CRF USA

Capital for Communities – Opportunities for People℠

Community Reinvestment Fund, USA
801 Nicollet Mall, Suite 1700 West
Minneapolis, Minnesota 55402
800 475.3050/612 338.3050 tel
612 338.3236 fax www.crfusa.com

August 5, 2022

*Via Electronic Submission*

James P. Sheesley
Assistant Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

Re: Notice of Proposed Rulemaking on Community Reinvestment Act Regulations – RIN 3064-AF81

Dear Mr. Sheesley:

On behalf of Community Reinvestment Fund, USA, (CRF) I wish to share our comments on the Joint Notice of Proposed Rulemaking (NPR) regarding the Community Reinvestment Act (CRA) published in the *Federal Register* on June 3, 2022, by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency. The CRA is one of several landmark civil rights laws enacted to address systemic and on-going inequities in access to credit. This seminal statute was intended to combat the practice of redlining and ensure that banks are held accountable for serving the credit needs of *all* communities in which they are chartered to operate, including *low- and moderate-income neighborhoods.* More than 25 years have passed since major revisions were made to this groundbreaking legislation and the world has changed dramatically since that time. The draft NPR represents a major rulemaking effort by all three bank supervisory agencies after an unprecedented period of economic upheaval. This proposal was developed in a thoughtful manner with a focus on strengthening the regulations to assure that the needs of low- and moderate-income (LMI) individuals and communities are met. We commend the bank supervisory agencies for working together to produce stronger, modernized CRA framework that remains true to the original intent of the statute and applies to all depository institutions in this country. We appreciate the opportunity to offer our perspective on the proposed NPR which comes a critical juncture in the history of our nation.

## Background

Community Reinvestment Fund, USA, a national Community Development Financial Institution (CDFI), is a leader in channeling resources from the capital markets to support community economic development and helping mission-driven organizations improve efficiency and build capacity. Our mission is *to improve lives and strengthen communities through innovative financial solutions*. For the past 34 years we have worked with community partners, investors, foundations, and financial institutions to deliver over $3.44 billion in loans, investments, and bonds, resulting in the creation or preservation of 157,000 jobs, the financing of nearly 19,600 affordable housing units and funding for a wide range of community facilities. Since its inception, CRF has funded nearly 6,800 small business loans, more than 3,120 of which were made to businesses owned by women or people of color. CRF has deployed resources in more than 1,000 communities in 50 states and the District of Columbia and served more than 2.32 million people.

CRF is widely known as a financial innovator with expertise in adapting financing tools that connect underserved communities to new sources of capital. For example, we established the first secondary market for small business and affordable housing loans to supply liquidity to development finance agencies, CDFIs and other mission-driven lenders. We also pioneered the creation of securities collateralized by community development assets to offer mainstream institutional investors (banks, pension funds, and insurance companies) with a way to invest capital at scale in projects and businesses serving low-income people and revitalizing distressed communities. Since 1989, CRF has issued 19 series of Notes totaling $284.7 million backed by community development loans. Three of our debt offerings totaling $176 million have been rated and all included a senior tranche rated “AAA” by Standard & Poor’s. We have also issued three multifamily affordable housing securities, including one Standard & Poor’s rated issue totaling $84.9 million, backed by 45 multifamily affordable housing loans.

CRF actively engages in three federal programs which include the SBA’s 7(a) guaranteed loan program, the New Markets Tax Credit (NMTC) program and the CDFI Bond Guarantee Program (BGP).

- Since 2012, CRF has been one of 14 national non-depository 7(a) lenders. We focus our 7(a) lending activities on supporting business owners who are people of color, and other historically marginalized entrepreneurs, including women, veterans and those operating in low- and moderate-income (LMI) areas. To date we have made more than 580 loans totaling over $314.9 million creating or retaining nearly 13,400 jobs. Our SBA expertise and proprietary loan origination software enabled CRF to originate $700 million in Paycheck Protection Program Loans preserving 70,200 jobs. As a Preferred Lender in the SBA 7(a) program, CRF has been ranked among the top 7(a) lenders nationally. We also participated in an innovative recovery loan fund in Chicago originating over 1,700 loans for over $43.8 million which retained 6,475 jobs and created 3,144 new positions.

- Together with its affiliate, National New Markets Tax Credit Fund, Inc., (NNMTCF), CRF has received $919.5 million in tax credits all of which has been deployed in the form of flexible loans for both non-profit and for-profit operating businesses located in low-income communities across the country.

- In 2013, CRF was named the first Qualified Issuer (QI) for the CDFI Bond Guarantee Program. We have issued bonds in seven funding rounds and our total issuance since 2014 stands at $940 million on behalf of eight CDFIs.

GENERAL COMMENTS

CRF is pleased to support the draft NPR and the agencies’ overall approach to modernizing the CRA. A comprehensive update is long overdue for this pathbreaking law enacted to address systemic inequities in access to credit. The purpose of the CRA is to ensure federally insured banks help meet the credit needs of the communities they are chartered to serve, including LMI neighborhoods, in a safe and sound manner. We have reviewed the draft

NPR and wish to offer a number of general comments on the agencies' proposal before providing responses to specific questions raised by the agencies.

First, we wish to acknowledge and congratulate the agencies' staff for creating a unified approach to updating and strengthening the CRA. It is critical that all three agencies implement and administer the same set of regulations for this rule to be relevant and effective.

Second, the draft NPR provides a platform that will enable the agencies to successfully advance CRA's goal of building a robust and inclusive financial services industry in this country. Several aspects of the draft help to accomplish this goal. In particular, the proposal:

- Improves the evaluation of large bank engagement across geographies and activities by adopting a more comprehensive approach that captures the full range of lending and investing activities through the proposed Retail Lending and Community Development Financing Tests.

- Promotes greater financial inclusion by encouraging banks to engage in activities in conjunction with minority depository institutions (MDIs), women's owned depository-institutions (WDIs), low-income credit unions (LICUs), *as well as* Community Development Financial Institutions (CDFIs) certified by the U.S. Treasury Department. We are pleased to see CDFIs among the mission-driven lenders with which banks are encouraged to collaborate because of their ability and record of delivering credit and capital to LMI individuals and communities.

- Seeks to redress the pervasive lack of access to credit and investment in Native Land Areas and non-metropolitan areas by clarifying that activities in these areas *are* eligible for CRA consideration.

- Proposes impact review factors for community development activities in persistent poverty counties and for activities that support small businesses with annual revenues of $250,000 or less, elevating these activities in the CRA evaluation process.

- Recommends public disclosure of existing large bank Home Mortgage Disclosure Act (HMDA) data on mortgage originations and applications by borrowers' race and ethnicity in each of a bank's assessment areas. While increasing transparency of a bank's mortgage lending activities is certainly helpful, disclosure is *not* sufficient, and this change underscores a deep flaw in the draft NPR – the failure to address race in the CRA regulations. The agencies' efforts aimed at bolstering financial inclusion are well-intentioned but fall short of addressing the root causes of racial and ethnic discrimination in our financial system. Long-standing inequities in access to credit have become ingrained in lending and investing as a result of practices like redlining and *must* be directly confronted. To eradicate institutionalized and systemic discrimination in access to credit, the CRA regulations must ***name*** race as a major factor in restricting the free and equitable flow of credit to all those who wish to participate in our economy. Without equal access to credit untainted by racial or ethnic discrimination, the core purpose of the CRA cannot be fully realized. We wish to express our support for the comment letter submitted by the African American Alliance of CDFI CEOs and Pacific Community Ventures which eloquently makes the case for a "race-centered approach" to the CRA. We share their disappointment that the agencies did not take such an approach and hope this critical flaw will be remedied.

Third, the draft NPR adapts to changes in the banking industry, particularly the advent of online and mobile banking, by revising the approach to assessment areas. The proposed revisions take into consideration banks' activities outside their branch network while preserving the importance of branch-based assessment areas. The draft NPR also provides greater certainty related to community development financing activities conducted outside of facilities-based assessment areas (FBAAs) without sacrificing the expectation that banks must meet the credit needs of these assessment areas. As a national CDFI, CRF has requested clarification on this question on numerous occasions[1] and is encouraged to see the agencies have addressed this issue.

Fourth, the draft NPR brings greater clarity and consistency as to how the CRA regulations are applied to banks. The agencies propose to use standardized metrics along with an impact review to account for qualitative factors which will increase transparency and predictability to the CRA evaluation process for banks as well as community-based stakeholders. Similarly, the agencies' efforts to clarify eligible CRA activities benefitting LMI and non-metropolitan communities, such as provisions related to activities in Native Land Areas and rural communities, highlight the significant unmet credit and service needs in these areas. The addition of climate resiliency activities is especially encouraging given the environmental risks and the impending threat climate change poses to residents of LMI and communities of color.[2]

One proposed change included in the draft NPR concerns us. The agencies propose a tailored set of performance standards based on the asset size and business model of the bank along with the local conditions in the markets where it is operating. This is a reasonable approach however the updated asset size thresholds proposed will result in the reclassification of 778 Intermediate Small Banks as Small Banks under the new regime and would no longer be required to conduct or engage in community development financing activities.[3] As we discuss in our comments below, this loss of community development financing activities could negatively affect rural and/or smaller communities where these activities may have an outsized impact on the local economy. Not only would the activities be lost but so could

[1] Community Reinvestment Fund, USA comment letter on Community Reinvestment Act: Interagency Questions and Answers Regarding Community Reinvestment, May 14, 2013, pg. 2-3; Community Reinvestment Fund, USA comment letter on the Community Reinvestment Act Notice of Proposed Rulemaking, Docket ID OCC – 2018, pg. 12; Community Reinvestment Fund, USA comment letter to the Federal Reserve Board of Governors' Advance Notice of Proposed Rulemaking on modernizing the Community Reinvestment Act regulatory and supervisory framework, Docket No. R-1723 and RIN 7100-AF94, February 16, 2021, pg. 45.

