Homeownership Alliance

National Community Stabilization Trust

August 5, 2022

The Honorable Jerome Powell
Chairman
The Board of Governors of the Federal Reserve System
Ann E. Misback, Secretary
20th Street and Constitution Avenue, NW
Washington, D.C. 20551
RE: Docket Number R-1769 RIN 7100-AG29

The Honorable Michael Hsu
Comptroller
Office of the Comptroller of the Currency
Attention: Comment Processing
Chief Counsel's Office
400 7th Street, S.W. Suite 3E-218
Washington, D.C. 20219
RE: OCC Docket ID OCC-2022-0002 RIN1557-AF15

The Honorable Martin Gruenberg
Acting Chair
Federal Deposit Insurance Corporation
Attention: James P. Sheesley, Assistant Executive Secretary
550 17th Street, N.W.
Washington, D.C. 20429
RE: RIN 3064-AF81

Dear Chairman Powell, Comptroller Hsu, and Acting Chair Gruenberg:

The Homeownership Alliance and the National Community Stabilization Trust appreciate the thoughtful joint Notice of Proposed Rulemaking about proposed changes to the Community Reinvestment Act (CRA) regulations. The National Community Stabilization Trust is a national nonprofit that increases access to homeownership, promotes resilient neighborhoods, and advances racial equity by advocating for policy change, strengthening housing markets, and innovating capital solutions to close the wealth gap. Over the past decade, NCST has facilitated the transfer of over 27,000 foreclosed homes from lenders to community-based nonprofits that renovate them for owner occupants or responsible rental.

NCST also manages the Homeownership Alliance on behalf of a group of nonprofit developers and CDFIs that collaborate to advocate for more resources and better policies to increase affordable homeownership opportunities for American families. The mission of the Homeownership Alliance is to increase access to homeownership in order to narrow America's racial wealth gap, improve access to long-term affordable housing, and to revitalize disinvested communities without gentrification. The Homeownership Alliance is committed to building a robust, nonprofit-led delivery system that will increase access to homeownership for those who have been left behind by our current system.

CRA has been essential to the constructive bank-nonprofit partnerships that help NCST buyers improve communities by putting vacant properties back to productive use and increasing affordable homeownership. Banks give lines of credit to NCST's nonprofit buyers to finance home renovations and also provide mortgages to the homebuyers that eventually purchase the homes. The nonprofits and CDFIs that belong to the Homeownership Alliance also rely on CRA to motivate banks to invest in CDFIs, provide construction financing for affordable homeownership projects, invest equity in tax credit programs, lend to homebuyers, and work with government mortgage guarantee programs.

Before we answer the more detailed questions posed in the NPR, we applaud the agencies for thoughtful and deliberate work together to create a modernized CRA framework that balances quantitative and qualitative factors to create a more transparent and predictable system. The detail, rigor and transparency of the framework that the agencies have created is impressive. Nevertheless, there is a major omission in the system you propose: there is no mechanism for the banking agencies to consider the race of the bank's borrowers as part of the evaluation of the bank's efforts to "help meet the credit needs of the entire community."

When CRA was enacted in 1977, Senator William Proxmire was eloquent that CRA was "intended to eliminate the practice of redlining by lending institutions."[1] It is difficult to see how CRA can achieve its stated purpose of eliminating the practice of redlining--refusing to lend in certain neighborhoods based on the race of the people who live these--without considering race in evaluating banks' lending, investments and services. As you work on a Final Rule, please strengthen the data collection requirements and disclosures so it is easier for the public and community advocates to see any disparities in bank lending by race. There is much information in Home Mortgage Disclosure Act data that the agencies already collect which could enhance CRA evaluations and help reveal inequities. It also would be helpful to strengthen the nexus between fair lending compliance and CRA evaluations so that banks with fair lending violations see that reflected in their CRA rating.

