PCRG
PITTSBURGH COMMUNITY REINVESTMENT GROUP

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RE: Federal Deposit Insurance Corporation: 12 CFR Part 345, RIN 3064-AF81
Federal Reserve System: Docket No. R-1769, RIN 7100-AG29
Office of the Comptroller of the Currency: Docket ID OCC-2022-0002, RIN 1557-AF15

August 5, 2022

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

The Pittsburgh Community Reinvestment Group (PCRG) greatly appreciates the opportunity to comment on the Notice of Proposed Rulemaking (NPR) regarding updating the Community Reinvestment Act

(CRA). PCRG is a coalition of 60 community groups representing Western Pennsylvania and considers CRA to be one of the founding pillars of our work in the communities we represent. We have historically commented on CRA examinations, mergers and acquisitions, and numerous NPRs, including recent attempts to modernize CRA in 2020 and the NPR for the implementation of Section 1071 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. This NPR represents the most significant changes to the CRA regulation and exams in 27 years, and PCRG is greatly encouraged to see the historic alignment of the banking regulators in putting forth this NPR.

CRA has successfully leveraged loans, investments, and services. Between 2009 and 2020, banks have made more than $2.58 trillion in home loans to low- and moderate-income (LMI) borrowers or in LMI census tracts. They made $856 billion in loans to small businesses with revenues under $1 million. In the Pittsburgh, PA metropolitan statistical area (MSA), this has led to approximately $13.4 billion in mortgage lending to LMI borrowers or LMI census tracts, and over $7.1 billion to small businesses. We need to build on this progress and address remaining disparities in lending through CRA reform. CRA has never been more critical as we continue to deal with significant racial and economic inequalities in wealth and homeownership, and as we contend with the short-term and long-term effects of the COVID-19 pandemic.

CRA will be more effective in bolstering bank reinvestment activity in underserved communities, the more rigorous CRA exams and ratings are. The agencies proposed important improvements in the CRA regulation including increasing the rigor of the subtests on the CRA exams, expanding geographical areas on CRA exams, and collecting more data to scrutinize bank performance. However, the federal agencies did not sufficiently address racial inequities, and have moved us backwards in terms of reinvestment by arbitrarily increasing the asset thresholds for small and intermediate banks.

CRA must explicitly consider bank activity by race and ethnicity

Although the CRA statute does not mention race, it required banks to serve all communities, which provides room for the federal bank agencies to incorporate race in CRA exams. The passage of CRA underscores the history of housing and civil rights legislation that preceded it (the Fair Housing Act of 1968, the Equal Credit Opportunity Act of 1974, and the Home Mortgage Disclosure Act of 1975); as such, the current persistent racial disparities in lending should compel the agencies to incorporate race and ethnicity in CRA exams. A recent national level analysis showed continuing disparities in loan denials by race and when people of color receive home loans, their equity accumulation was less.

Additionally, research by PCRG highlights this trend is prevalent throughout the City of Pittsburgh and Allegheny County. In 2015-2019, the Black-white homeownership gap in the Pittsburgh MSA was 41.6% (73% for non-Hispanic whites, and 31.4% for Black households).[1] Furthermore, from 2013-2020, non-Hispanic white applicants had an origination rate 13% higher than Black applicants, controlling for home-purchase loans, while non-Hispanic white applied for loans at a rate of approximately 16 to 1

[1] Pittsburgh Community Reinvestment Group (2022), *Taking Stock: A Decade in Decline for Black Homeownership*.

compared to Black applicants.[2] This disparity grows when factoring all loan purposes (home renovations and refinancing).[3]

The result of such loan disparities, along with an unequal growth in home value appreciations between Black and white neighborhoods, leaves Black residents in Pittsburgh and Allegheny County much more likely to live in census tracts with higher rates of family poverty, lower educational attainment, higher rates of single mother led households, and lower rates of males participating in the labor force. Our research locally, along with recent reports of Black homeownership decreasing nationally to the lowest levels since legal segregation and redlining, proves that while CRA has had meaningful successes, more work is needed to adequately address the growing racial inequalities in America.