[2] https://www.americanprogress.org/article/cra-meet-challenge-climate-change/; *A CRA to Meet the Challenge of Climate Change: Advancing the Fight Against Environmental Racism*, by Michela Zonta and Zoe Willingham, Center for American Progress, December 2020.

[3] Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, Treasury, "Joint notice of proposed rulemaking: Community Reinvestment Act Regulations," Federal Register, Vol. 87, No. 107, June 3, 2022, pg. 33924. https://www.govinfo.gov/content/pkg/FR-2022-06-03/pdf/2022-10111.pdf

the partnerships and collaboration between banks and community-based organizations. The agencies should not implement changes that would reduce the community reinvestment activities of existing Intermediate Small Banks.

Finally, CRF is supports the draft NPR's efforts to improve data collection, transparency, and public engagement in the CRA evaluation process. The proposed adoption of the Consumer Financial Protection Bureau's (CFPB) Section 1071 small business data once it becomes available is a positive development. This data set will be far more comprehensive and detailed than the current CRA small business data and most importantly, it will contain information on the race and ethnicity of small business owners applying for and receiving loans. The CFPB's Section 1071 data is yet another resource the agencies could use to incorporate race and ethnicity into a bank's CRA performance evaluation. Thus, while CRF is gratified that the draft NPR expands disclosure and emphasizes the importance of public engagement and community feedback as fundamental to the CRA evaluation framework, the next step the agencies need to take is to grapple with the question of race and how it continues to distort access to credit for people of color in our nation.

## RESPONSES TO SPECIFIC QUESTIONS

## COMMUNITY DEVELOPMENT DEFINITIONS

The agencies' proposal broadens the definition of community development activities that benefit LMI communities and individuals and therefore qualify for CRA consideration. CRF supports this broader definition of qualified or eligible activities and is especially heartened by clarifications related to disaster preparedness and climate resiliency, infrastructure for health care facilities as well as activities in persistent poverty counties and Native Land Areas.

We are concerned about several specific aspects of the agencies' proposal related to the expansion of financial literacy and education initiatives to include beneficiaries in all income groups and the requirement that banks collaborate or align with local government agencies and/or plans in their place-based CRA activities. Please see our responses to individual questions below.

### *Community Development Definitions and Qualifying Activities*

<u>Partial CRA Consideration</u>

*Question 1. Should the agencies consider partial consideration for any other community development activities (for example, financing broadband infrastructure, health care facilities, other essential infrastructure, and community facilities), or should partial consideration be limited to only affordable housing?*

*Question 2. If partial consideration is extended to other types of community development activities with a primary purpose of community development, should there be a minimum percentage of the activity that serves low- or moderate-income individuals or geographies or small businesses and small farms, such as 25 percent? If partial consideration is provided for certain types of activities considered to have a primary purpose of community* *development, should the agencies require a minimum percentage standard greater than 51 percent to receive full consideration, such as a threshold between 60 percent and 90 percent?*

The rules for awarding partial credit must be carefully crafted for CRA qualifying activities. The primary purpose standard, as proposed, would require a majority of dollars (or applicable beneficiaries or housing units) of the community development loan or investment to be dedicated to one or more of the categories of community development activities with an exception for activities that have a bona fide intention of community development. In addition to affordable housing activities, other essential infrastructure projects or activities (such as broadband, health care facilities or public transit, etc.) should be eligible to receive partial CRA credit where a minimum threshold of 30 percent of the activity serves LMI individuals, geographies, or small businesses/farms and only that portion of the project should receive consideration. For full CRA credit, activities should meet or exceed a much higher threshold of at least 60 percent or perhaps a higher threshold. This approach would prevent banks from financing large-scale projects to inflate their community development financing metric in the proposed Community Development Financing Test.

Affordable Housing

*Question 3. Is the proposed standard of government programs having a "stated purpose or bona fide intent" of providing affordable housing for low-or moderate-income (or, under the alternative discussed above, for low-, moderate-or middle-income) individuals appropriate, or is a different standard more appropriate for considering government programs that provide affordable housing? Should these activities be required to meet a specific affordability standard such as rents not exceeding 30 percent of 80 percent of median income? Should these activities be required to include verification that at least a majority of occupants of affordable units are low-or moderate-income individuals?*

We think the proposed standard of government programs having a "stated purpose or bona fide intent" of providing affordable housing for low-or moderate-income (or, under the alternative discussed above, for low-, moderate- or middle-income) individuals is appropriate.

*Question 4. In qualifying affordable rental housing activities in conjunction with a government program, should the agencies consider activities that provide affordable housing to middle-income individuals in high opportunity areas, in nonmetropolitan counties, or in other geographies?*

While we believe the proposed CRA rule should stay focused on low- and moderate- income areas, there is a need for workforce rental housing in high opportunity areas and non-metropolitan areas that is accessible to middle-income individuals. We urge the agencies to further explore and consider providing CRA consideration for affordable housing that serves individuals and families with a range of incomes.

*Question 5. Are there alternative ways to ensure that naturally occurring affordable housing activities are targeted to properties where rents remain affordable for low-and moderate-income individuals, including properties where a renovation is occurring?*

An alternative way to ensure that naturally occurring affordable housing activities are targeted to properties where rents remain affordable for LMI individuals (including properties under renovation) is to grant CRA consideration for bank activities that support nonprofits purchasing or owning the property. Generally speaking, nonprofits have a mission to keep rents affordable to LMI residents in the community.

Economic Development

*Question 11. Would lending to small businesses and small farms that may also support job creation, retention, and improvement for low- or moderate-income individuals and communities be sufficiently recognized through the analysis of small business and small farm loans and the qualitative review in the Retail Lending Test?*

In the NPR small business/farm loans would be evaluated under the Retail Lending Test rather than as a community development activity under the proposed definition of economic development. The agencies also propose to adopt the CFPB's definition under Section 1071 of the Dodd-Frank Act for small business/farm loans once the rule for this section is implemented. The CFPB defines a small business/farm as one with gross annual revenues of $5 million or less.

Evaluating small business/farm loans under the Retail Lending Test rather than as an economic development activity under the CRA removes the requirement for large banks to demonstrate that these loans create, retain, or improve opportunities (such as jobs) for LMI individuals and communities – something which can be difficult to document. This change would allow banks to receive CRA consideration for making loans larger than $1 million to small businesses or farms for new equipment or facilities that could support their growth without having to create or retain jobs as long the business' gross annual revenue is $5 million or less.[4]

However, it is not clear that small business/farm loans that do create and retain jobs for LMI individuals and communities would be sufficiently recognized since we found only one reference to a qualitative review which allows examiners to consider *additional factors* when determining a bank's Retail Lending Test conclusion.[5] The agencies should clarify that examiners may recognize the job creation/retention benefits of small business/farm loans for LMI individuals and communities through a qualitative review component of the Retail Lending Test.

The agencies should encourage examiners to utilize a methodology, such as the one we developed (described below), to assess and provide CRA consideration to banks that lend to small businesses creating or retaining quality jobs. CRF's mission is to *improve lives and strengthen communities through innovative financial solutions*. We

[4] Ibid, pg. 33899.
[5] Ibid, pgs. 33947-8.

achieve our mission and measure our impact by making loans to small businesses that assist LMI individuals and communities as well as women, people of color, LGBTQ+ individuals and veterans through the creation and/or preservation of quality jobs. CRF defines a quality job as one which pays at least a *living wage* (as defined by the MIT living wage calculator) and/or offers at least three benefits, including health insurance, dental insurance, a 401k plan or other retirement plan, sick leave, vacation leave, and disability. We also consider whether the small business offers training or other opportunities to assist employees with career advancement and if wages increase with experience and over time.

*Question 12. During a transition period, should the agencies continue to evaluate bank loans to small businesses and small farms as community development activities until these loans are assessed as reported loans under the proposed Retail Lending Test?*

Yes, the agencies should continue to evaluate bank loans to small businesses/farms as community development activities until they can be reported under the Retail Lending Test. This approach captures small business loans of $1 million or less and small farm loans of $500,000 or less based on Call Report data. For loans that exceed these dollar limits, the agencies should consider them as community development activities until Section 1071 data is available to be used on exams under the proposed Retail Lending Test.

*Question 13. Should the agencies retain a separate component for job creation, retention, and improvement for low- and moderate-income individuals under the economic development definition? If so, should activities conducted with businesses or farms of any size and that create or retain jobs for low- or moderate-income individuals be considered? Are there criteria that can be included to demonstrate that the primary purpose of an activity is job creation, retention, or improvement for low-or moderate-income individuals and that ensure activities are not qualified simply because they offer low wage jobs?*

The proposed definition of economic development does not retain a separate component for job creation, retention, and improvement for LMI individuals. However, it does specify that lending to, investing in, or providing services to SBDCs, SBICs, New Markets Venture Capital Companies, qualified Community Development Entities or USDA Rural Business Investment Companies (RBICs) would qualify as economic development and would not specify a gross annual revenue threshold of $5 million or less.[6] Thus, larger businesses with more than $5 million in gross annual revenues that create or retain jobs could receive financing under government programs through these entities.

As noted above in Question 11, CRF urges the agencies to retain a separate component for job creation, retention, and improvement for LMI individuals under the economic development definition or include such a component as part of the impact review in the Community Development Financing Test. We recommend that the agencies focus on creation and retention of quality jobs for LMI individuals and have described our approach for determining whether a

---

[6] Ibid, pg. 34019.

job meets our definition of a quality job in some detail. We would be pleased to provide additional information to the agencies' staff if that would be helpful.

