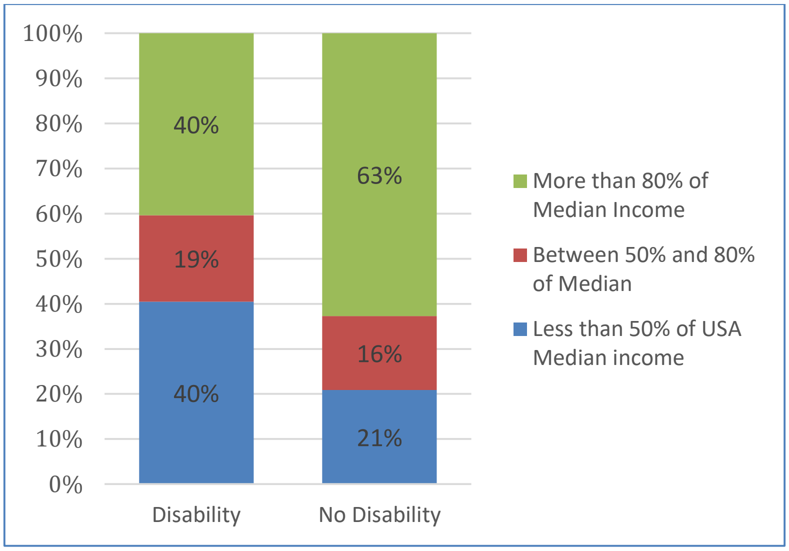
More than 60% of adults with disabilities are considered LMI (have household incomes less than 80% of the median household income). (Figure below)

Other data indicates that people with disabilities make up approximately 12% of the U.S. working-age population; however, they account for more than 40% of those living in long-term poverty.[1]

Income Distribution as a Percentage of USA Median Household Income,

by Disability Status

[1] She,P. and Livermore, G. (2009). Long-Term Poverty and Disability Among Working-Age Adults. *Journal of Disability Policy Studies.* (19)4:244-256.



The relationship between poverty and disability is well documented. **Disability causes poverty** by limiting employment possibilities and earnings. It also imposes additional costs on families, such as medical bills, transportation, modifications to their home and support from personal assistants. It also often reduces the labor force participation of other family members. At the same time, **poverty causes disability**. Children living in poverty are more likely to have conditions that lead to disability, such as asthma, chronic illness, lead poisoning, learning problems and low birth weight. People in more physically demanding low-income jobs are also more likely to suffer workplace illnesses and injuries. People in poverty are less able to treat disabling conditions and to mitigate their impact. Limited access to high quality medical care and early intervention may mean that a condition goes untreated longer, increasing the potential for more severe long-term effects. Inadequate educational opportunities also have long-term impacts including higher dropout rates from high school and college and limited reading and numeric literacy.

Selected Characteristics of Adults with Disabilities

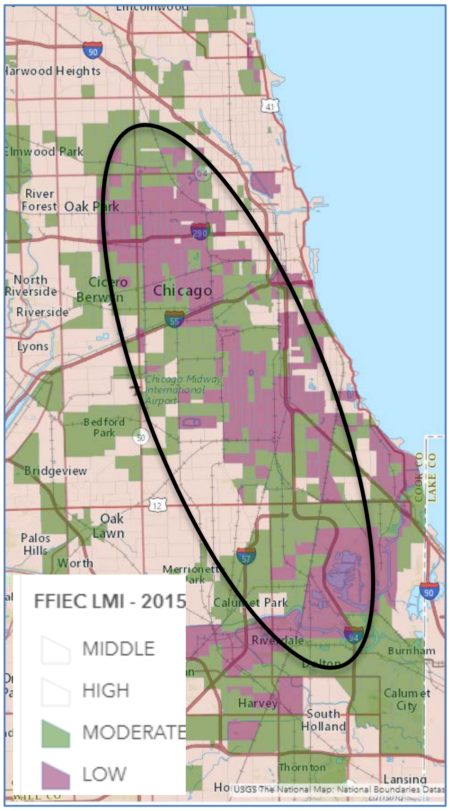
	With Disability Percentage (Number)	**No Disability Percentage**
Employment Status (working age 18-65)		
Employed	35% (7 million)	75%
Unemployed (actively looking for work)	5% (1 million)	5%
Not in Labor Force	61% (13 million)	20%
Educational Attainment (population over age 25)		
Less than high school graduate	24% (8 million)	11%