The agencies proposed to use the Home Mortgage Disclosure Act (HMDA) data to produce exam tables describing lending by race, but not to use the results of these analyses to influence a bank's rating. PCRG's national partner, the National Community Reinvestment Coalition (NCRC), had asserted in a paper co-authored by Relman Colfax PLLC that changes to CRA would comply with legal standards if CRA examined lending by race and ethnicity in geographical areas experiencing ongoing discrimination or exhibiting significant racial disparities in lending. NCRC had also proposed including analyses of lending in underserved neighborhoods with low levels of lending, which are disproportionately communities of color. The former would be achieved on an interagency basis through a periodic statistical study of metro and rural areas that experience continued discrimination or significant racial disparities in access to credit. The latter would be achieved through compiling a list of underserved neighborhoods through the same mechanisms already used for LMI tracts in CRA exams.

While we believe the agencies can examine banks' record of lending to race, the agencies should at least bolster fair lending reviews accompanying CRA exams for banks that perform poorly in the HMDA data analysis of lending by race. In addition, the agencies proposed using Section 1071 data on small business lending by race and gender of the business owner, and this data should be used as a screen for fair lending reviews. By including race and ethnicity, CRA can identify and address persistent racial disparities that have direct impacts on quality of life and health outcomes.

Another mechanism offered by the agencies would be the use of special purpose credit programs (SPCPs) as examples of loan products or programs that facilitate lending to LMI individuals. Given the recent statements by the Consumer Protection Finance Bureau, and the interagency statement from seven federal agencies (including those offering this NPR) creating near unanimity of alignment across multidiscipline government agencies, we believe that SPCPs can be an important tool to target redlined neighborhoods and communities of color. Although CRA is statutorily focused is on LMI communities and individuals, we believe that SPCPs included in the final rule should explicitly recognize lending to all people of color and communities of color, in home lending, small business lending, and consumer lending. Ample evidence suggests that non-Hispanic white LMI individuals often see better lending rates than middle- and upper-income people of color in recent HMDA data, further highlighting the need to include all lending to people and communities of color.

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[2] Ibid.

[3] Ibid.

Public input mechanisms: agencies propose improvements that must be codified

Since CRA requires banks to meet the needs of communities, the agencies must elevate the importance of public comments regarding the extent to which banks meet local needs. PCRG believes that public comments should receive more attention in the examination process, both as a means of penalizing or rewarding banks for their performance over time. The agencies proposed to continue the current practice of sending any comments on CRA performance to banks and are also considering publishing comments received on agency websites.

Posting comments on agency websites will establish accountability on the part of examiners to adequately consider them. In addition, these comments can be referenced during future merger applications to determine if the banks addressed significant concerns of the public. PCRG often comments on mergers, acquisitions, and business combinations within the Pittsburgh MSA. Ensuring that agencies can revisit these comments during their decision-making processes with further hold banks accountable to the communities they operate in. Also, the agencies should establish a public registry that community organizations can use to sign up if they want to be contacted about community needs and bank CRA performance. This is critically important for PCRG's membership base, which ranges from fully staffed organizations to volunteer run coalitions.

Furthermore, we request that the agencies start to publish which organizations they consult with to understand local community needs, commit to collecting input from a diverse range of organizations that includes organizations led by people of color and women, follow up on needs identified and detail how community input was factored into the results of CRA performance evaluations. This should include better training for examiners to solicit more in-depth observations of stakeholders during examinations. The agencies should also make more information about localities available to banks and the public alike. This could include sousing vacancy rates, housing cost burden ratios, unemployment levels, poverty rates, levels of segregation, and measures of health and environmental quality standards at the tract or county level.

We also agree with Acting Comptroller Hsu that the agencies must hold frequent public hearings on large bank mergers. CRA exams, if they are made more rigorous by a final rule, will help hold merging banks accountable. However, merging banks must also submit a community benefits plan as part of their merger applications which could include community benefits agreements negotiated with community organizations, through the implementation of the "convenience and needs" public benefits standard required under banking law for mergers. As further described in recent comments we agree with NCRC that an outstanding CRA rating must not be considered evidence that merging banks have satisfied the public benefits legal requirement.