CRF strongly supports the second prong of the economic development definition that focuses on activities with financial intermediaries (including CDFIs) that increase access to capital for businesses with gross annual revenues of $5 million or less. As a national, non-profit CDFI, our focus is on expanding access to affordable, appropriate capital and credit for historically underserved small businesses including those owned by women, people of color, veterans, LGBTQ+ individuals, and those located in rural areas.

CRF also supports including technical assistance to small businesses/farms with revenues under $5 million as an eligible community development activity. Certified CDFIs, like CRF, routinely provide technical assistance to enable their customers to utilize credit effectively to strengthen or grow their businesses. Credit coupled with technical assistance creates and retains jobs in LMI communities and rural areas.[7]

Community Supportive Services

CRF supports the agencies' proposed definition of community supportive services in § __.13(d) "…as general welfare activities that serve or assist low-or moderate-income individuals, such as childcare, education, workforce development and job training programs, health services, and housing services programs."[8] This definition provides more clarity and elevates the importance of these critical services. In addition, the agencies propose that the regulations incorporate standards to demonstrate that a community supportive service activity has a primary purpose of serving LMI individuals as verified by proxies such as the majority of the beneficiaries of such services receive free or reduced lunches or are Medicaid recipients.[9]

CRF also supports the agencies' proposal that an activity conducted in in conjunction with a qualified community development organization located in a low- or moderate-income census tract is a community supportive service given that these community-based organizations often serve the community where they are located.[10]

Finally, considering workforce development and job training activities aimed at LMI individuals as community supportive services allows for activities supporting larger businesses to receive CRA credit. This approach means the activity would no longer dependent on the size of the business nor would it be related to financing activities. The agencies should consider workforce development for people with disabilities in impact reviews in the community development financing and services tests.

[7] Ibid, pgs. 34019 -34020.
[8] Ibid, pg. 33901.
[9] Ibid, pg. 34020.
[10] Ibid, pg. 33901.

Place-Based Activities

The agencies propose to replace the revitalization and stabilization activities in the current rule with six new categories of activities to provide more clarity as to which activities qualify for CRA consideration as follows:

- revitalization;
- essential community facilities;
- essential community infrastructure;
- disaster preparedness and climate resiliency activities;
- qualifying activities in Native Land Areas.[11]

Each place-based activity must share four common elements:[12]

- benefit LMI census tracts and distressed or underserved nonmetropolitan middle-income census tracts;
- benefit residents, including LMI residents of the targeted areas;
- must not displace LMI residents;
- must be conducted in conjunction with a public sector program, plan, or initiative.

CRF supports the first three elements but is concerned about the requirement that place-based activities *must* be conducted in conjunction with a public sector program, plan, or initiative which we address in the Questions below.

*Question 14. Should any or all place-based definition activities be required to be conducted in conjunction with a government plan, program, or initiative and include an explicit focus of benefitting the targeted census tract(s)? If so, are there appropriate standards for plans, programs, or initiatives? Are there alternative options for determining whether place-based definition activities meet identified community needs?*

*Question 15. How should the proposals for place-based definitions focus on benefitting residents in targeted census tracts and also ensure that the activities benefit low-or moderate-income residents? How should considerations about whether an activity would displace or exclude low-or moderate-income residents be reflected in the proposed definitions?*

CRF has concerns about requiring all place-based activities to be conducted in conjunction with a government plan, program, or initiative. Not all local governments have the resources or capacity to develop and implement plans or programs. Restricting place-based activities to those communities or geographies that have such plans may discourage banks from engaging in valuable and otherwise needed qualifying community development activities. On the other hand, we applaud the agencies for encouraging collaboration between banks and local government agencies and urge them to consider place-based activities where public and private sector resources are combined as

[11] Ibid, pg. 33901.
[12] Ibid, pgs. 33901-33902.

a positive factor under the impact review for the community development tests. Banks should be able to strengthen their CRA performance through these activities, but collaboration should not be mandatory. If banks and local government agencies do collaborate in qualifying place-based activities, there should be clear targeting of specific geographies and LMI residents should benefit from these activities. Efforts should also be made to ensure LMI residents are not displaced by such activities.

*Question 17. Should the agencies consider additional requirements for essential community infrastructure projects and essential community facilities to ensure that activities include a benefit to low-or moderate-income residents in the communities served by these projects?*

As noted above in our response to Questions 1 & 2, activities qualifying for CRA consideration must meet the primary purpose standard under which the majority of the dollars benefit LMI individuals. To ensure this standard is met, the agencies should allocate partial credit for a large-scale essential community infrastructure project if the activity meets or exceeds a minimum threshold of serving LMI census tracts, residents, or small businesses/farms.

<u>Disaster Preparedness and Climate Resiliency Activities</u>

*Question 18. Should the agencies consider any additional criteria to ensure that recovery of disaster areas benefits low-or moderate-income individuals and communities?*

One option is for the agencies to provide additional CRA consideration for disaster recovery activities that specifically benefit LMI individuals and communities under the impact review for the community development financing test.

*Question 19. Does the disaster preparedness and climate resiliency definition appropriately define qualifying activities as those that assist individuals and communities to prepare for, adapt to, and withstand natural disasters, weather-related disasters, or climate-related risks? How should these activities be tailored to directly benefit low-or moderate-income communities and distressed or underserved nonmetropolitan middle-income areas? Are other criteria needed to ensure these activities benefit low-or moderate-income individuals and communities?*

CRF supports the addition of disaster preparedness and climate resiliency activities as a new category of place-based activity. It is important that these activities are separate from recovery activities in designated disaster areas. Climate change poses a clear and present danger to *all* communities, but the proposal correctly points to evidence that LMI communities and LMI households are especially vulnerable to the impact of natural disasters and climate-related risks due to their location, the nature of their housing stock and the lack of financial resources with which to recover from these events.[13] The agencies are to be commended for explicitly including activities related to helping LMI individuals, LMI communities, small businesses/farms prepare for disasters and/or build resilience to future climate-related events.[14]

---

[13] Ibid, pg. 33905.
[14] Ibid, pg. 33905.

The proposal provides useful examples of different types of activities that would qualify under this category of place-based activities and appropriately requires that these activities be targeted to LMI, distressed, and underserved nonmetropolitan middle-income census tracts to ensure LMI individuals benefit from them.

*Question 20. Should the agencies include activities that promote energy efficiency as a component of the disaster preparedness and climate resiliency definition? Or should these activities be considered under other definitions, such as affordable housing and community facilities?*

If the agencies choose to include energy efficiency activities as a component of the definition of disaster preparedness and climate resiliency, they should ensure that these activities are not double counted while capturing multiple benefits that these activities may generate through comprehensive data collection.

*Question 22. Should the agencies consider utility-scale projects, such as certain solar projects, that would benefit residents in targeted census tracts as part of a disaster preparedness and climate resiliency definition?*

Again, this question relates to the allocation of partial CRA consideration addressed in Question 1 & 2 above. If the solar project can be shown to specifically benefit LMI census tracts and their residents, then the agencies could consider utility-scale solar projects that contribute to climate resiliency.

*Question 24. Should the agencies qualify activities related to disaster preparedness and climate resiliency in designated disaster areas? If so, are there additional criteria needed to ensure that these activities benefit communities with the fewest resources to address the impacts of future disasters and climate-related risks?*

We concur with the agencies' decision not to consider disaster preparedness and climate resiliency activities in designated disaster areas in order to ensure these activities are directed to communities with more limited resources.[15]

Mission-Driven Financial Institutions

CRF is gratified to see the agencies propose that *all* activities with Treasury Department-certified CDFIs would qualify for CRA credit in the proposed NPR. We have advocated for placing Treasury-certified CDFIs on equal footing with MDIs, WDIs, and LICUs in several past comment letters[16] because these organizations are required to demonstrate they have a mission of promoting community development and provide financial products and services to LMI

[15] Ibid, pg. 33906.
[16] Community Reinvestment Fund, USA Comment Letter to the Office of the Comptroller of the Currency on the Advance Notice of Proposed Rulemaking: Community Reinvestment Act – Docket ID OCC–2018-008, November 19, 2018, pg. 21. Community Reinvestment Fund, USA Comment Letter to the Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation on Community Reinvestment Act, Joint Notice of Proposed Rulemaking – Docket ID OCC-2018-0008, March 20, 2020, pg. 10. Community Reinvestment Fund, USA Comment Letter to the Federal Reserve Board of Governors on the Advance Notice of Proposed Rulemaking - Docket No. R-1723 & RIN 7100-AF94, February 16, 2021, pgs. 6-7, 42-43, 45, 54-55.

individuals and communities.[17] In fact, CDFIs certified by the Treasury Department's CDFI Fund must direct *at least 60%* of their lending and investing activities to designated areas or markets comprised of LMI census tracts and/or populations lacking access to credit. In other words, CDFIs share the same mission and perform the same function as MDIs, WDIs and LICUs and they have demonstrated the ability and the expertise to meet the credit needs of LMI communities and individuals that banks often cannot reach.

Addressing the disparate treatment afforded Treasury-certified CDFIs vis a vis MDIs, WDIs, and LICUs, given that they serve virtually identical purposes, is a long overdue change and is critical to helping meet the continued challenges LMI individuals and communities face when trying to obtain credit. We learned during the pandemic that CDFIs deployed nearly $15 billion in Paycheck Protection loans to the hardest-to-reach small businesses[18] across the country because they were able to access new sources of capital that allowed them to expand their lending and investing activities and reach even more of those individuals and communities outside the mainstream economy.

This change will help CDFIs continue to partner with banks to make credit accessible in LMI communities across the country.