	With Disability Percentage (Number)	No Disability Percentage
High school graduate (includes equivalency)	34% (12 million)	26%
Some college or associate's degree	27% (9 million)	30%
Bachelor's degree or higher	15% (5 million)	33%

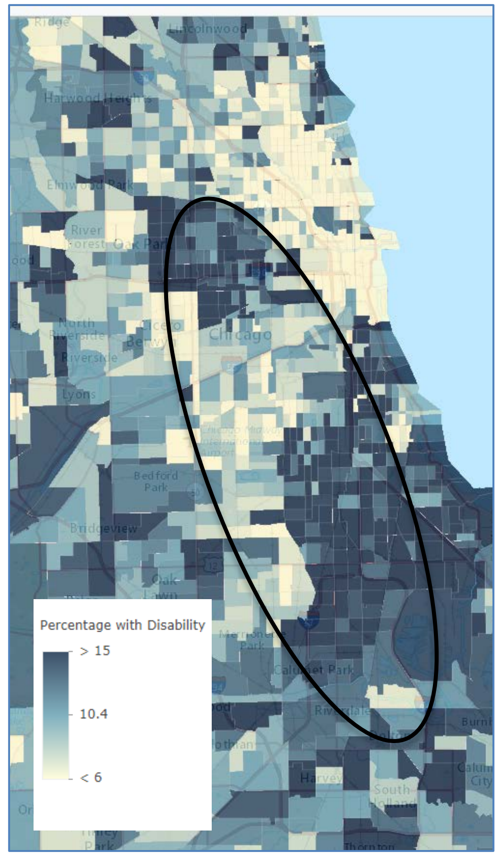
People with disabilities make up a sizable portion of residents of LMI neighborhoods

Because people with disabilities are more likely than those without disabilities to have low- or moderate-incomes, they make up a sizeable portion of the residents of LMI neighborhoods. Using the area in and around Chicago, IL as an example, Maps 1 and 2 show the LMI neighborhoods as defined by the Federal Financial Institutions Examination Council (FFIEC), compared to the prevalence of disability in those Census Tracts. LMI Census Tracts tend to have a higher density of people with disabilities.

Map 1: LMI neighborhoods in Chicago Area[2]



Map 2: Percentage with Disability[1]



Using examples from LMI areas in Chicago, the table below shows that working-age people with disabilites are often disporportionately represented in those neighborhoods. Based on data from the American Community Survey (ACS), adults with disabilities make up less than 11% of the population in the city of Chicago and the Chicago Metropolitan Statistical Area, yet they make up 12% to 17% of some LMI neighborhoods.

[2] Census Tract tables and boundaries, with CRA Income Category and Distressed/Underserved designation for use in CRA compliance and analysis. Developed by RPM Consulting and publicly available in ARCGIS.

Working-age Disability as a Percentage of LMI population in Selected High LMI Areas in Chicago[3]

Area	Working-age LMI Population	Percentage of Working-age LMI Population with Disabilities
Chicago City (South)-Auburn Gresham, Roseland, Chatham, Avalon Park & Burnside	36,292	17.2%
Chicago City (South)-South Shore, Hyde Park, Woodlawn, Grand Boulevard & Douglas	38,272	16.1%
Chicago City (West)-Austin, Belmont Cragin & Montclare	54,175	15.1%
Chicago City (South)-South Chicago, Pullman, West Pullman, East Side & South Deering	35,189	14.5%
Chicago City (West)-North & South Lawndale, Humboldt Park, East & West Garfield Park	66,567	13.5%
Chicago City (South)-Chicago Lawn, Englewood/West Englewood & Greater Grand Crossing	48,555	11.9%