The reason to include race in CRA evaluations is that America's growing racial wealth gap and homeownership gap are well documented and interrelated. According to the

[1] Congressional Record, June 6, 1977, p. 17604

Urban Institute, while 72.1% of white households own their own home, but only 42% of Black households and 48.1% of Hispanic households are homeowners.[2] This disparity in homeownership rates is then reflected in statistics on household wealth. According to Federal Reserve's Survey of Consumer Finances (Sept. 2020) the median wealth of white households is $188,200 compared to only $24,100 for Black households and $36,200 for Hispanic households.[3] CRA examinations could help push financial institutions to be part of the solution to these longstanding inequities.

Finally, in addition to addressing race in CRA evaluations, please consider carefully the overall structure of the scoring and weighting of various activities under CRA. Before you finalize such a dramatic change in how activities are weighted and scored, please consider carefully the possibility of unintended consequences with any new system. Sometimes with the best of intentions, government policies backfire and create outcomes that no one intended. Please think about the possibility that the transparency and predictability that both community groups and banks have asked for might start a "race to the bottom" that results in less financing and lending for the affordable housing, child care centers, health clinics, and other community development activities that have been such a productive outcome of the last rewrite of the CRA rules.

As we discuss in greater detail later in the letter, please consider weighting the Community Development Test equally with the Retail Lending Test. When the last major rewrite of the CRA regulations was done 27 years ago, many community development investments like New Markets Tax Credits didn't exist and the Low Income Housing Tax Credit had just been made a permanent part of the tax code in 1993. It was a happy accident that CRA gave the banking industry a motive to learn to use these complicated new financial tools to comply with the Investment Test portion of CRA.

The newly created Community Development Finance test includes many laudable features like certainty of consideration for investments in Treasury-certified CDFIs. Yet if the weighting of the test vis a vis the Retail Lending Test is not calibrated correctly, all of the thoughtful work done on Impact Factors won't matter because banks will focus on Retail Lending to drive their ratings. As you work to create the system that will work for the next few decades, please beware of unintended consequences and create a framework that allows for new products and services to evolve and grow.

Question 1. Should the agencies consider partial consideration for any other community development activities (for example, financing broadband infrastructure, health care

[2] *Closing the Gaps*, Alanna McCargo and Jung Hyun Choi, Urban Institute, 2020

[3] McCargo and Choi, page 2

facilities, other essential infrastructure and community facilities), or should partial consideration be limited only to affordable housing?

Partial credit probably makes sense for other community development activities in addition to affordable housing. It may make sense to consider partial credit in the case of essential infrastructure that spans a larger area, like several census tracts. Partial credit would most likely be applied to large-scale infrastructure such as water treatment facilities or a transportation project. For example, if broadband benefits five census tracts and only three of these tracts are LMI, then 60% of the financing should qualify as CD, not 100%.

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?

If there was a 25% floor for partial credit it might encourage the inclusion of more LMI census tracts in infrastructure projects. A 60% standard for activities that have a primary purpose of community development to get full consideration would encourage investment in LMI tracts while also remaining flexible enough to accommodate mixed-income communities.

Question 7. Should the proposed approach to considering naturally occurring affordable housing be broadened to include single-family rental housing that meets the eligibility criteria proposed for multifamily rental housing? If so, should consideration of single-family rental housing be limited to rural geographies, or eligible in all geographies, provided the eligibility criteria to ensure affordability are met?

Financing affordable rental single-family housing should not be part of the Retail Lending Test. This financing could be part of the CD Financing test if the financing is given to a nonprofit developer and the housing is affordable and in decent physical condition. If the agencies decide to allow CRA consideration for single family rental by for profit entities, if a bank discovers subsequent to financing single-family rental housing, that the recipient of the loan is operating rental housing in an abusive manner, the bank should cut off that loan recipient from future financing. CRA examiners should confirm the bank has due diligence procedures and should monitor the lending activity and penalize a bank if it continues to finance an abusive property owner.