<u>Financial Literacy</u>

*Question 27. Should consideration of financial literacy activities expand to include activities that benefit individuals and families of all income levels, including low-and moderate-income, or should consideration be limited to activities that have a primary purpose of benefiting low-or moderate-income individuals or families?*

The agencies should <u>not</u> expand CRA consideration for financial literacy activities that benefit individuals and families of all income levels. The CRA was intended to focus on the communities and their residents that suffered as a result of redlining and discrimination. Financial education and literacy activities that receive CRA consideration should be directed to those individuals and communities that the statute and its regulation were intended to serve.

<u>Activities in Native Land Areas</u>

The agencies propose creating a definition for qualifying community development activities targeted to and conducted in Native Land Areas. Included in this new category are revitalization activities; essential community facilities; essential community infrastructure; and disaster preparedness and climate resiliency activities - all of which must occur in Native Land Areas. As with other place-based activities, these activities must benefit or serve residents, including LMI residents of Native Land Areas, without displacing or excluding LMI residents and they must be

---

[17] Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, Treasury, "Joint notice of proposed rulemaking: Community Reinvestment Act Regulations," Federal Register, Vol. 87, No. 107, June 3, 2022, pg. 33908. https://www.govinfo.gov/content/pkg/FR-2022-06-03/pdf/2022-10111.pdf
[18] https://www.fastcompany.com/90648212/these-community-banking-institutions-should-be-the-center-of-the-recovering-economy

conducted in conjunction with a Federal, state, local, or tribal government plan. Separately, the agencies are proposing that revitalization activities in Native Land Areas have a more specific focus on LMI individuals.[19]

CRF supports the establishment of this new category of place-based activities under the CRA rule. Native Land Areas have significant unmet credit and capital needs and have traditionally lacked access to CRA loans and investments due to the absence of bank branches and other physical facilities. Native residents of these areas experience much higher rates of poverty, substandard housing and lack basic infrastructure, such as broadband.[20] Defining Native Land Areas and providing a separate category of place-based activities will help to focus attention and encourage banks to provide loans and investments in these areas.

*Qualifying Activities Confirmation and Illustrative List of Activities*

*Question 32. What procedures should the agencies develop for accepting submissions and establishing a timeline for review?*

The agencies should develop procedures for accepting and reviewing submissions that provide an opportunity for public to comment. Updating the list of CRA qualified activities should give all stakeholders a chance to weigh in and provide feedback on this important list. These procedures should be clear and transparent to the public.

*Impact Review of Community Development Activities*

The agencies are proposing a specific set of factors known as “impact review factors” that would inform the evaluation of the impact and responsiveness of a bank’s activities under the proposed Community Development Financing Test, the Community Development Financing Test for Wholesale and Limited Purpose Banks, and the Community Development Services Test.

*Question 34. For the proposed impact review factors for activities serving geographic areas with high community development needs, should the agencies include persistent poverty counties, high poverty census tracts, or areas with low levels of community development financing? Should all geographic designations be included or some combination? What considerations should the agencies take in defining these categories and updating a list of geographies for these categories?*

The agencies should include persistent poverty counties, high poverty census tracts and areas with low levels of community development financing as all three of these geographic areas have significant need and would benefit from community development activities. The agencies propose definitions for the first two geographic area categories while

---

[19] Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, Treasury, “Joint notice of proposed rulemaking: Community Reinvestment Act Regulations,” Federal Register, Vol. 87, No. 107, June 3, 2022, pg. 33910. https://www.govinfo.gov/content/pkg/FR-2022-06-03/pdf/2022-10111.pdf
[20] Ibid, pg. 33909.

identifying areas with low levels of community development financing would require data collection and review. We support implementing the approach articulated in the NPR.

*Question 35. For the proposed factor focused on activities supporting MDIs, WDIs, LICUs, and Treasury Department-certified CDFIs, should the factor exclude placements of short-term deposits, and should any other activities be excluded? Should the criterion specifically emphasize equity investments, long-term debt financing, donations, and services, and should other activities be emphasized?*

As noted in the section on Mission Driven Financial Institutions, CRF commends the agencies for providing CRA consideration for activities involving Treasury Department-certified CDFIs in the proposed rule. We also strongly endorse including CDFI related activities as an impact factor under the community development tests. While all activities in which CDFIs are engaged should receive consideration, certain activities such as equity investments, long-term, low cost "patient" capital, and grants are particularly impactful and should receive greater consideration or weight than other types of activities. This would provide an incentive for banks to provide these forms of support that may have a greater impact on LMI individuals and LMI communities.

*Question 36. Which of the thresholds discussed would be appropriate to classify smaller businesses and farms for the impact review factor relating to community development activities that support smaller businesses and farms: the proposed standard of gross annual revenue of $250,000 or less, or an alternative gross annual revenue threshold of $100,000 or less, or $500,000 or less?*

We believe a threshold of gross annual revenue of $500,000 would be appropriate to classify smaller businesses and farms for the impact review factor related to extending community development loans. However, if banks are engaged in other community development activities, such as providing technical assistance, a threshold of $250,000 would be appropriate as firms this size may benefit from non-financial assistance from a bank.

*Question 38. For the proposed factor to designate activities benefitting or serving Native communities, should the factor be defined to include activities benefitting Native and tribal communities that are not located in Native Land Areas? If so, how should the agencies consider defining activities that benefit Native and tribal communities outside of Native Land Areas?*

Yes, the proposed factor to designate activities benefitting or serving Native communities should be defined to include activities benefitting Native and tribal communities that are not located in Native Land Areas.

*Assessment Areas and Community Development Activity Areas*

The agencies propose to update CRA assessment areas to evaluate retail lending performance in facility-based assessment areas (where a bank has branches and/or offices) for all banks, and in "retail lending assessment areas" for large banks in areas where they have no physical presence but have issued 100 home loans or 250 small business loans in each of the last two most recent years.[21] This updated approach emphasizes importance of branches in the CRA evaluation framework while acknowledging changes in the banking industry.

The agencies also propose to evaluate the community development performance of a large bank, wholesale or limited purpose bank, or an intermediate bank that elects evaluation under the Community Development Financing Test within each facility-based assessment area (FBAA), and to consider any additional qualifying activities that the banks elect to conduct outside of their FBAAs, referred to as to as "areas for eligible community development activity." [22] In other words, *all* community development qualifying activities would receive CRA consideration regardless of the geographies served.[23] This approach is intended to create additional flexibility for banks to conduct qualifying activities outside of FBAAs, while continuing to prioritize facility-based assessment area performance.[24] The agencies propose to consider qualifying community development activities outside of a bank's assessment areas at the state, multistate MSA, and institution levels to add certainty and to encourage qualifying activities in areas with high community development needs.[25]

CRF strongly supports the proposed approach to evaluating community development performance on a nationwide basis as it will allow qualifying activities conducted anywhere in the country to receive CRA consideration. We believe it will serve as a powerful incentive for banks to engage in activities in communities where they do not have a physical presence but where there are significant unmet credit needs.

*Question 45. The agencies' proposals for delineating retail lending assessment areas and evaluating remaining outside lending at the institution level for large banks are intended to meet the objectives of reflecting changes in banking over time while retaining a local focus to CRA evaluations. What alternative methods should the agencies consider for evaluating outside lending that would preserve a bank's obligation to meet the needs of its local communities?*

CRF is generally pleased with the agencies' proposal for delineating retail lending assessment areas (RLAAs) and evaluating any activities outside *all* assessment areas at the institution level. The agencies have struck a delicate balance between holding banks accountable to the local communities they serve while expanding consideration for qualifying activities that take place outside established assessment areas.

*Question 47. The agencies propose to give CRA consideration for community development financing activities that are outside of facility-based assessment areas. What alternative approaches would encourage banks that choose to do so to conduct effective community development activities outside of their facility-based assessment areas? For*

[21] Ibid, pg. 33919.
[22] Ibid, pg. 33921.
[23] Ibid, pg. 33922.
[24] Ibid, pg. 33922.
[25] Ibid, pg. 33916.

*example, should banks be required to delineate specific geographies where they will focus their outside facility-based assessment area community development financing activity?*

Please see our general comments at the beginning of this section on Assessment Areas and Community Development Activity Areas. If the agencies want to provide flexibility for banks to conduct qualifying community development activities in areas of greatest need, it seems counterproductive to require that they delineate specific geographies where they will focus their outside FBAA community development financing activity.

*Question 48. Should all banks have the option to have community development activities outside of facility-based assessment areas considered, including all intermediate banks, small banks, and banks that elect to be evaluated under a strategic plan?*

If the agencies wish to encourage additional community development activities, then it would be helpful to allow all banks to have the option to have their community development activities outside of FBAAs considered for CRA purposes. This approach could generate new partnerships and collaboration especially in small and rural communities where large banks may not be present.

*Performance Tests, Standards, and Ratings*

The agencies propose to evaluate large banks under four tests: a Retail Lending Test; a Retail Services and Products Test; a Community Development Financing Test; and a Community Development Services Test. In addition, a tailored Community Development Financing Test would apply for wholesale and limited purpose banks. The proposal would preserve the current lending test for small banks and the community development test for intermediate banks without significant changes.

*Question 49. The agencies' proposed approach to tailoring the performance tests that pertain to each bank category aims to appropriately balance the objectives of maintaining strong CRA obligations and recognizing differences in bank capacity. What adjustments to the proposed evaluation framework should be considered to better achieve this balance?*

CRF has concerns about the proposed changes to the asset threshold for bank categories which will be discussed below in Questions 50 & 51.