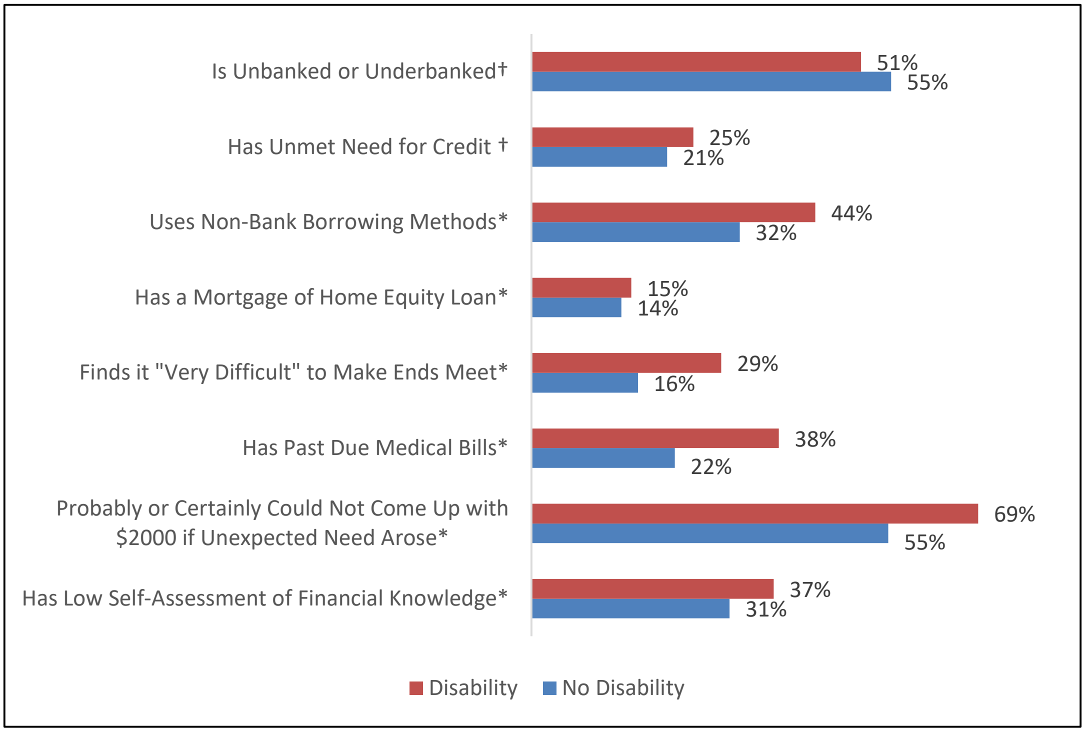
The LMI population with disabilities faces significant economic challenges

LMI populations often face significant economic challenges. For people with disabilities, these challenges are magnified by the extra costs associated with the disability (such as unreimbursed health care expenditures, extra costs of housing and transportation, and assistive technology) and more limited access to the labor market. In some cases, the disability of a family member affects the ability of other family members to work for pay. Compared to the LMI population without disabilities, those with disabilities are more likely to be unbanked or underbanked, have unmet needs for credit and have a greater tendency to use non-bank borrowing methods.[4] They are more likely to find it very difficult to make ends meet and would not be able to come up with $2,000 if an unexpected need arose (Figure below).

[3] For this analysis, we use the term "area" in reference to a Public Use Microdata Area (PUMA) as defined the US Census Bureau. https://www.census.gov/geo/reference/puma.html

[4] Because of data constraints, we cannot identify LMI populations in accordance with the CRA definition of household income less than 80% of the median in the relevant Metropolitan Statistical Area. Instead, we define it as household income of less than $35,000 for data from the FINRA Investor Education Foundation Survey and $30,000 of less for data from the FDIC Survey of Unbanked and Underbanked Households.

Indicators of Financial Inclusion and Financial Stress among Households with Incomes Less than $35,000, by Disability



Status

Sources: * FINRA Investor Education Foundation: National Financial Capability Study, 2015
† FDIC National Survey of Unbanked and Underbanked Households, 2015

Data is available to support CRA evaluation

NDI's research, conducted in cooperation with the FDIC and the FINRA Investor Education Foundation, has created a baseline previously unknown prior to 2014 regarding banking status, financial behavior and financial institution relationships of people with disabilities.

What is most relevant to the discussion today is that we now can empirically provide evidence of the disability being an important segment of the LMI population.

Banking Status

- 17.6% are unbanked compared to 6.5% of people without disabilities.
- 28% are underbanked as compared to 21% of people without disabilities.
- 9.6 million adults and 2.6 million children living in unbanked or underbanked households with a disability.
- Of those who previously had a banking account, about 30% expressed a positive interest in wanting to open a bank account in the future.

Type of Accounts Owned by Banked Households

- 54% have a checking and savings account, versus 80% of nondisabled peers.

Credit Constraints among Working-Age Adults with Disabilities

- 37% do not have a credit card, versus 20% of their nondisabled peers.
- 26% auto loan, versus 33% of their nondisabled peers.
- 29% mortgage or home equity loan, versus 39% of their nondisabled peers.
- 42% used one or more non-bank borrowing methods, versus 25% of their nondisabled peers.
- 22% has an unmet need for credit, versus 13% of their nondisabled peers.
- 55% are not able to come up with $2,000 in an emergency, versus 32% of their nondisabled peers.