Question 8. How should the agencies consider activities that support affordable low-or moderate-income homeownership in order to ensure that qualifying activities are affordable, sustainable, and beneficial for low-or moderate-income individuals and communities?

It is very helpful for the CRA regulatory regime to recognize the importance of bank support for the affordable homeownership work of nonprofit developers and CDFIs. In many markets across the country, rising home prices and the rise of cash investors in single family homes are posing challenges for first time homebuyers who struggle to acquire homes. CRA can help give banks an incentive to work with the nonprofit developers and CDFIs that are doing the difficult work of developing affordable single family homes and working with families to improve their credit to qualify for a mortgage. This nonprofit delivery system for affordable homeownership is crucial to lessening the racial wealth gap, and CRA needs to support it.

It is appropriate to include loans that banks make to low and moderate income homeowners on the Retail Lending Test, while also including bank grants, loans, and investments that support affordable homeownership work of nonprofits and CDFIs on the Community Development Financing test. The agencies should address, however, an anomaly in the proposed system that while all mortgage lending in LMI census tracts counts in the Retail Lending Test, construction lending or rehabilitation financing can only count on the Community Development Financing test if the occupant of the home is LMI.

This could discourage bank financing of the home construction and rehabilitation lending activities in communities that need revitalization and stabilization. It also could discourage bank participation in the Neighborhood Homes Investment Act[4] (NHIA), an innovative new tax credit that is pending in Congress. The income eligibility for homeowners in NHIA goes up to 140% of Area Median Income, so bank construction lending or equity investments in NHIA developments would not receive CRA credit unless the family purchasing the home was LMI.

There are other activities that should be included on Community Development Finance test that are vital to improving LMI Census tracts such as construction loans for a single-family development and bank investments in New Markets Tax Credits that finance affordable homeownership. These activities should receive CRA credit in LMI Census tracts unless the homes sold for a price exceeding 4 times the area median income. This is a safeguard in the Neighborhood Homes Investment Act that also makes sense as a guard against the financing of gentrification in CRA. CRA needs to help level the playing field for first time homebuyers who have tremendous disadvantages in current market conditions.

Question 9. Should the proposed approach to considering mortgage-backed securities that finance affordable housing be modified to ensure that the activity is aligned with CRA's purpose of strengthening credit access for low-or moderate-income individuals? For example, should the agencies consider only the value of affordable loans in a qualifying mortgage-backed security, rather than the full value of the security? Should only the initial purchase of a mortgage-backed security be considered for affordable housing?

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[4] https://neighborhoodhomesinvestmentact.org/

Purchases of mortgage-backed securities have much less impact in boosting affordable homeownership than the types of activities described above in Question 8 and should receive less consideration as part of the Community Development Financing test. Only the dollar amount devoted to LMI mortgages in the security should be counted, as suggested by the agencies. In addition, only the initial purchase of MBS, and no subsequent purchases, should be counted toward the Community Development Financing test.

Question 10. What changes, if any, should the agencies consider to ensure that the proposed affordable housing definition is clearly and appropriately inclusive of activities that support affordable housing for low-or moderate-income individuals, including activities that involve complex or novel solutions such as community land trusts, shared equity models, and manufactured housing?

NCST and the Homeownership Alliance are supportive of innovative financing by mission-driven nonprofits that includes community land trusts and shared equity models. Financing of manufactured housing must be accompanied by rigorous due diligence to avoid abusive landowners and lenders. Any activities that receive credit on the Community Development Financing test should be confined to resident-owned communities or nonprofit organizations that work with families and provide sustainable mortgages for manufactured housing. In addition, banks should align their financing with the reputable manufactured housing activities that the Government Sponsored Enterprises (GSEs) that are required to undertake as part of their Duty-to-Serve requirements.

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?

The agencies proposed to reconfigure revitalization and stabilization activities to be in one of six categories:

- revitalization
- essential community facilities
- essential community infrastructure
- recovery activities in designated disaster areas
- disaster preparedness and climate resiliency activities ▯ qualifying activities in Native Land Areas

The agencies proposed that the six activities share four common elements.