*Question 50. The proposed asset thresholds consider the associated burden related to new regulatory changes and their larger impact on smaller banks, and it balances this with their obligations to meet community credit needs. Are there other asset thresholds that should be considered that strike the appropriate balance of these objectives?*

*Question 51. Should the agencies adopt an asset threshold for small banks that differs from the SBA's size standards of $750 million for purposes of CRA regulations? Is the proposed asset threshold of $600 million appropriate?*

The agencies propose to reset the asset thresholds for banks of different sizes. They propose to raise the small asset bank threshold from $346 million to $600 million and to create a new intermediate bank category comprised of banks with at least $600 million to $2 billion in assets. Currently, Intermediate Small Banks (ISB) have assets ranging from $346 million to $1.384 billon. Under the proposal, large banks would be defined as banks with assets of at least $2 billion, which is higher than the current large bank threshold of $1.384 billion and is broken down into two subcategories - banks with assets of $10 billion or less and those with more than $10 billion.[26]

As a result of this proposal, 778 banks that are classified as ISB banks would be reclassified as small banks.[27] These banks would no longer have community development finance responsibilities, resulting in a loss of considerable amounts of community development activities. According to National Community Reinvestment Coalition (NCRC) this change could result in $1.214 billion less in community development financing on an annual basis based on a sample of CRA exams conducted in 2016).[28] In our view, raising the asset threshold for small banks will have a detrimental effect particularly on small and rural communities that benefit from the community development activities conducted by smaller banks. These smaller community banks have built valuable relationships, partnerships and collaborative initiatives that may disappear if they are no longer required to engage in community development financing activities. This aspect of the proposal is a step backwards that is not based on lack of capacity or burdensome requirements since the banks affected have been engaged in these activities without negative impacts. Thus, raising the asset thresholds, particularly for small banks is not aligned with the objectives articulated by the agencies in this proposal.

*Retail Lending Test Product Categories and Major Product Lines*

*Question 62. Should the agencies adopt a size standard for small business loans and small farm loans that differs from the SBA's size standards for purposes of the CRA? Is the proposed size standard of gross annual revenues of $5 million or less, which is consistent with the size standard proposed by the CFPB in its Section 1071 Rulemaking, appropriate? Should the CRA compliance date for updated "small business," "small business loan," "small farm," and "small farm loan" definitions be directly aligned with a future compliance date in the CFPB's Section 1071 Rulemaking, or should the agencies provide an additional year after the proposed updated CRA definitions become effective?*

We support the agencies proposal to adopt the small business size standard of gross annual revenues of $5 million or less which is consistent with the size standard proposed by the CFPB in its Section 1071 rulemaking. CRF welcomes the adoption of CFPB's Section 1071 database once it becomes available in place of the current CRA small business data as it will be more comprehensive and include the race and gender of the small business owner. Section 1071 information should be integrated into the CRA examination and make it easier for banks to report and collect small business data under a single rule. In addition, the Section 1071 definition of a small business improves upon the CRA

---

[26] Ibid, pg. 33924.
[27] Ibid, pg. 33924.
[28] Adam Dettelbach, Josh Silver, Bruce C. Mitchell, *Intermediate Small Banks: The Forgotten But Significant Resource For Affordable Housing And Community Development*, NCRC, November 2017, https://www.ncrc.org/intermediate-small-banks-forgotten-significant-resource-affordable-housing-community-development/

definition in that it defines a loan to a small business as one to a firm with revenues of $5 million or less unlike the CRA definition which defines a small business loan as a loan of $1 million or less. By relying on loan size the CRA definition allows loans of $1 million or less to larger businesses to qualify rather than focusing on the size of the business. In our view, the definition used by the CFPB's Section 1071 more accurately targets the credit needs of small businesses.

*Question 64. Should retail loan purchases be treated as equivalent to loan originations? If so, should consideration be limited to certain purchases – such as from a CDFI or directly from the originator? What, if any, other restrictions should be placed on the consideration of purchased loans?*

*Question 65. Would it be appropriate to consider information indicating that retail loan purchases were made for the sole or primary purpose of inappropriately influencing the bank's retail lending performance evaluation as an additional factor in considering the bank's performance under the metrics or should such purchased loans be removed from the bank's metrics?*

Retail loan purchases should be treated as equivalent to loan originations in cases where the loan is purchased from a CDFI or directly from the originator. CDFIs play a critical role in lending to small businesses, particularly those located in LMI, underserved and rural areas. In addition, CDFI have proven expertise in reaching small business owners who lack access to credit such as those who are BIPOC, women, veterans, LGBTQ+, disabled or otherwise marginalized individuals. To make access to credit more inclusive and equitable, banks should have an incentive to purchase loans from CDFIs. These purchases also provide liquidity for CDFIs that allows them to make more loans. Unlike banks, CDFIs are not able to tap established secondary markets or other sources of liquidity making these mission-driven lenders reliant on raising new resources to meet the demand for loans. Allowing loans purchases by banks from CDFIs can be mutually beneficial and lead to broader partnerships and future collaborations that support small businesses and the communities where they operate.

We also support limiting the purchase of loans from the originator as we recognize loan sales are an important tool for banks seeking to access and manage liquidity. Buying a loan from the originator allows banks to utilize this liquidity channel but not to abuse it by manipulating its retail lending performance evaluation through repeated loan purchases also known as "churning." Thus, it would be appropriate to consider evidence or information indicating a bank was engaged in loan churning in order to influence or improve its performance on the Retail Lending Test. Loans purchased from the originator could be included in the bank's metric but not loans that were purchased from a bank other than the originator.

*Retail Lending Test Evaluation Framework for Facilities-Based Assessment Areas and Retail Lending Assessment Areas*

The NPR proposes a more rigorous and transparent approach to evaluating banks under the Retail Lending Test to determine how well they are serving LMI borrowers and small businesses/farms. The proposal would standardize retail lending evaluations through retail lending metrics and establish performance standards based on local tailored benchmarks (e.g. the market and community benchmarks) for each assessment area. Banks would be evaluated on the distribution of their lending to LMI census tracts and LMI borrowers using metrics to create more consistency and clarity. These metrics would be compared to customized thresholds established for geographic and borrower distribution metrics for each assessment area.[29] Using these metrics and thresholds, the agencies propose to assign a score reflecting a bank's performance in its major product lines in each assessment area and outside retail lending area. The scores across the various major product lines would be combined to determine a recommended Retail Lending Test conclusion for each assessment area, weighted by the dollar volume associated with each product line.[30]

Based on an historical analysis conducted by the agencies, the proposed evaluation framework would lead to more failing and low satisfactory ratings on the Retail Lending Test which would account for 45% of a bank's overall CRA rating. Some stakeholders argue that this new ratings system would discourage large banks from seeking an Outstanding rating on the Retail Lending Test since it would be more difficult to achieve. If more banks decide to settle for a Satisfactory rating then less credit could flow to LMI borrowers, small businesses/farms and in LMI areas. Others believe there is ample opportunity for large banks to expand their retail lending activities and that raising the bar is a beneficial aspect of the agencies' proposal.

CRF supports a more robust and quantitative Retail Lending Test framework however, we offer a specific recommendation to address concerns from stakeholders who believe the proposed approach could disincentivize large banks from seeking an Outstanding rating on the Retail Lending Test. The agencies propose to award points for an outcome on each of the performance measures related to the percent of loans to low- and moderate-income borrowers as follows:

- Outstanding - 10 points
- High Satisfactory - 7 points
- Low Satisfactory - 6 points
- Need-to-Improve - 3 points
- Substantial Noncompliance - 0 points

The proposed scoring or point system should be revised to create a greater distinction between Low Satisfactory and High Satisfactory conclusions which are only separated by one point. If moving from Low to Hight Satisfactory makes little difference in a rating, banks will not be motivated to improve their performance. One way to address this issue

---

[29] Federal Reserve Board of Governors, Staff Memo regarding Notice of Proposed Rulemaking – Community Reinvestment Act (Regulation BB), April 26, 2022, pg. 16. https://www.federalreserve.gov/consumerscommunities/files/board-memo-20220505.pdf
[30] Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, Treasury, "Joint notice of proposed rulemaking: Community Reinvestment Act Regulations," Federal Register, Vol. 87, No. 107, June 3, 2022, pg. 33933. https://www.govinfo.gov/content/pkg/FR-2022-06-03/pdf/2022-10111.pdf

would be to assign High Satisfactory a point score of 8 and Low Satisfactory a point score of 5. This could encourage banks to work towards an Outstanding rating by expanding their retail lending activities.

*Question 74. Should the geographic distribution evaluations of banks with few or no low-and moderate-income census tracts in their assessment areas include the distribution of lending to distressed and underserved census tracts? Alternatively, should the distribution of lending in distressed and underserved census tracts be considered qualitatively?*

This question raises an important point regarding rural areas where there may be a very limited number of LMI census tracts in a bank's assessment area(s). Poverty often presents itself differently in rural geographies where there may be pockets of distress surrounded by areas that would not meet the criteria used to define LMI census tracts. In these instances, we believe it would be useful to examine the distribution of lending in distressed and underserved census tracts. It may be helpful to consider a combination of a quantitative and qualitative factors to get a clear picture of the true credit needs in these areas.

*Question 75. Is the choice of $250,000 gross annual revenue an appropriate threshold to distinguish whether a business or farm may be particularly likely to have unmet credit needs, or should the threshold be lower (e.g., $100,000) or higher (e.g., $500,000)?*

Generally speaking, the smaller the business, the more difficult it is to obtain a loan. Businesses with gross annual revenues (GAR) of less than $500,000 are likely to have unmet credit needs as well as those which have GAR of $250,000 or $100,000. It is difficult for banks to make loans to small businesses as the cost of underwriting the credit remains the same regardless of the size of the business and the loan. We believe the challenges are greater for smaller businesses (e.g. those with $100,000 or less in GAR). CRF encourages the agency to gather data for businesses at different GAR thresholds to understand the unmet credit needs for a range of small businesses/farms before setting a specific threshold.