Financial Stress Among People with Disabilities

- People with disabilities are almost three times (23% versus 9%) more likely to have extreme difficulty paying bills.
- People with disabilities are almost two times (46% versus 25%) more likely to skip medical treatments, because of cost.
- They are also more likely (55% versus 32%) to report that they could not come up with $2,000, if an unexpected need arose.
- People with disabilities are more likely to be late on mortgage payments (31% versus 14%), overdraw on checking accounts (31% versus 18%) and take loans from retirement accounts (23% versus 10%).

Medical Cost Issues

- 34% did not go to a doctor or clinic, because of cost, versus 18% of their nondisabled peers.
- 31% skipped a medical test, treatment or follow-up recommended by a doctor, because of the cost, versus 16% of their nondisabled peers.
- 29% did not fill a prescription or medicine, because of cost, versus 12% of their nondisabled peers.
- 46% had medical cost difficulty, versus 25% of their nondisabled peers.

Sources: *Financial Capability of Adults with Disabilities: Findings from the FINRA Investor Education Foundation National Financial Capability Study* and *Banking Status and Financial Behaviors of Adults with Disabilities: Findings from the 2015 FDIC National Survey of Unbanked and Underbanked Households*)

Unless their issues are intentionally addressed, people with disabilities will be unintentionally excluded from the financial system and be overlooked as a target of community development activities.

Financial institutions have not specifically targeted LMI populations with disabilities as part of investments in the development of workforce, technology infrastructure, affordable accessible housing or financial capability. As a result:

- Housing development for LMI often critically miss the unique challenges of providing housing that is both accessible and affordable.
- FinTech apps lack requirements to meet the accessibility needs of people with different types of functional limitations.
- Financial capability programs rarely have counselors trained to understand the complexities of making informed financial decisions based on the interrelationships between income, assets and limitations imposed by means-tested public benefits.

In a modernized CRA framework, regulators, financial institutions and potential community partners will have to be educated on the data sets[5] that provide empirical evidence that people with disabilities are being left out of the financial mainstream. These data sources will allow banks and regulators to identify areas with LMI populations with disabilities, in order to focus their investments, lending and services to be responsive to this target audience. Disability community partners will need to be educated about the purposes of CRA and opportunities for effective partnerships with financial institutions. Affordable housing developers, small businesses, Community Development Financial Institutions (CDFIs), community services targeted to low- or moderate-income individuals, financial education and counseling programs and workforce development programs will need to modify their frameworks to be more inclusive and responsive to the unique needs of LMI populations with disabilities.

Technological advances in the delivery of banking services are changing consumer behavior and preferences. NDI research findings on the financial behavior of people with disabilities reports that such access to FinTech and internet-based products and services are lagging behind, as a result of lack of access and affordability. CRA credit should be awarded to financial institutions that seek to close the digital divide and improve financial literacy for low- and

[5] Centers for Disease Control and Prevention. (2017) Population Surveys that Include the Standard Disability Questions. https://www.cdc.gov/ncbddd/disabilityandhealth/datasets.html

moderate-income individuals with and without disabilities, both within and outside their assessment areas. Without a focus on technology access and affordability, low-and moderate-income populations can fall further behind. For people with disabilities, FinTech access must also pay careful attention to information and communication technology (ICT) accessibility so that current and potential LMI customers have equal opportunity to use mainstream banking innovations.

ANPR Section V. A Modernized CRA

A. Revising or Transforming the Current Regulatory Approach

1. Revising the Current Performance Evaluation Method
2. Metric-Based Framework

    10. In a metric-based framework, additional weight could be given to certain categories of CRA-qualifying activities, such as activities in certain geographies, including LMI areas near bank branches; activities targeted to LMI borrowers; or activities that are particularly innovative, complex, or impactful on the bank's community. How could a metric-based framework most effectively apply different weighting to such categories of activities? For example, should a $1 loan product count as $1 in the aggregate, while a $1 CD equity investment count as $2 in the aggregate?

3. Redefining Communities and Assessment Areas

    13. How could the current approach to delineating assessment areas be updated to consider a bank's business operations, in addition to branches and deposit-taking ATMs, as well as more of the communities that banks serve, including where the bank has a concentration of deposits, lending, employees, depositors, or borrowers?

    14. Should bank activities in the LMI geographies surrounding branches and deposit-taking ATMs, or in other targeted geographic areas, be weighted (and if so, how), or should some other approach be taken to ensure that activities in those areas continue to receive appropriate focus from banks, such as requiring banks to have some minimum level of performance in the metropolitan statistical area (MSA) and non-MSA areas in which they have domestic branches before receiving credit for activity outside those areas?