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

initiative.

NCST and the Homeownership Alliance are supportive of the first three elements but urge the agencies to reconsider the requirement that the activities be conducted in conjunction with a government program. The first three criteria are appropriate because geographic targeting to underserved areas is necessary to maintain CRA's focus on disinvested communities that were formerly redlined.

We urge the agencies to reconsider the requirement that the place-based activities be conducted in conjunction with a government, plan, program or initiative. The agencies had a laudable goal of encouraging collaboration among banks and local government agencies. Combining public subsidies and support with bank financing would generally make community development activities more effective. Unfortunately, local governments in areas most in need of stabilization and revitalization may not always have a program, plan or initiative for the targeted census tracts that need bank investment. Thus, when banks are unable to find a government partner, some community development activities would not be undertaken, contrary to the goals of CRA.

Many persistent poverty counties lack well-managed, active government programs to drive public investment into disinvested neighborhoods. In these places, CDFIs are often the drivers of revitalization strategies. Bank lending and investment in LMI communities working with mission driven lenders like the members of the Partnership for Rural Transformation should get CRA consideration, regardless of the role of the local government.

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?

The bank should include data on the number of LMI residents benefiting from the revitalization activities and statements from nonprofit or public sector partners about the community impact of the project.

Question 16. Should the agencies include certain housing activities as eligible revitalization activities? If so, should housing activities be considered in all, or only certain, targeted geographies, and should there be additional eligibility requirements for these activities?

Activities like bank financing of owner-occupied rehabilitation of housing can be a crucial part of revitalization strategies. Owner-occupied rehabilitation helps ensure that existing residents see their equity in their homes increase, a significant way to help narrow the racial wealth gap. As long as the homes are in a LMI Census tract and the sales price does not exceed four times the Area Median Income, banks should receive CRA consideration.

Responsible disposition of vacant and foreclosed homes is another revitalization strategy that should be considered as a revitalization strategy. Banks that work with responsible partners like NCST to sell their foreclosures to community based nonprofits and owner occupants should receive consideration for this as an eligible revitalization activity.

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?

The agencies proposed to include in the definition of essential community infrastructure broadband, telecommunications, mass transit, water supply and distribution, and sewage treatment and collection systems. Financing essential community facilities would include, but are not limited to, financing the development of schools, libraries, childcare facilities, parks, hospitals, healthcare facilities, and community centers. Answers to the questions about how to allocate partial credit seem to be a sufficient standard for ensuring that low- and moderate- income residents benefit.

Question 31. Should the agencies also maintain a non-exhaustive list of activities that do not qualify for CRA consideration as a community development activity?

There is a list of businesses that are not eligible for New Markets Tax Credit investments that provides a useful template for the agencies to think about this question. The IRS regulations[5] state that the excluded businesses are: "Trades or businesses consisting of the operation of any private or commercial golf course, country club, massage parlor, hot tub facility, suntan facility, race track or other facility used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off the premises."

Impact Review of Community Development Activities

The agencies' proposal to create a more standardized and transparent system of qualitative assessment of the banks' Community Development Financing and Community Development Services test makes sense but it is difficult to evaluate because the details of how the system would work are as yet unknown. The general approach of incorporating specific factors to evaluate the impact and responsiveness of the banks' activities with respect to community needs and opportunities will enhance the quantitative review. The factors that the agencies have chosen, like persistent poverty counties are sound and well-thought through.

We support adding MDIs and Treasury Department-certified CDFIs as an impact review factor. In proposing to grant automatic eligibility for CRA consideration for any activity undertaken in partnership with a Treasury-certified Community Development Financial Institution (CDFI), the Agencies have recognized the potential these institutions have to drive transformative change in communities. According to

[5] https://www.irs.gov/pub/irs-utl/atgnmtc.pdf

the NPR, activities undertaken with a CDFI "would be presumed to qualify for CRA credit given these organizations would need to meet specific criteria to prove that they have a mission of promoting community development and provide financial products and services to low- or moderate-income individuals and communities."