Enhancements to public comments should not be limited to solely the CRA examination process. The agencies asked in the NPR about developing and maintaining a "non-exhaustive list of activities" that do not qualify for CRA considerations as a community development activity. We encourage the agencies to instead focus on a principles-based list of *qualifying* CRA activities, which would be updated through regular requests of public comments from all stakeholders: including, but not limited to, banks and community organizations. As PCRG, and many of our membership base, routinely work with banks on

CRA qualified projects, we see using all stakeholders in a qualifying activities public comment period as creating a unique opportunity for further collaboration between banks and community organizations.

Reducing CRA ratings inflation: progress on the lending test of the large bank exam, but not as much on the other subtests

Currently, about 98% of banks pass their CRA exams, according to an NCRC review of CRA exam results annually from 1990 to 2019, with just less than 10% receiving an Outstanding rating and almost 90% of them receiving a rating of Satisfactory. This represents an improvement in the overall passage rate since 1990, but a decrease of more than half in the rate of Outstanding ratings from its peak in 1996. CRA has successfully leveraged more loans, investments, and services for LMI communities, but it would be more effective in doing so if the ratings system more accurately revealed distinctions in performance. More banks would be identified as significantly lagging their peers, particularly those on the lower end of the Satisfactory spectrum, which would motivate them to improve their ratings and increase their reinvestment activity.

The agencies bolstered the rigor on the large bank retail lending test by introducing performance ranges for comparisons among a bank's lending and demographic and market benchmarks. This quantitative approach would decrease ratings inflation and result in more failing and low satisfactory ratings on the lending test. As a result of this proposed reform, several banks would likely respond by boosting their retail lending to underserved communities.

The agencies proposed improvements to the other subtests of the large bank exam but did not establish as many guidelines for the performance measures, which could contribute to inflation on the subtests. The community development finance test, for example, will consist of a quantitative measure of a bank's ratio of community development finance divided by deposits. The bank's ratio will be compared to a local and national ratio. The agencies, however, did not provide enough guidelines to examiners for comparing the bank's ratio to either the local or national ratio, making it possible for an examiner to inflate a rating by choosing the lowest comparator ratio.

The possibilities of misplaced examiner discretion can also occur on the retail services test and the community development services test. The retail services test contains quantitative measures comparing a bank's branch distribution to market and demographic benchmarks but does not provide enough instructions to examiners about how to weigh these benchmarks. While the Pittsburgh MSA has generally been a robust banking market, the lack of guidance could reduce the effectiveness of the above tests. This could have substantial effects for many of the banks in our footprint that also operate in underserved banking areas like those in Eastern Ohio, such as the Youngstown and Akron MSAs.

We believe that is it possible for the agencies to further develop guidelines for how to use the performance measures on the community development and services subtests of the large bank exam to produce a uniformly rigorous CRA exam and guard against ratings inflation. PCRG has concerns that the new weights for the large bank exams could lead to unintended consequences, such as a bank receiving a passing grade overall despite a "needs-to-improve" community development, and a low satisfactory retail lending and service test. PCRG does not support a test that would pass a bank that is otherwise failing to significantly address the concerns of a community. Likewise, we would support banks with "high satisfactory" ratings in either the retail lending or community development lending tests should not be precluded from an "outstanding" final exam score.

Reforms to lending data and evaluations need additional consideration

In a series of questions, the agencies asked for feedback regarding the nature of loan purposes and what is the appropriate test to the lending practices. This included whether the agencies should separate home purchasing from home refinancing, and the value of collecting home improvement loan information. PCRG supports separating home purchasing loans from home refinancing loans, as these loan purposes fluctuate based on market conditions. Additionally, PCRG supports continuing to collect and evaluate home improvement loans in the retail lending test. Given the conditions of the housing stock in Pittsburgh's older and disproportionately LMI neighborhoods, home improvement loans are a critical tool for LMI populations to enhance their quality of life, protect and restore housing structures, and build wealth.

Another significant question posed by the agencies was whether to include closed-end, nonowner-occupied housing lending in the retail lending test. We strong do not support CRA considerations for nonowner-occupied housing lending. The Pittsburgh region is not alone in what has become a nationwide trend of large corporate entities purchasing single-family residences.[4] Recent reporting locally shows multiple out of state investors purchasing hundreds of homes in the region, often in LMI or traditionally affordable neighborhoods and municipalities, converting homeownership opportunities into increasingly unaffordable rental units.[5] Banks that are facilitating these corporate purchases should not be given CRA considerations for these lending practices.