In defining "community," it is essential for financial institutions to first meet the needs of LMI populations within their branch and deposit-taking ATM footprint. If a broader definition of community allows consideration of additional domestic geographies in which the bank engages in the business of banking, any metric-based framework must provide additional weight to the traditional geographic assessment areas with qualitative and quantitative review of CRA qualifying activities. Whether or not a metrics-based framework is adopted as part of a framework for CRA evaluation, the definition of "community" must specifically include the recognition that "LMI individuals" is inclusive of LMI individuals with disabilities to encourage banks to serve entire LMI communities.

Defining community more broadly outside the traditional physical footprint of a bank to include clear coverage of LMI populations could be another way to meet the unmet financial service needs of people with disabilities. Qualifying activities must be responsive to the affordability and accessibility of online services and FinTech products. Investment in closing the digital divide and improving digital financial literacy should specifically be of added, weighted value that helps mitigate the possibilities that LMI populations with and without disabilities are not left further behind. Particularly innovative and impactful activities that increase participation of LMI individuals with disabilities in mobile banking and access and use of FinTech products and services deserve additional consideration as part of a metric-based framework, if such an approach is to be adopted.

Any metric-based framework should involve extensive community group participation in the development, testing and refinement of metrics with qualifying activities complemented by community participation in the review process that includes all segments of the LMI community including LMI populations with disabilities. Such participation should include opportunity for written comments on bank performance on each metric that are shared with regulators. Of equal importance is the documentation of bank outreach efforts to engage community partners of all segments of LMI population.

ANPR Section V. B. Expanding CRA-Qualifying Activities

> *15. How should "community and economic development" be defined to better address community needs and to incentivize banks to lend, invest, and provide services that further the purposes of the CRA? For example, should certain categories of loans and investments be presumed to receive consideration, such as those that support projects, programs, or organizations with a mission, purpose, or intent of community or economic development; or, within such categories, only those that are defined as community or economic development by federal, state, local, or tribal governments?*

In the expansion of CRA qualifying activities, National Disability Institute supports the need for more clarity and certainty regarding which community development, small business, lending and retail service activities will receive CRA consideration. Such clarity and certainty must address not only the type of activities, but also the level of documentation required of banks to prove support of LMI individuals, including individuals with disabilities.

"Community and economic development" should be defined to offer additional incentives to banks to lend, invest and provide services that improve essential communitywide infrastructure and community services that revitalize or stabilize LMI geographies. "Community and economic development" should be defined also to target specific populations most in need such as LMI individuals with disabilities. Certain categories of loans and investments should be presumed to have additional value for CRA credit and performance evaluation if they support projects, programs or organizations with a mission, purpose or intent of community or economic development as defined by federal, state, local or tribal governments and provide identified benefits to LMI individuals such as those with disabilities as defined by the Americans with Disabilities Act 42USC§126.

> *16. Should there be specific standards for CD activities to receive consideration, such as requiring those activities to provide identified benefits to LMI individuals and small business borrowers or to lend to and invest in LMI communities or other areas or populations identified by federal, state, local, or tribal government as distressed or underserved, including designated major disaster areas (hereinafter referred to as "other identified areas" or "other identified populations")?*

For CD activities to receive additional credit as part of performance evaluation, the proposed activities should provide identified benefits to LMI individuals, including LMI individuals with disabilities who have historically been underserved in receiving benefit of CD activities such as affordable and accessible housing, small business and workforce development, financial education and counseling and consumer lending for assistive technology, home and vehicle modifications.

> *17. Are there certain categories of CD activities that should only receive consideration if they benefit specified underserved populations or areas, such as providing credit or technical assistance to small businesses or small farms; credit or financial services to LMI individuals or other identified populations (such as the disabled); or social services for LMI individuals or job creation, workforce development, internships, or apprentice programs for LMI individuals or other identified populations?*

Certain categories of CD activities should only receive consideration if they benefit LMI individuals or other identified populations such as individuals with disabilities. The data is available to identify concentration in geographic areas of both LMI and specific underserved populations with disabilities. Such CD activities as extending credit or financial education, counseling and other financial services responsive to the needs of underserved populations, including individuals with disabilities; job creation, workforce development, internships or apprentice programs for LMI individuals including individuals with disabilities as defined by the Americans with Disabilities Act 42USC§126; communitywide infrastructure development including broadband access, hardware and software to improve availability of mobile banking; and providing credit or technical assistance to small businesses or small farms with ownership by underserved populations, including individuals with disabilities, would all be examples of CD activities that should benefit underserved populations in distressed or underserved geographic areas.