Applying this same reasoning, NCST and the Homeownership Alliance recommend extending this status to partnerships between banks and nonprofit organizations that hold a charter from NeighborWorks America. NeighborWorks is a Congressionally-chartered organization, and membership in the network for these mission-driven organizations requires rigorous financial and management assessments prior to receiving their charters and on an ongoing basis thereafter. Furthermore, membership in the NeighborWorks network is only available to organizations that demonstrate a commitment to resident leadership, ensuring that the organization continues to represent the interests of the communities in which it works. The accountability and oversight that NeighborWorks America provides to network organizations is akin to the stewardship of Treasury for certified CDFIs, ensuring that NWOs maintain their physical and financial health as well as their mission-driven focus.

Similarly, it was thoughtful of the agencies to recognize that grants can be relatively small dollar amounts compared with the flow of financing through a bank yet they can have an outsized impact on a community. Thus we support the agencies' choice to include a qualifying grant or contribution as a separate impact review factor.

Factor #9, "Activities that Result in a new Community Development Financing product or Service" is also a good choice to be included as an impact factor. Community development is continually evolving and changing, as are the needs of communities. This factor will reward banks that take the time and trouble to create new products or take advantage of changes in government policy. For example, Congress is currently considering the Neighborhood Homes Investment Act[6], an innovative single family tax credit that can fill the valuation gap on homeownership projects in distressed census tracts. If Congress enacts NHIA, banks that take the time and trouble to learn how to use this new tool and make investments or loans should get extra credit for committing the time and personnel to develop a new community development strategy. In this way, Factor #9 can help the community development delivery system evolve and change over time.

The entire impact review process is dependent on thorough and effective examiner training so that their application of the factors is consistent across the banking industry and diverse markets. Engagement with community stakeholders regarding their opinions about the extent to which the activities were responsive to needs or were multifaceted or innovative can be a helpful way for examiners to make the necessary judgements.

Question 34. For the proposed impact review factors for activities serving geographic areas with high community development needs, should the agencies include persistent

[6] https://neighborhoodhomesinvestmentact.org/

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?

We recommend that the agencies include these three geographical areas. Each of the categories include a mix of areas that need community development activity. As the agencies documented, persistent poverty counties have a poverty rate of 20% over three decades and would include large rural areas in need such as Appalachia, Mississippi Delta and Colonias regions. High poverty tracts are those with poverty rates of 40% or higher and would bring in several urban neighborhoods.

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?

Yes. CDFIs like the other entities listed in this question experience a dearth of long term patient capital at below market rates. The agencies recognize this in their NPR discussion. The impact review database should include at least a categorical data field with codes for investments, grants loans and other financing. Another field should record term of the financing in months or years. An additional field should indicate whether the financing is below market. Higher points should be awarded to longer term and more affordable finance.

Assessment Areas and Areas for Eligible Community Development Activity

The agencies should be commended for thinking through a new system to modernize the evaluation of bank CRA activities outside of their branch networks. As the banking industry has expanded beyond traditional brick and mortar branches using online deposit gathering and lending, the methods that CRA examiners use to assess bank performance needs to include areas beyond bank branches where banks make significant numbers of retail loans. The proposed expansion of assessment areas creates parity among traditional banks and online lenders and would hold both accountable for making loans to LMI borrowers and communities.

The proposed framework makes useful and practical distinctions across the geographies in which a bank may do business. The NPR retains a focus on evaluating a bank's CRA performance within any existing branch network with it requiring the designation of Facility-Based Assessment Areas (FBAAs) where banks have branches or a main office. For markets where large banks provide retail loans beyond their FBAAs, the NPR adds two new types of geographies for evaluating the retail lending performance for major product lines: 1) Retail Lending Assessment Areas (RLAAs) where there are concentrations of loans (the NPR proposes thresholds of 100 home mortgages or 250 small business loans) and 2) an Outside Assessment Area (OAA) that encompasses all the other geographies where a bank makes retail loans.