Lastly, the agencies ask whether banks should receive equivalent consideration for retail loan purchasing compared to primary loan originations. We believe that it is important to give some credit for retail loan purchasing as a means to account for different businesses models in the banking sector. However, retail loan purchasing should not receive equal weight to primary loan originations and the agencies should not include purchased loans in the calculation of retail lending benchmarks. Furthermore, a recent report from the Federal Reserve Board of Governors presents evidence that the serial purchasing of loans to LMI tracts and borrowers, also known as "loan churning," continues to persist.[6] While questions about the external validity of results remains, the study posits that the "evidence in this paper clearly indicate banks purchase significantly more loans at the CRA's LMI thresholds with little-to-no effect on the volume of credit flowing to LMI communities."[7] PCRG believes that if this practice is occurring in large banks at the level of purchasing to indicate manipulation of the

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[4] Sophie Kasakove, New York Times. April 23, 2022. "Why the Road Is Getting Even Rockier for First-Time Home Buyers" https://www.nytimes.com/2022/04/23/us/corporate-real-estate-investors-housing-market.html
[5] Paul Van Osdol, WTAE. November 4, 2021. "Investors buying up homes in western Pennsylvania" https://www.wtae.com/article/investors-buying-up-homes-in-western-pennsylvania/38163406
[6] Kenneth P. Brevoort, Board of Governors Federal Reserve System. 2022. "Does Giving CRA Credit for Loan Purchases Increase Mortgage Credit in Low-to-Moderate Income Communities?" https://doi.org/10.17016/FEDS.2022.047
[7] Ibid. Page 59.

retail lending test, that the examiners must downgrade the bank's rating and that no purchased loans be used in the retail lending test.

Additional concerns regarding the exam frameworks proposed

Regarding the retail lending test, PCRG has concerns about the retail lending volume screening metric used to determine substantial noncompliance. The 30% loans-to-deposit ratio is already too low compared to other legislation and informal industry standards. We believe that a loan-to-deposit ratio should be at a minimum 50% (such as the standard in Section 109 of the Riegle-Neal Act), or as high as 60%.

PCRG applauds the agencies for separating low-income and moderate-income evaluations in both geographic and borrower analysis as part of the retail lending test. We typically find that in theory and practice, banks tend to focus on moderate-income lending at the expense of low-income borrowers and tracts. Similarly, the agencies proposed thresholds for determining whether a small business is likely to have unmet credit needs. We support breaking out small businesses by revenue under $100,000 and from $100,001 to $250,000. The $100,000 threshold is particularly useful for understanding the needs of newly created small businesses, especially women- and minority-owned businesses. A study from JPMorgan Chase showed that the median Black-owned small businesses earned $39,000 in revenue their first year of business, 59% less than the median revenue for white-owned businesses in their first year.[8]

We support the proposed market and community benchmark multipliers for the retail lending test. The proposal includes a well thought out system that would adequately distribute rankings across the testing categories. The higher weights and percentages for market benchmarks compared to peers is reasonable given recent trends of non-depository lending firms in HMDA data. However, the agencies should be mindful of how they weight lending to LMI borrowers versus tracts. PCRG believes that the weighting system should prioritize borrowers rather than tracts, in the form of a 60/40 split in favor of borrowers. Additionally, the agencies should prioritize low-income borrowers and tracts over moderate-income borrowers and tracts. Furthermore, the agencies should not count upper-income borrowers purchasing in low- and moderate-income tracts for CRA purposes as an additional anti-displacement measure.

Overall, PCRG finds the proposed retail lending test to represent a significant improvement to the current procedures. However, we would encourage the agencies to reconsider the decision to allow small and intermediate banks the decision to opt-in to the new testing procedure. The agencies should consider this in conjunction with requiring the use of new testing components for small banks to earn an outstanding rating, or in response to a small bank receiving a needs-to-improve rating.