*Question 82. How should the agencies address the potential concern that the proposed approach may set performance expectations too low in places where all lenders, or a significant share of lenders, are underserving the market and failing to meet community credit needs? Should the agencies consider an alternative approach to setting the performance thresholds that would use a weighted average of the calibrated market benchmark and calibrated community benchmark?*

The alternative approach outlined in the NPR[31] should be explore further. Calculating a weighted average of the two calibrated benchmarks for each threshold could be a useful way to address the possibility of setting performance expectations too low in places where all or a significant share of lenders are failing to meet the community credit needs.

[31] Ibid, pg. 33943.

*Question 83. Should the agencies weight the two distribution results equally? Should the borrower distribution conclusion be weighted more heavily than the geographic distribution conclusion to provide an additional incentive for lending to low-and moderate-income borrowers in certain areas? Are there circumstances under which the geographic distribution conclusion should be weighed less heavily, such as in rural areas with few low-and moderate-income census tracts or where the number of investor loans is increasing rapidly?*

We see merit in weighing the two distribution results differently depending on the local context or conditions. As noted in the question, LMI census tracts may be less prevalent in rural areas, hence it would make sense to place more weight on the borrower distribution. The agencies should consider this approach for areas exhibiting data anomalies.

*Question 84. Should the agencies use loan count in conjunction with, or in place of, dollar volume in weighting product line conclusions to determine the overall Retail Lending Test conclusion in an assessment area?*

There is a debate among community development professionals as to whether it is better to use loan count or dollar volume. It is not clear whether one measure is more appropriate for weighting product line conclusions when determining the overall Retail Lending Test conclusion in an assessment area, in part, because some retail loan products are better assessed based on loan count while for others dollar value is a better measure. Therefore, we suggest the agencies consider using loan count in conjunction with dollar volume to account for product differences or idiosyncrasies.

*Question 86. Should the agencies consider other factors, such as oral or written comments about a bank's retail lending performance, as well as the bank's responses to those comments, in developing Retail Lending Test conclusions?*

Given the importance of public engagement and feedback in the CRA examination process, CRF believes the agencies should absolutely consider oral and/or written comments about a bank's retail lending performance as well as the bank's response to those comments when assigning retail lending conclusions.

### *Retail Lending Test: Evaluation Framework for Retail Lending Test Conclusions at the State, Multistate MSA, and Institution Level*

*Question 87. Should all large banks have their retail lending in their outside retail lending areas evaluated? Should the agencies exempt banks that make more than a certain percentage, such as 80 percent, of their retail loans within facility-based assessment areas and retail lending assessment areas? At what percentage should this exemption threshold be set?*

The banking industry has changed dramatically over the past decade and the agencies efforts to adapt the CRA to new business models is an important aspect of the NPR. Banks *must* serve the credit needs of their local communities as embodied in their FBAAs. However, banks' retail lending beyond their FBAAs and their RLAAs should also be considered otherwise, examiners do not have a complete picture of their activities. Thus, we do not favor exempting banks that make a certain percentage of their retail loans within their FBAAs and RLAAs.

*Retail Services and Products Test*

The agencies are proposing a Retail Services and Products Test for large banks with assets of more than $10 billion with two components: (1) delivery systems and (2) credit and deposit products responsive to the needs of LMI communities.[32] The delivery systems component or subtest would be comprised of three elements: (1) branch availability and services; (2) remote service availability; (3) digital and other delivery systems. Large banks with assets below $10 billion would only be subject to the first two parts of this delivery systems test.[33] Under the branch availability and services component, the agencies would evaluate how responsive branch distribution, branch openings and closings and banking hours and services are to the needs of LMI customers and communities.[34]

The NPR reflects several positive changes as part of the Retail Services and Products Test that would benefit LMI individuals and LMI communities. We are pleased to see this focus reflected in this test.

- The proposal would leverage a quantitative and more consistent approach using community and market benchmarks to evaluate a bank's branch and remote service facilities distribution systems serving low-, moderate-, middle-, and upper-income census tracts. This level of granularity is helpful.

- The agencies propose providing favorable consideration for banks that operate branches within or nearby census tracts defined as having low or very low branch access.[35] It is important to recognize that branches still play a critical role and must be accessible to meet the credit needs of low- and moderate-income individuals and communities. However, it would be helpful to have further clarification as to *how* these low and very low access branches would be considered in a bank's CRA examination.

- In addition, the agencies propose providing qualitative consideration for operating branches in other geographic areas as well. These areas would be favorably considered when evaluating overall accessibility of delivery systems, including to low- and moderate-income populations. While on the surface, this appears to be a useful approach, we have concerns about qualitatively considering retail branching in middle- and upper-income census tracts if a bank can demonstrate that branch locations in these geographies deliver services to low- or moderate-income individuals.[36] The type of data required to document use by LMI individuals must be carefully developed to ensure banks do not use branches in middle- and upper-income census tracts to avoid placing branches in LMI communities to serve their residents.

---

[32] Ibid, pg. 33956.
[33] Ibid, pg. 33958.
[34] Ibid, pg. 33958.
[35] Ibid, pg. 33960.
[36] Ibid, pg. 33963.

- Providing positive qualitative consideration for banks operating branches in Native Land Areas is a welcome addition to the delivery system test given the limited access residents of these areas have to both branches and remote service facilities.

- We also favor the agencies' proposed approach of focusing on whether services offered in branches are tailored to meet the particular needs of LMI individuals in a bank's facility-based assessment areas rather than evaluating the range of services offered by the bank in totality.[37] However, it is not explicitly stated that these products should be *affordable* for LMI individuals. This should be clarified in the NPR.

- By including digital and online delivery systems, the Retail Services and Products Test provides a more comprehensive picture of how a bank serves its customers, including LMI individuals. Unfortunately, this component of the delivery system evaluation would be required for large banks with assets of over $10 billion and would be optional for large banks with assets of $10 billion or less. [38] We think this component should be extended to banks with assets less than $10 billion based on some threshold of deposit activity. The agencies should consider revising this aspect of the services test.

- Evaluating the availability of credit *and* deposits products and the extent to which they are responsive to LMI individuals, small businesses, and small farms in the same service test. This is an improvement over the current qualitative part of the service test as these products can be mutually reinforcing and beneficial for LMI customers as well as small businesses or farms. We suggest agencies consider assessing the extent to which these products are serving traditionally underserved populations. We are also a concerned that large banks with less than $10 billion will not be evaluated on the availability and responsiveness of credit and deposit products to the needs of LMI individuals as well as small businesses/farms.

*Question 90. Should the agencies use the percentage of families and total population in an assessment area by census tract income level in addition to the other comparators listed (i.e., census tracts, households, and businesses) for the assessment of branches and remote service facilities?*

If the agencies are already using census tracts, households and businesses as comparators when assessing branches and remote facilities, adding the percentage of families and total population in an assessment area at the census tract level does not seem necessary or warranted.

*Question 98. Should branches in distressed or underserved middle-income nonmetropolitan census tracts receive qualitative consideration, without documenting that the branch provides services to low-or moderate-income individuals?*

---

[37] Ibid, pg. 33963.
[38] Ibid, pg. 33964.

Middle-income nonmetropolitan census tracts should not receive qualitative consideration without documenting or demonstrating that the branch provides service to LMI customers.

*Question 99. Should the agencies provide favorable qualitative consideration for retail branching in middle-income and upper-income census tracts if a bank can demonstrate that branch locations in these geographies deliver services to low-or moderate-income individuals? What information should banks provide to demonstrate such service to low-or moderate-income individuals?*

If the agencies provide favorable qualitative consideration for retail branches in middle- and upper-income census tracts demonstrating that these branches are serving LMI individuals, it could provide a means for banks to avoid placing branches in LMI census tracts or communities. This option sets a dangerous precedent and allows banks to practice a subtle form on redlining.

*Question 101. Should affordability be one of the factors in evaluating digital and other delivery systems? If so, what data should the agencies consider?*

Intuitively, we think affordability should be a factor in evaluating digital and other delivery systems in order to determine if these systems are accessible to LMI individuals. Information on cost or fees associated with these systems would be useful in assessing affordability.

*Question 104. Are there additional categories of responsive credit products and programs that should be included in the regulation for qualitative consideration?*

CRF was pleased to see the proposal includes credit products and programs that meet the needs of small businesses/farms, including the smallest businesses/farms as a separate category of credit products or programs. The NPR specifically mentions microloans, loans to businesses with gross annual revenues of $250,000 or less, and patient capital with longer terms for entrepreneurs.[39]

The NPR also includes credit products and programs that are conducted in conjunction with MDIs, WDIs, LICUs, and Treasury Department-certified CDFIs as a category of responsive credit products and programs. As noted above, CDFIs are mission-driven lending organizations that specifically design and deliver a range of credit products and services that are intended to serve the needs of small businesses, nonprofits and LMI individuals unable to access conventional bank financing. Activities conducted with these mission-focused lenders are designed to be accessible to under- and unbanked consumers, businesses, and other community-based organizations.[40]

CRF is encouraged by the inclusion of these two categories of responsive credit products and programs – one for the smallest businesses and/or farms and another for activities conducted in collaboration with CDFIs and other mission-

---

[39] Ibid, pg. 33966.
[40] Ibid, pg. 33966.

driven lenders. This approach provides incentives for banks to partner with CDFIs to ensure access to affordable, safe credit products for LMI customers.