These geographic distinctions make possible a nuanced approach to evaluating CRA performance. While all four of the performance tests (Retail Lending, Retail Services and Products, Community Development Financing, and Community Development Services) are applied in FBAAs, only the Retail Lending Test is applied in RLAAs and the OAA where, by definition, banks do not have a branch or main office presence. While a bank's community development is evaluated at the FBAA level, it is not evaluated for the RLAA and OAA geographies. Rather, it is simply evaluated at the state/metro and institution levels where the regulators are required to produce CRA ratings based on evaluations of both retail and community development performance within the relevant geographic boundaries.

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

NCST and the Homeownership Alliance agree that banks should receive CRA consideration for community development financing outside of FBAAs. The agencies should evaluate the quality of the investment and the impact on the community.

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?

All banks should have the option of outside FBAA community development financing being considered.

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?

The agencies proposed to raise the small asset bank threshold from $346 million to $600 million. Likewise, the intermediate small bank (ISB) asset threshold would be adjusted and would range from $600 million to $2 billion. Currently, the ISB asset thresholds range from $346 million to $1.384 billon. As a result of this proposal, 779 banks that are ISB banks now would be reclassified as small banks.

These banks would no longer have community development finance responsibilities, resulting in a loss of considerable amounts of community development finance. The agencies argue that this only impacts 2% of bank assets, but these banks may well be the only lenders in their communities, so this reduction in their CRA responsibilities could have serious consequences. In this respect, the proposal goes backwards with no justification about how any reduction in burden for these banks would somehow offset the loss of reinvestment activity from a public benefits perspective.

Question 55. The agencies request feedback on the proposed performance context factors in § __.21(e). Are there other ways to bring greater clarity to the use of performance context factors as applied to different performance tests?

The agencies are considering whether to establish a specific mechanism seeking input about needs and conditions across localities. This could be useful in ascertaining the extent to which banks are responding to community needs. The agencies need to ask specific questions about the most pressing needs and which types of financing are offered or not offered by banks in response to those needs. This would be the best way to obtain the most useful performance context information for evaluating bank performance and the banks' responsiveness to needs. Comments from the public and community organizations should inform examiner conclusions on the performance tests. The agencies are contemplating making demographic and economic information about localities available to banks and the public. This is a very good idea that would help both banks and community partners. These could include measures of housing vacancy rates, housing cost burden ratios, unemployment levels, poverty rates, levels of segregation and measures of health and environment quality standards. Exams should then judge in the impact reviews and other qualitative aspects of the subtests the extent to which banks are responsive to priority needs as revealed by this data.

Question 56. Should the agencies aggregate closed-end home mortgage loans of all purposes? Or should the agencies evaluate loans with different purposes separately given that the factors driving demand for home purchase, home refinance, and other purpose home mortgage loans vary over time and meet different credit needs?

NCST and the Homeownership Alliance recommend that the agencies separately evaluate home purchase and home refinance loans. It does add complexity to CRA evaluations, but as the agencies recognize, the needs for and volume of these different loan purposes will ebb and flow during different economic conditions. Considering these loans separately is a more precise way to determine if the needs of LMI borrowers for these loans are being met by banks in their locality.

The Retail Lending Test is a quantitative test, but agencies should give special consideration for loans to first generation homebuyers and small dollar mortgages. Adding impact factors to the Community Development Finance test that reward lending to first generation homebuyers and small dollar mortgages would be a way to balance qualitative and quantitative assessment. Banks that are taking meaningful steps to narrow the racial homeownership gap should receive CRA consideration for their work.

Question 57. Should the agencies exclude home improvement and other purpose closed-end home mortgage loans from the closed-end home mortgage loan product category to emphasize home purchase and refinance lending? If so, should home improvement and other purpose closed-end home mortgage loans be evaluated under the Retail Lending Test as a distinct product category or qualitatively under the Retail Services and Products Test?