> *19. How should financial education or literacy programs, including digital literacy, be considered?*

Mobile financial services and the internet have quickly become dominant channels for banking over physical locations. There are multiple barriers to full participation for LMI populations including individuals with disabilities. There are challenges of a technical level of access in terms of broadband access, because of location and/or cost. There are also challenges of financial and digital literacy in terms of a fully useable and functional experience. Community development activities should recognize the rapid evolution of financial services that embrace the need to improve access and accessibility and financial and digital literacy. CRA performance should provide incentives for banks to support infrastructure development that includes improved broadband access in addition to availability of affordable hardware, software and data plans.

Equally important as valued CD activities is the investment in financial education, coaching and counseling that support projects, programs or organizations with a mission, purpose or intent to expand financial education or literacy programs including digital literacy with underserved populations including individuals with disabilities. With the rapid expansion of FinTech tools and services, specific attention should be focused on incentives for banks to invest in accessibility and affordability of FinTech tools and services with projects, programs and organizations that seek to close the financial and digital divide for underserved populations with disabilities who have significant disparity in access to the internet and smart technology.[6]

Modernization of CRA should recognize that no underserved population including individuals with disabilities should be left behind in the transformation of strategies for greater financial inclusion from in-person branch banking to online real time access 24 hours a day, seven days a week.

> *22. Under what circumstances should consumer lending be considered as a CRA-qualifying activity? For example, should student, auto, credit card, or affordably priced small-dollar loans receive consideration? If so, what loan features or characteristics should be considered in deciding whether loans in these categories are CRA-qualifying?*

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[6] Pew Research Center (2017). Disabled American are less likely to use technology. http://www.pewresearch.org/fact-tank/2017/04/07/disabled-americans-are-less-likely-to-use-technology/

For LMI individuals with disabilities, access to credit remains a significant barrier. In the most recent 2017 report from FDIC that offers results of their National Survey of Unbanked and Underbanked Households, four in ten working-age disabled households (40.4 percent) had no mainstream credit, compared with 15.3 percent of working-age nondisabled households[7]. Small dollar loans have proven to be a positive way to improve credit history and make low and moderate income individuals, including those with disabilities, more credit worthy. The experience of the Pennsylvania Assistive Technology Foundation (PATF) documents the positive experiences of LMI individuals with disabilities utilizing small dollar loans to improve their credit score and be able to access needed assistive technology. PATF is one of only four CDFIs in the country that offer assistive technology loans in collaboration with bank partnerships. It is an example of a CRA qualifying activity that could be more widely replicated by other banks nationwide.

ANPR Section V. C. Recordkeeping and Reporting

> *29. Could the reporting of data gathered using a metric-based approach on a regular, periodic basis better support the tracking, monitoring, and comparison of CRA performance levels?*
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> *30. How frequently should banks report CRA activity data for the OCC to evaluate and report on CRA performance under a revised regulatory framework?*
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> *31. As required by law, and to the extent possible, the OCC attempts to minimize regulatory burden in its rulemakings consistent with the effective implementation of its statutory responsibilities. The OCC is committed to evaluating the economic impact of, and costs and benefits associated with, any changes that are proposed to the CRA regulations. Under the current regulatory framework, what are the annual costs, in dollars or staff hours, associated with CRA-related data collection, recordkeeping, and reporting?*

CRA-related data collection recordkeeping and reporting should support the tracking, monitoring and comparison of individual bank performance levels over time and a comparative analysis of banks in the same assessment areas. With the emergence of mobile banking and FinTech products and services, it is important that data collection, recordkeeping and reporting separate out CRA qualifying activities in the traditional physical footprint of neighborhood branches from larger geographic areas, where potential LMI customers are

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[7] 2017 FDIC National Survey of Unbanked and Underbanked Households http://www.economicinclusion.gov

reached through mobile banking and FinTech. If we are to learn the impact of CRA activity on LMI neighborhoods and specific populations, data must be disaggregated to document progress with investment, lending and services for LMI individuals with disabilities.

Such bank reporting should be made publicly available with opportunity for impacted communities to comment and for banks to be able to include their responses in writing as part of the record.

ANPR Section V. D. Additional Options or Approaches

> *The OCC invites other ideas and options for modernizing the CRA regulatory framework not identified in this ANPR.*

A Disability Framework for CRA Evaluation

Modernizing the CRA regulatory framework should address the needs of LMI individuals with disabilities. CRA modernization is long overdue for Americans with disabilities, who are at the bottom of the economic ladder, remain disproportionately unemployed and underbanked and continue to lack access to affordable and accessible financial products and services.