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[8] JPMorgan Chase & Company Institute. July 2020. *Small Business Owner Race, Liquidity, and Survival.* *https://www.jpmorganchase.com/institute/research/small-business/report-small-business-owner-race-liquidity-survival*

Enhancements to community development definitions will increase responsiveness of banks to community needs

The agencies proposed refinements to the definitions of affordable housing, economic development, climate resiliency and remediation, community facilities and infrastructure that we believe will more effectively target revitalization activities to communities such as persistent poverty counties and Native American communities. However, more consideration must be taken by the agencies to prevent displacement of LMI populations through CRA qualified activities, including the development of affordable housing. Specifically, a final rule should protect against rapid rent hikes, and detrimental projects that have disproportionately affected LMI neighborhoods and communities of color, like fossil fuel and other petrochemical facilities.[9] Financial institutions should be penalized, not rewarded, for community development financing that has a negative impact on LMI communities. Moreover, the agencies should not give CRA consideration for affordable housing targeted to middle-income households, but instead continue support for the creation and preservation of housing in high opportunity areas for LMI households and populations. Any credit that is rewarded for naturally occurring affordable housing developments should include a pledge to preserve affordable units for at least 15 years, like Low Income Housing Tax Credits, and include at least 50% affordable units in non-LMI tracts.

The NPR clarified that financing health services qualifies under the definition of community support services. Essential community facilities now include hospitals and health centers without current documentation requirements, applied inconsistently, that the financing attract and retain residents to the community. The agencies should also consider adding grocery stores and supermarkets to the list of community facility projects, as LMI communities are disproportionately more likely to be food deserts. This streamlining would boost financing of critical community infrastructure. PCRG is also supportive of the expansion of community development activities definitions to include climate remediation, childcare facilities, and activities with minority depository institutions (MDIs), women's depository institutions (WDIs), and Community Development Financial Institutions (CDFIs). Particular focus should be given towards long-term and affordable financing, but not at the complete exclusion of short-term lending.

However, the community development finance test will include an impact review which must be further developed (to determine the extent to which bank financing is benefitting LMI residents and communities) and include points and ratings like other subtests so that the test can be even more effective in stimulating responsive community development activities. The agencies should consider the following when assessing what data large banks should report for the community development financing test:

- Types of financing, with greater weight towards loans and investments over grantmaking
- Collaboration with public agencies
- Metrics for affordable housing units produced for low-income and moderate-income residents

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[9] Ken Ward Jr., ProPublica "How Black Communities Become "Sacrifice Zones" for Industrial Air Pollution". https://www.propublica.org/article/how-black-communities-become-sacrifice-zones-for-industrial-air-pollution

- Dollar allocations to CDFIs, MDIs, WFIs, other intermediaries focused on small businesses development, and government-certified entities
- Percentages of low- and moderate-income clients served by community services and infrastructure projects
- Additional assessments for persistent poverty counties with low levels of community development, native lands, and other targeted areas, and,
- Other multifaceted and innovative activities

Finally, we ask the agencies to reconsider their proposal to expand CRA consideration for financial literacy with no income limits; scarce counseling resources need to be targeted to LMI and other underserved populations. As previously stated, PCRG is asking the agencies to carefully develop a proposed, non-exhaustive list of activities that qualify as CRA activities.

Overall, the community development finance test as proposed represents an improvement to the current rule. However, more guidance is necessary to achieve an equitable and sustainable community development financing test without leading to grade inflation. This should include standards for local and national community development ratios and adopting weights for the components to the financing test. Additionally, the agencies should be careful in how they implement the inclusion of past and present lending in community development ratio. Taking a long-term approach to capital is a worthwhile goal for the agencies but should be limited to community development lending from the previous exam cycle. PCRG supports using component weights to encourage community development financing while balancing the results of small dollar, high impact financing that can be more responsive to community needs. We believe that a 60/40 split in weighing between the community development financing ratio and the impact review respectively would be an equitable split.

Service test modernization holds brick-and-mortar and online lending accountable

PCRG applauds including the branch distribution, openings and closures, and other banking services in the newly proposed service test. In the 20 months following the lockdowns of the COVID-19 pandemic, more than 4,000 physical bank branches closed across the United States – doubling the rate of the prior 20 months, according to a study by NCRC.[10] PCRG is also encouraged to see the agencies further broadening of the remote services definition to include other types of remote facilities that take deposits. However, the inclusion of tracking closures needs further guidance from regulators, specifically relating to defining how a "disproportionate amount" of closings or openings in an LMI census tract would impact a service test score. Furthermore, this level of scrutiny should also include whether the services and products offered are comparable across geographic income distributions. This should include a list of the range of credit and deposit products available in branches located in LMI census tracts and other disadvantaged communities. PCRG does not believe the agencies should limit the changes to the service only to large banks over $10 billion in assets, but instead cover all large banks.