According to the State of the Nation's Housing 2021, "After years of relatively weak residential construction, the median age of the US housing stock increased sharply from 34 years in 2007 to 41 years in 2019. Older housing generally needs more upkeep than newer housing. Indeed, a 2019 analysis by the Federal Reserve Bank of Philadelphia and PolicyMap found that 45 percent of homes built before 1940 were in need of repair, compared with 26 percent of homes built in 2000 or later."[7] As our housing stock ages, there will be increasing need for home improvement lending. For example, families will need these types of loans to weatherize their homes and improve energy efficiency, particularly in colder climates such as in the Northeast and the Midwest. NCST and the Homeownership Alliance recommend that home improvement and other purpose closed-end home loans be evaluated on the Retail Lending Test because LMI communities have significant needs for these loans. If the bank gives grants or makes these loans in a partnership with a nonprofit that works with owner-occupants on homeowner repair, these activities should receive consideration on the Community Development Financing test.

Question 58. Should the agencies include closed-end non-owner-occupied housing lending in the closed-end home mortgage loan product category?

Our strong preference would be that non-owner occupied housing lending be removed from the Retail Lending Test. Large corporate entities are buying single family housing disproportionately in communities of color and LMI communities.[8] A significant number of these corporate owners are not responsible, making tenants pay high rents and not maintaining the properties. Furthermore, the competition from these corporations are bidding up home prices and making homeownership out of reach for many modest income families. CRA exams should not exacerbate these adverse market dynamics by including these loans on a quantitative-driven retail lending test as the agencies propose. If these loans were included in the Retail Lending Test, some banks may respond by loading up on loans to non-occupant owners and thereby intensifying racial, gender and income inequalities in homeownership, the opposite of what the CRA should do.

Question 59. Should open-end home mortgage loans be evaluated qualitatively under the Retail Services and Products Test rather than with metrics under the Retail Lending Test?

Agencies should evaluate the extent to which LMI households use these products for critical needs and whether the lending is responsible before making a decision. The proposed Retail Lending Test should consider this lending separately for the reasons mentioned above.

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[7] https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_State_Nations_Housing_2021.pdf

[8] Peter Whoriskey and Kevin Schaul, *Corporate landlords are gobbling up U.S. suburbs. These homeowners are fighting back,* Washington Post, March 31, 2022, https://www.washingtonpost.com/business/2022/03/31/charlotterental-homes-landlords/ [144] NPR, p. 167.

Some home equity lending responds to legitimate needs such as home improvement and repair so it is logical to include this lending on CRA exams. However, the agencies should conduct some more research to see the extent to which this lending is critical for LMI households in meeting needs and whether such lending is affordable and sustainable. Similar to the loans to non-occupant owners, open end lending might be more appropriately evaluated under the proposed Retail Services and Products Test which is more qualitative and should take into account sustainability and affordability issues.

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?

Retail loan purchases should not be treated as the equivalent to loan originations and consideration should be limited to direct purchases from a nonprofit or a CDFI. Consideration should be given on the Retail Services and Products Test should consider and regard favorably bank purchases from institutions that do not have regular access to the Government Sponsored Enterprises (GSEs) or other secondary market outlets. These institutions include Community Development Financial Institutions (CDFIs), minority-owned depository institutions, women-owned depository institutions and low income credit unions. Banks could create purchasing programs for these entities and also other institutions that have less than average access to the secondary market

Purchasing loans does not entail as much effort and resources in responding to local credit needs as originating loans. Originating loans involves determining which products best respond to local needs, conducting flexible underwriting that preserves safety and soundness while increasing access to underserved populations and marketing to underserved communities. In contrast, when a bank purchases loans, it is relying on another entity to do the multiple tasks associated with originating 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?