Neither the 1978 CRA nor any of the subsequent amendments or agency guidelines considered or discussed people with disabilities as a part of LMI populations despite their disproportionately high poverty rate in all geographic areas nationwide. This leads to two challenges:

- Because people with disabilities are not specifically mentioned in the regulation, there is no evaluation of bank performance regarding discriminatory lending practices, review of
- availability and effectiveness of retail banking services to meet this specific population's needs and exploration of community development investments that target this specific audience.
- Financial institutions are not encouraged to direct their community development, investment and lending to initiatives that directly service and can directly benefit this population.

The Office of the Comptroller of the Currency (OCC) has presented an opportunity to correct this omission. As stated by Comptroller Otting in testimony this year before House and Senate Committees, banks should be expected and encouraged to provide more lending, investment and financial services "where they are needed most" and to who needs them most.

Data about disability is available today to support CRA bank evaluations.

Disability is identified on most major national surveys including the American Community Survey, the National Health Interview Survey, the Current Population Survey, the Behavioral Risk Factor Surveillance Survey, the American Housing Survey, the FDIC Survey of Unbanked and Underbanked Households and a variety of non-governmental surveys such as the FINRA Investor Education Foundation Financial Capability Study. These surveys provide empirical evidence that people with disabilities are being left out of the financial mainstream. These data sources also allow banks and regulators to identify areas with LMI populations with disabilities in order to target their work and operationalize the proposed CRA evaluation criteria.

A CRA evaluation of bank performance that specifically addresses the financial needs of LMI populations with disabilities must recognize the awareness and knowledge gaps of regulators, banks and current and potential community partners. In addition to education and training about the disability population in LMI neighborhoods and identification and use of public data sets to document LMI disability populations in a bank's physical footprint, training and technical assistance will be needed to identify community partners who support this target audience. Development of a database of CRA qualifying activities that have been approved by bank regulators that respond to the community development and/or financial service needs of LMI individuals with disabilities would also benefit and accelerate adoption of CRA qualifying activities by banks of all sizes.

A part of a disability framework would require community outreach to disability-related nonprofit groups serving LMI individuals with disabilities and documentation of investment, lending and financial services that are responsive to identified needs.

As the performance context of a CRA exam seeks to provide baseline information about the institution, its community and its competitors, community needs should be required to include information on identified populations, including people with disabilities.

The performance context should equally examine the bank and the community perspective. When evaluating external factors, community needs should be taken into consideration with the examination of disaggregated data for specific LMI populations. Performance context should also include a focus on economic trends and documentation for which demographic groups are or are expected to have the most financial challenges.

CRA modernization should encourage community organizations to assess future needs and conditions - just like banks - and to share these analyses with banks and OCC/FDIC. “Community Contacts” should be subject to measurement, rather than only serving as cursory summaries within a CRA exam. Both banks and community groups should complete community need performance context analyses involving a diversity of perspectives including stakeholders from identified populations, such as people with disabilities.

The essential elements of a **disability framework to CRA modernization** should include nine parts:

1. Inclusion of LMI populations with disabilities in a definition of “community”, in terms of analysis of LMI neighborhoods, distressed areas and specific LMI populations.
2. Regulator published examples of CRA qualifying activities for banks that respond to the financial needs of LMI individuals with disabilities with products and services that are accessible and affordable and investment and lending that advances inclusive community development (affordable and accessible housing, workforce development, technology infrastructure and financial and digital literacy).
3. Reasonable standards to meet documentation requirements to prove inclusion of LMI individuals with disabilities in community development investment activities.
4. Required outreach to community groups in the disability community to be part of community need and performance context analysis.
5. CRA exam requirements that banks provide baseline information on investment, lending and financial services that are responsive to the LMI disability population in their geographic physical footprint and outside service areas.
6. Training and technical assistance be offered by regulators with national disability subject matter experts to increase awareness and knowledge about LMI individuals with disabilities, their inclusion in LMI neighborhoods, potential partnership opportunities with nonprofits focused on this population and examples of CRA qualifying activities and documentation needed.
7. Performance scores and future bank reporting establish quantitative and qualitative metrics to be measured and weighted to support this target audience.
8. There should be a CRA “inclusive community development” imperative. The inclusion of LMI individuals with disabilities must result in more than dedicated, disability-related lending, investment and financial service access and use. The OCC should integrate disability throughout the entire regulatory framework it intends to modernize such that banks

are most clearly recognized for their efforts when any initiative they support meets disability-related objectives. For example, a bank may provide an investment in a CDFI to support lending for affordable housing development. The bank and CDFI should also focus on the accessibility of a number of units beyond minimum federal standards. An investment in financial education and counseling should require outreach and partnerships with the disability community. Any new regulatory framework should make it clear to banks that a disability lens is going to be used to assess the full CRA-related worth of a given project.