*Question 106. Should special purpose credit programs meeting the credit needs of a bank's assessment areas be included in the regulation as an example of loan product or program that facilitates home mortgage and consumer lending for low-and moderate-income individuals?*

Special purpose credit programs (SPCPs) offer banks a unique opportunity to develop and implement proactive initiatives and products to address past discriminatory practices and make credit more accessible for LMI individuals and communities of color. We agree that SPCPs are an example of a program or product that facilitates home mortgage and consumer lending to LMI individuals, however, these programs have also been used to increase the availability of small business loans to historically marginalized entrepreneurs including women, people of color, LGBTQ+ people and those living in rural areas. The agencies should encourage SPCPs that direct credit to a wide range of LMI customers, not just those seeking home mortgages or consumer loans.

*Question 108. The agencies wish to encourage retail banking activities that may increase access to credit. Aside from deposit accounts, are there other products or services that may increase credit access?*

If the agencies wish to encourage retail banking activities that increase access to credit, they should consider ways of incentivizing banks to provide financial literacy and counseling services to LMI individuals and families. These services help consumers learn how to access safe, affordable credit products that are suited to their needs. Not only do financial education and counseling increase access to credit but these services also help consumers avoid predatory and abusive products that can damage their credit history and prevent them from accessing credit in the future. With the advent of new technology and communication channels, these services can be delivered online or in-person and may allow participants to track improvements in their credit score and increases in their savings – both of which are important factors that can help individuals access credit from banks.

*Community Development Financing Test*

Overall, CRF believes the proposed Community Development (CD) Financing Test improves upon the current approach by including a *community development financing metric*, benchmarks, and an impact review. Large banks subject to this test would be assessed at the FBAA, state, multistate MSA, and institution levels to develop or assign conclusions at each of those levels, however, the CD Financing Test would not be assessed in RLAAs.

The *community development financing metric* (a ratio) would consist of the combined dollar amount of a bank's community development loans and community development investments as a percentage of the dollar value of a bank's deposits. The proposed benchmarks would be tailored to reflect local context, (i.e. activities of other banks) and would be compared to the bank's CD financing metric to assess its performance. Using consistent metrics and benchmarks would provide greater uniformity and clarity as to how banks are evaluated under this test. The impact and responsiveness of a bank's community development loans and investments to community needs would be captured through the impact review based on a series of specific qualitative factors.[41]

In contrast to current practice, the draft NPR proposes to evaluate community development loans and investments of large banks together in the community development financing metric.[42] By combining CD loans and investments the agencies wish to allow banks to pursue the financing that is most appropriate for a project rather than targeting a specific volume of activity for CD loans and investments. However, we are concerned as many community development projects and borrowers need investments or equity – a form of capital that is much harder to secure than debt. While we appreciate the flexibility provided by combining these two types of capital into a single metric, we urge the agencies to consider creating an incentive for banks to provide equity capital in the form of investments to underserved entrepreneurs (women, people of color, LGBTQ+, rural, and others), affordable housing and community facilities projects as well as to CRA eligible intermediaries, like certified CDFIs, MDIs, WDIs and LICUs. CDFIs operating as non-profit loan funds utilize a specialized type of long-term capital known as an EQ2s (Equity Equivalent) which have allowed certified CDFIs to grow their balance sheets and expand their lending and investing activities in LMI and underserved communities. Community development activities require a ***both*** loans and investments and the new CRA rules should include a meaningful incentive for banks to provide investments without a separate test. One approach the agencies should consider is to offer greater weight for investments under the impact review component of the CD Financing Test.

To encourage banks to provide patient capital, the agencies are proposing to include the annual average value of community development loans and investments that remain on a bank's balance sheet in any subsequent year after purchase or origination.[43] Generally speaking, we favor this change because it recognizes the value of long-term capital – another type of financing that is harder to obtain but particularly well suited to community facilities and real estate projects in LMI communities. The potential downside of this change is that banks may not be motivated to expand their community development lending and/or investing activities if they have substantial on-balance sheet CD loans and investments that carry over from prior years. The agencies should explore ways of providing additional CRA consideration for banks that continue to expand their CD activities each year even though they have a significant amount of CD assets on their balance sheets. This approach will recognize banks that grow their CD lending and/or investing activities while also making patient, long-term loans, and investments.

Other additions or changes to the CD Financing Test that CRF believes are useful / beneficial:

- The agencies propose to establish local and national benchmarks for each assessment area to evaluate a bank's performance against each benchmark as well as compare it to that of other banks in a clear and consistent manner.[44]

[41] Ibid, pg. 33970.
[42] Ibid, pg. 33971.
[43] Ibid, pg. 33972.
[44] Ibid, pg. 33973.

- To complement the CD metrics and benchmarks, the agencies propose to add an impact review to evaluate the impact and responsiveness of a bank's community development activities based on defined impact factors. The impact review maintains the CRA's emphasis on the impact and responsiveness of activities while increasing consistency in the evaluation of qualitative factors through well-defined criteria and greater transparency into the activities conducted. The impact review can elevate impactful activities like small-dollar transactions and those that serve LMI populations and census tracts.[45] As suggested above, it could also award additional consideration for investments (equity, grants, etc.) for which there may be significant need but limited supply.

- Finally, the CD Financing Test will evaluate a bank's performance in FBAAs, at the state, multistate MSA, and institution levels. The agencies proposed approach emphasizes banks' CD activities inside FBAAs while allowing them the opportunity to engage in and receive consideration for activities outside of FBAAs.[46]

*Question 121. What is the appropriate method to using the local and nationwide benchmarks to assess performance? Should the agencies rely on examiner judgment on how to weigh the comparison of the two benchmarks, or should there be additional structure, such as calculating an average of the two benchmarks, or taking the minimum, or the maximum, of the two benchmarks?*

Relying on examiner judgement on how to weigh the comparison of the two benchmarks will make it difficult for the agencies to achieve their objective of establishing a consistent and transparent CRA evaluation process. Guidelines should be developed for using the local and national benchmarks to truly understand how well a bank is performing in comparison to its local peers as well as a national metric. The goal should be to encourage banks to strengthen their performance vis a vis either the local or the national ratio depending on which one is higher. Examiners could tailor the weighting of the benchmarks to emphasize the stronger of the two ratios for a bank's FBAA. This aspect of the NPR needs to be further refined to create a clearly delineated process for assessing a bank's performance against these two benchmarks.

*Question 125. Considering current data limitations, what approaches would further enhance the clarity and consistency of the proposed approach for assigning community development financing conclusions, such as assigning separate conclusions for the metric and benchmarks component and the impact review component? To calculate an average of the conclusions on the two components, what would be the appropriate weighting for the metric and benchmarks component, and for the impact review component? For instance, should both components be weighted equally, or should the metric and benchmarks be weighted more than impact review component?*

We agree with the approach suggested by some stakeholders of assigning a weight of 60% for the CD metrics component and 40% for the impact review. A higher weight for the CD metrics portion would ensure that a bank

[45] Ibid, pg. 33975.
[46] Ibid, pgs. 33975-33980.

conducts a reasonable amount of CD financing while providing qualitative consideration for aspects of its financing such as the extent to which its products are highly impactful and/or responsive to the needs of the community.

*Question 126. How can the agencies encourage greater consistency and clarity for the impact review of bank activities? Should the agencies consider publishing standard metrics in performance evaluations, such as the percentage of a bank's activities that meet one or more impact criteria?*

Developing standard metrics for performance evaluations would provide greater consistency and transparency for the impact review of bank CD financing. The suggested metric of the percentage of a bank's activities that meet one or more specific impact criteria is a good place to start. Over time and with the benefit of more data, a system for weighting specific criteria and assigning points could be developed to add more rigor and clarity to the impact review component of a bank's activities.

*Community Development Services Test*

CRF is pleased to see that the draft NPR proposes to retain the current definition of community development services which includes activities that have a primary purpose of community development and are related to the provision of financial services. The proposal provides continued flexibility to consider other types of expertise contributed by a bank's employees, such as human resources, information technology, and legal services, related to the provision of financial services. Community development service activities performed by board members, executive employees or other employees of the bank would also be considered.

The Community Development (CD) Services Test would apply to large banks with assets of more than $10 billion and would include a quantitative measure as well as a qualitative review of the extent to which the bank provides CD services that are impactful and responsive to community needs. The agencies are proposing a FBAA CD service hours metric that measures the total hours of CD services performed by bank employees as a percentage of total employees during the CRA evaluation period. Large banks' CD service activities will also be evaluated at the state, multistate MSA and institution levels.[47]

*Question 127. Should volunteer activities unrelated to the provision of financial services be considered in all areas or just in nonmetropolitan areas?*

CRF has concerns about considering volunteer activities that are unrelated to the provision of financial services for CRA purposes in nonmetropolitan or rural areas. While we agree these areas have specific characteristics and challenges that may make it more difficult for banks to provide CD services related to the provision of financial services, we suggest that the agencies consider more general volunteer activities only if a bank has made a demonstrated effort to identify options for providing CD services related to the provision of financial services rather than allowing a bank to automatically receive credit for employees who helped construct affordable housing or

[47] Ibid, pg. 33981.

volunteered at a soup kitchen. There should be some incentive for banks to offer CD services directly related to the provision of financial services even at a modest level in rural areas as these services are extremely valuable and could contribute to expanding opportunities to provide more such CD services in the future.