[10] NCRC, February 16, 2022. "Study: Banks Doubled the Pace of Branch Closures During the Pandemic"

We support the establishment of the community development service test as a standalone test, especially considering recent branch closures and the growing need for dedicated technical assistance in community development. Under this new test, we encourage the agencies to abandon their proposal to count volunteer activities unrelated to financial services as CRA eligible activities. While PCRG is highly supportive of volunteering in any capacity, we do not think the agencies should reward banks for dedicating their time and energy in volunteering outside of their unique expertise when there is such a community need legal, accounting, and other technical expertise-based volunteerism. If stakeholders in the Pittsburgh region believe there to be insufficient need or opportunity for community development assistance, we would be more than happy get them in touch with membership base, or work with stakeholders directly to create novel opportunities for community development servicing.

Furthermore, PCRG believes that the agencies should consider additional metrics to limit the amount of examiner discretion in the retail services test. The agencies did not propose any weights for community or market benchmarks, unlike the retail lending test. Banks should receive quantitative considerations based on the percentage of branches in LMI tracts relative to peer competitors, as well as a further developing the guidance for awarding points for banking desert branches, and in distressed or underserved middle-income, non-metro tracts.

In terms of the retail products portion of the service test, the agencies must consider how each income group uses digital products and delivery systems. This should include evaluation on the openings and closings of accounts by census tract, and account usage metrics by income groups per census tracts. Paramount to evaluating deposit services, whether digital or in-person, should be the affordability of said products, including: the collection of monthly fees, fees related to balance minimums, and overdraft fees. According to a survey conducted by the FDIC, the largest impediment for unbanked people in establishing accounts are the expenses, with 49% of survey respondents saying they did not have enough money to avoid charges and fees.[11] Considering the challenges to unbanked populations, and the overall reliance on bank branch networks by LMI populations, the physical delivery systems should be given the most weight in this component of the test, with some consideration to digital delivery systems based on the business model of the bank in question.

Data improvements will help hold banks accountable, but all new data should be publicly available

The agencies correctly proposed to include new data collecting requirements for deposits, community development activities and automobile lending. Some of this data such as deposit and automobile lending would not be publicly available, which limits the extent to which the public can hold banks accountable for reaching underserved communities. The Bank On National Data Hub, operated by the St. Louis Federal Reserve Bank and Cities for Financial Empowerment Fund, is a publicly available data source with downloadable information on new and existing deposit accounts by zip-code. With that precedent established, PCRG does not believe it would be overly burdensome for banks to collect and de-identify depositor's address data and report that at the county and census tract level. As such, we do not think the agencies should limit collecting deposit data should be solely to large banks over

[11] FDIC Survey, 2019. *How America Banks: Household Use of Financial Services, 2019.* https://www.fdic.gov/analysis/household-survey/index.html

$10 billion, but instead should be required of all large banks. However, the agencies should assist the banks in collecting and reporting this data, through the creation of a geocoding tool.

The agencies additionally asked for more data disclosure regarding economic development lending as part of the retail services and product test for large banks. These banks should be required to submit data on job creation, retention, and improvements for consideration on the qualitative subtest, with specific focus on creation and retention. While loans over $1 million are currently included in community development activities, the agencies should plan to transition those loans to the retail lending test once Section 1071 data is available. PCRG has joined our colleagues at NCRC in advocating for using Section 1071 data for years and would rather use the Consumer Financial Protection Bureau's small business and farm lending data be the standard instead of the Small Business Administration's which includes some businesses over $5 million or 500 employees.

We ask the agencies to reconsider this decision and to expand data collection to all large banks instead of just banks with assets of more than $10 billion in the case of deposits and automobile lending. Finally, CRA exams should not only analyze access to deposits accounts for LMI communities but also affordability by comparing and refining, if necessary, fee information collected in call report data. Lastly, PCRG would encourage the agencies to work with additional agencies outside the scope of this NPR to simplify data collection standards, such as the Small Business Administration and the Securities and Exchange Commission. Additional data reporting standards should be harmonized across the federal government to prevent duplicative and otherwise redundant efforts, which could styme the ability of agencies and community groups alike to hold financial institutions accountable.