The agencies presented evidence in the NPR that loan churning, the serial purchasing of loans made to LMI borrower or tracts, has occurred. The agencies found that bank purchases of LMI loans are five times more likely to re-sold within the same year as loans purchases of non-LMI loans. The manipulation of CRA exams must be considered on CRA exams. If it occurs on a large scale for a bank, the examiner must downgrade the bank. Further, loans that are churned must not be included in the Retail Lending Test.

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?*

The cumulative, widespread and persistent disadvantages caused by redlining and discrimination must be remedied. Special purpose credit programs (SPCPs) are not the complete solution but they are an important part of the remedy by targeting formerly redlined neighborhoods or people of color. The final regulation must indicate that SPCPs can include programs that focus on either people of color or communities of color. The NPR discussed SPCP programs serving the needs of LMI borrowers but the final regulation must explicitly recognize that these programs usually have been utilized to extend credit to people of color and communities of color. The final regulation should mention that SPCP programs can include home lending, small business lending, consumer lending or deposit products. The question above does not reference small business lending but using SPCP to focus on minority-owned and women-owned businesses redresses the relative lack of credit that these businesses regularly experience. A rigorous credit and deposit products evaluation would elevate the importance of SPCPs.

It is probable that SPCPs will have more impact, the more widespread the lending industry adopts them and increases their product volume. Hopefully, recognizing SPCPs in the CRA regulation will facilitate use and replication of SPCPs.

Assigned Conclusions and Ratings

The agencies make dramatic changes in the current CRA system by replacing a system that weighted lending 50%, investment 25% and services 25% with a system that weights retail lending and services at 60% and community development finance and services at 40%. The agencies should consider the possibility that the transparency and predictability that both bankers and community advocates have long pushed for could have the effect of diminishing the amount of community development finance. Under the proposed system, if banks can calculate the rating that they will receive on the Retail Lending Test and be certain that their rating will be satisfactory and there is no chance that they can achieve an outstanding, they may stop making the more complex and difficult equity investments that have spurred so much constructive neighborhood revitalization through vehicles like New Markets Tax Credits.

The Retail Lending Test plus Retail Services and Products Test and the Community Development Finance Test plus Community Development Services Test should get equal weight. If this were done, the banks would have to perform well on both to get a satisfactory rating. This system would be consistent with the logic that the agencies articulate in getting rid of the Investment Test – that CRA shouldn't dictate the form that financing activities take. Retail Lending and the Retail Services Test would consider how a bank served customers with lending and deposit products, and Community Development Finance Test and Community Development Services Test would consider how the bank served its community. Both of these consolidated tests are very important and should be weighted equally.

The agencies should also reconsider the scoring system laid out in the NPR. The scores for "High Satisfactory" and "Low Satisfactory" are so close that it can result in perverse outcomes. The most significant of these is that a large bank can pass with an overall rating of Satisfactory if it receives a Needs-to-Improve on the CD Finance and Service Tests and a Low Satisfactory on the Retail Lending and Service Tests. This bank is failing to meet critical community needs and should NOT be considered satisfactory.

On the other end of the scale, a bank with High Satisfactory ratings on the Retail Lending and Service Test but with Outstanding ratings on the CD finance and service test cannot receive an overall Outstanding rating. This might well be a disincentive to striving for Outstanding on the Community Development Finance Test. To counter this possibility, the agencies should consider making Outstanding available to a bank if it achieves an Outstanding rating on either the retail and CD tests and is High Satisfactory on the other category of tests.

In conclusion, please reconsider the use of race in this system and think through the weighting and scoring to ensure that there are no unintended consequences. The agencies have done much to improve the transparency and rigor of CRA with this impressive and thorough rewrite of the regulations. The goal of the modernized regulations should be to ensure significant new access and investment for people and places that have long been overlooked or locked out. A durable system of CRA regulation that achieves that goal would be a lasting accomplishment, indeed.

Sincerely,

Kristin Siglin

Vice President of Policy and Partnerships