*Wholesale and Limited Purpose Banks*

The draft NPR proposes to evaluate wholesale and limited purpose banks under a modified Community Development (CD) Finance Test at the FBAA, state, multistate MSA and institution levels using a metric that measures a bank's volume of activities relative to its capacity. The draft NPR also proposes giving wholesale and limited purpose banks the option to have examiners consider community development service activities that would qualify under the Community Development Services Test.[48]

The proposed CD Financing Test for wholesale and limited purpose banks is intended for banks with unique business models. Under the current CRA regulations, a bank must apply and be approved by its banking regulator to be designated as a wholesale or limited purpose bank. The draft NPR defines a wholesale bank as a bank that is not in the business of extending home mortgage, small business, small farm, or consumer loans to retail customers. A limited purpose bank would be defined as a bank that offers only a narrow retail product line (such as credit cards, other revolving consumer credit plans, other consumer loans, or other non-reported commercial and farm loans) to a regional or broader market and for which a designation as a limited purpose bank is in effect.[49] We are concerned that these definitions may allow banks with significant credit card lending to exclude these activities from CRA consideration because the lender would only be subject to the proposed CD Financing Test. Credit card lending to individuals and small business owners is an important source of credit that should be captured and assessed as part of the CRA examination process to determine whether these banks are meeting the credit needs of all the communities they serve, including LMI neighborhoods. The agencies should reconsider the definition of wholesale and limited purpose banks to ensure that significant lending activities of these banks are captured for a full and proper evaluation as intended under the CRA statute.

*Assigned Conclusions and Ratings*

CRF agrees that the draft NPR proposes a more transparent and consistent approach to determining a bank's overall CRA rating. Underpinning this approach is a quantitative method for calculating a bank's performance score for each test at the state, multistate MSA and at the institution level based on a weighted average of assessment area conclusions and other applicable factors. These performance scores correspond to one of five conclusion categories (Outstanding, High Satisfactory, Low Satisfactory, Needs to Improve and Substantial Noncompliance) and these

---

[48] Federal Reserve Board of Governors, Staff Memo regarding Notice of Proposed Rulemaking – Community Reinvestment Act (Regulation BB), April 26, 2022, pg. 26. https://www.federalreserve.gov/consumerscommunities/files/board-memo-20220505.pdf
[49] Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, Treasury, "Joint notice of proposed rulemaking: Community Reinvestment Act Regulations," Federal Register, Vol. 87, No. 107, June 3, 2022, pg. 33983. https://www.govinfo.gov/content/pkg/FR-2022-06-03/pdf/2022-10111.pdf

performance scores are combined across tests to produce ratings for the bank at each of the three levels (state, multistate MSA and institution).[50]

CRF has concerns about the proposed rule's weighting of retail test performance and community development test performance which could have unintended consequences of undermining the importance of community development in CRA. We wish to echo the comments of Opportunity Finance Network (OFN) which notes that as currently structured, the community development performance of most large banks would not affect the overall CRA rating because retail test performance is weighted more heavily (60%) than community development performance (40%). The proposed weight of 40% assigned to community development fails to reflect its importance to community reinvestment.

OFN points out that under the new ratings system, very few banks would be able to achieve an Outstanding rating. As the National Housing Conference and other stakeholders note – if an Outstanding retail test rating is not achievable, a bank will receive an overall Satisfactory rating even if its Community Development test score is Needs to Improve as long as its retail test score is Low Satisfactory – a standard that nearly all banks are likely to meet or exceed.[51] Banks could dramatically scale back their community development activities without impacting their overall rating – which could have devastating consequences on the community development finance ecosystem and the CDFI industry.

We concur with OFN's recommendation that the retail test performance and community development test performance should be rebalanced so that each would account for 50% of a bank's rating. This would ensure that community development performance is still an integral part of a bank's CRA rating.

Rebalancing these two tests better reflects the important role community development activities play in ensuring access to credit for LMI individuals and communities as well as individuals and communities of color. It also aligns more closely with the weighting for intermediate banks, which equally weights the Retail Lending (RL)Test and the current community development test or CD Financing Test (if selected by the bank).[52] Increasing the weight of community development activities would also help to address the issue we raised in our comments above related to the ***Retail Lending Test Evaluation Framework for Facilities-Based Assessment Areas and Retail Lending Assessment Areas***. Without greater differentiation in the points awarded to banks performing at a High Satisfactory level versus a Low Satisfactory level, large banks may be discouraged from improving their CRA rating through additional lending to LMI individuals, small businesses/farms and in LMI communities. We reiterate our recommendation that a High Satisfactory performance be assigned a point score of 8 and a Low Satisfactory performance be assigned a point score of 5.

---

[50] Federal Reserve Board of Governors, Staff Memo regarding Notice of Proposed Rulemaking – Community Reinvestment Act (Regulation BB), April 26, 2022, pg. 27. https://www.federalreserve.gov/consumerscommunities/files/board-memo-20220505.pdf

[51] https://nhc.org/the-future-of-cra-is-in-doubt/

[52] Federal Reserve Board of Governors, Staff Memo regarding Notice of Proposed Rulemaking – Community Reinvestment Act (Regulation BB), April 26, 2022, pg. 27. https://www.federalreserve.gov/consumerscommunities/files/board-memo-20220505.pdf

*Performance Standards for Small and Intermediate Banks*

*Question 142. Should additional consideration be provided to small banks that conduct activities that would be considered under the Retail Services and Products Test, Community Development Financing Test, or Community Development Services Test when determining the bank's overall institution rating?*

Additional consideration should be provided to small banks that conduct activities that fall under the Retail Services and Products Test, Community Development Financing Test, or Community Development Services Test when determining the bank's overall institution rating. The benefit of providing consideration is that it could encourage banks to engage in activities reviewed under these tests resulting in increased community development lending and expanded availability of retail services and products for residents of LMI communities. Having an option to receive additional consideration for activities outside the current small bank framework could expand access to credit and services helping to revitalize LMI, rural and communities of color.

*Question 144. The agencies propose to provide continued flexibility for the consideration of community development activities conducted by intermediate banks both under the status-quo community development test and the proposed Community Development Financing Test. Specifically, intermediate banks' retail loans such as small business, small farm, and home mortgage loans may be considered as community development loans, provided those loans have a primary purpose of community development and the bank is not required to report those loans. Should the agencies provide consideration for those loans under the Community Development Financing Test?*

Flexibility for intermediate banks to continue considering various types of retail loans under the current and proposed community development financing tests would be beneficial as long as these loans have a clear primary purpose of community development and are not required to be reported under the retail lending test.

*Content and Availability of Public File*

*Question 156. Should banks collect and report an indicator for whether the loan was made to a business or farm with gross annual revenues of $250,000 or less or another gross annual revenue threshold that better represents lending to the smallest businesses or farms during the interim period before the CFPB Section 1071 Rulemaking is in effect?*

Keep the transition process smooth and straightforward by waiting for the CFPB Section 1071 to go into effect.

*Question 173. Should the agencies disclose HMDA data by race and ethnicity in large bank CRA performance evaluations?*

CRF believes HMDA data should be a factor in evaluating a bank's overall CRA performance as well the CFPB's section 1071 data once it becomes available. While disclosure of HMDA data by race and ethnicity in large bank CRA performance evaluations is helpful it is <u>not</u> enough. HMDA data must also play a role in determining whether a bank is engaged in discriminatory lending practices that violate fair lending laws such as the Fair Housing Act or the Equal

Credit Opportunity Act. The draft NPR makes what appears to be a circular argument that the agencies would disclose the number and percentage of a bank's home mortgage loan originations and applications by race and ethnicity and compare that data against the demographic data of the assessment area and the aggregate mortgage lending of all lenders in such area. However the disclosure of this race and ethnicity information would have no effect on a bank's CRA conclusions or ratings, nor could it constitute a fair lending examination to determine if a bank had been engaged in redlining.[53] It is imperative that the agencies move beyond simply disclosing HMDA data by race and ethnicity in large bank performance evaluations and explicitly include race as a factor in the revised CRA regulations to fulfill the purpose of the statute.

*Question 176. Should the agencies publish bank-related data, such as retail lending and community development financing metrics, in advance of an examination to provide additional information to the public?*

The agencies should publish bank-related data in advance of an examination to inform public comments and feedback on the CRA performance of the bank. The more transparency the better.

*Question 177. Should the agencies ask for public comment about community credit needs and opportunities in specific geographies?*

The agencies should regularly request public comment about community credit needs and opportunities in specific geographies. Community-based organizations, businesses, residents, and other stakeholders in these geographies have in-depth information and a well-developed understanding of the credit and capital gaps as well as the local assets that could prove to be extremely helpful to examiners. Public comment is a crucial element that should be routinely solicited as part of the examination process.

### *Transition*

*Question 180. When should the agencies sunset the agencies' small business loan and small farm loan definitions?*

The agencies should sunset their definition of small business loan and small farm loan when they transition to the CFPB's Section 1071 data set.

## Conclusion

We are grateful for the chance to share our comments and recommendations on the NPR. CRF applauds the efforts and commitment of the agencies' staff to modernize and strengthen the CRA in a manner that furthers the original intent and purpose of this groundbreaking statute. As a national CDFI, we have witnessed the ability of bank partnerships with community-based organizations to transform LMI communities. CRF remains a strong and steadfast

[53] Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, Treasury, "Joint notice of proposed rulemaking: Community Reinvestment Act Regulations," Federal Register, Vol. 87, No. 107, June 3, 2022, pg. 34003. https://www.govinfo.gov/content/pkg/FR-2022-06-03/pdf/2022-10111.pdf

supporter of the CRA. We stand ready to assist the agencies as you finalize the regulations and implement a new CRA framework that will ensure this statute fulfills its core purpose in the context of a dynamic and ever-changing financial landscape. The CRA is critical to the future economic well-being of our country and especially now as we work to build a more equitable and just financial system for all. Please contact me with any questions regarding comments included in this letter.

Sincerely,

[redacted]

Frank Altman
Founder & Chief Executive Officer