9. To help banks achieve the best possible results for themselves in understanding and translating new knowledge about the LMI disability population and their financial needs to impactful investments, lending and services, they should be assisted with easy access to the best possible available data and analysis. At a national and a community level, expert and consumer input directly from the disability community should be encouraged and produce a value-added return for all parties.

Based on experiences with banks nationwide, there has been progress made over the past five years that helps define qualified CRA activities that benefit this economically vulnerable population. The list below is a starting point for further discussion at a national and community level to help define, educate and inform future qualifying CRA activities that support LMI neighborhoods and LMI people across the spectrum of disabilities.

Examples of Qualifying Inclusive CRA Activities

Community Development Activities

1. Support affordable and accessible housing for LMI individuals with disabilities including ownership and multi-family rental housing that is inclusive of individuals with and without disabilities.
2. Promote economic development of small businesses owned (wholly or shared ownership) by people with disabilities with access to capital for startup and/or growth.
3. Loans to businesses in an LMI area or nearby area that employ at least 7% people with disabilities.[8]
4. Fund infrastructure development to increase broadband access and computer hardware and software to improve technology use and literacy.

[8] In accordance with section 503 of the Rehabilitation Act requiring federal contractors to take affirmative action to recruit, hire, promote, and retain individuals with disabilities with a goal of employing 7% individuals with disabilities
https://www.dol.gov/ofccp/regs/compliance/section503.htm

5. Provide credit counseling and other financial capability services that can address the complexities of making informed financial decisions based on the interrelationship between income, assets and public benefits.

Qualified Investments

1. Investments in CDFIs and Community Development Banks to support assistive technology loans and/or home and vehicle modification loans for LMI populations with disabilities.
2. Investments in nonprofit organizations to help LMI populations with disabilities improve financial literacy, make informed decisions about debt and credit and offer financial education and coaching in one-to-one and group sessions.
3. Support workforce development programs that improve skills and enable LMI individuals with disabilities to work including apprenticeships, internships, certifications and on-the-job skills training.
4. Lending bank employees to provide voluntary financial services and strategic decision making to disability nonprofits to expand affordable and accessible housing, jobs and inclusive career development, and access to FinTech tools and services.
5. Investments in technology infrastructure and digital literacy to close the digital divide for improved access to FinTech products and services for LMI individuals with disabilities.

Qualified Lending

1. Direct small dollar loans to improve access to credit and credit scores.
2. Consumer loans for assistive technology purchases and home and vehicle modifications.
3. Local and state governments for community development activities that target underserved populations with disabilities.
4. Small business loans for entrepreneurs with disabilities.
5. Borrowers that construct or rehabilitate community facilities that are located in LMI geographies and cater to people with disabilities (i.e., Independent Living Centers, Assistive Technology Demonstration and/or Recycling Centers, Business Incubators that intentionally provide support for entrepreneurs with disabilities).

Conclusion

Vibrant communities are best supported when economic opportunities are all inclusive of LMI populations, including people with disabilities.

Twenty-eight years after the passage of the ADA and more than 40 years after the passage of the CRA, there has never been a more timely opportunity to relook at the approaches, roles and responsibilities of regulated financial institutions to proactively address the financial access and economic opportunity needs of people with disabilities.

CRA modernization will help financial institutions work cooperatively with the disability community to meet the intent of the Americans with Disabilities Act to "advance economic self-sufficiency, equality of opportunity and community participation" and the intent of the Community Reinvestment Act to meet the credit needs of low and moderate income neighborhoods and individuals, who have the most financial needs.

We support CRA modernization efforts that make performance reviews more consistent and objective, expand coverage to LMI individuals with disabilities to improve their access to affordable and accessible products and services and disaggregate data that enables comparisons of individual bank performance. Consumer participation should be strengthened by CRA modernization. Participation in identification of needs, review and comment on performance plans, design and implementation of inclusive community development activities and access to affordable and accessible financial products that increase trust and confidence in the mainstream banking system will ultimately improve the economy and help LMI neighborhoods prosper.

National Disability Institute welcomes the opportunity to provide further advice and guidance.