Accountability for discrimination will increase but the agencies need to bolster their reviews concerning the quality of lending

The agencies proposed to include all activities and products including deposit accounts in addition to credit in anti-discrimination and consumer protection legal reviews. This is an important advance, but we urge the agencies to expand their reviews to include the quality of lending. Massachusetts CRA exams include analysis of delinquency and defaults rates in home lending. Federal CRA exams should do likewise in all major product lines. Moreover, reviews of lending must include an affordability analysis and impose penalties when banks offer on their own or in partnerships with non-banks abusive, high-cost loans that exceed state usury caps and that exceed borrowers' abilities to repay. Finally, we are pleased that the agencies added the Military Lending Act in the list of laws to be included in the fair lending review, but we urge them to also add the Americans with Disability Act.

Assessment areas are expanded to include online lending but performance in smaller areas needs to be considered more carefully

For several years, advocates have urged the agencies to examine lending that occurs online. The agencies proposed to create retail assessment areas where a large bank does not have branches when a bank has issued 100 home loans or 250 small business loans for two consecutive years. This proposal would result in the great majority of total lending being incorporated on exams (90% of home lending and 84% of small business lending) and would therefore hold non-traditional banks more accountable for serving LMI communities. PCRG has already identified a handful of banks that meet the criteria of 100 or more home loans, which are performing below the baseline averages of banks with a physical presence in the region.[12] While some financial institutions believe that this may be overreach on behalf of the agencies, PCRG firmly believes that this is well with the statutory requirements of CRA that banks "serve the convenience and needs of the communities in which they are chartered to do business."

Additionally, large banks should not be exempted from retail lending assessment areas, even when a majority of the banks retail lending occurs inside the facility-based assessment areas. Facility based-assessment areas should be expanded to the full metro area for large banks that fit the criteria for a retail-lending assessment area in the same geographies. This will ensure that large banks with some presence in a given metro area are completely evaluated under the scope of a large bank examination. Furthermore, when intermediate banks are making over 50% of their loans outside of the traditional facilities-based assessment areas, the agencies should consider their lending under the retail lending assessment area criteria.

The agencies asked whether banks should receive credit for community development lending that occurs outside the facilities-based assessment area footprint of a bank. While PCRG believes that banks should receive some credit for this lending, the agencies should propose a weighting scheme to prioritize traditional branch network community development. If not, then the agencies should reconsider whether banks should be examined for the community development financing test in retail-lending assessment areas.

For small and intermediate banks, PCRG requests that the agencies reconsider partial county designations for assessment areas. If not, the agencies must consider amending the assessment area procedures to fully require partial assessment areas to not arbitrarily exclude low- and moderate-income tracts, or predominately majority-minority tracts to prevent further redlining.

We ask the agencies to expand upon their proposal to include partnerships with banks and non-banks for retail lending. When a bank partners with more than one non-bank, the lending of all the non-banks needs to be totaled together for calculating if the threshold is exceeded for purposes of creating assessment areas. Additional considerations should be included for consumer lending, as Fintech companies and other largescale online lenders have received bank charters and make consumer loans but not home or small business loans.

These third-party partnerships and other affiliates should be considered mandatory reporting because these organizations are engaging in activity on behalf of the banks. A recent study from NCRC found that 80% of the largest banks are already including their affiliates on CRA examinations, with 41% reporting retail lending and 76% in community development lending. This high level of participation from large banks shows that a more expansive consideration of affiliate and third-party activities would not deter banks.

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[12] PCRG achieved this using HMDA data from 2019 and 2020 but requires further analysis of 2021 HMDA data recently released at the end of April 2022.

To ensure that banks serve smaller metropolitan areas and rural counties, the agencies proposed requiring that banks with 10 or more assessment areas must receive at least a Low Satisfactory rating in 60% of the assessment areas in order to pass overall. This still may not be an adequate solution since the smaller areas could represent a minority of areas, allowing a bank to pass the 60% threshold by focusing on the larger areas. One possible fix is to require banks to achieve at least a Low Satisfactory rating of 60% in each of its large metropolitan, small metropolitan and rural assessment areas.

Reclassifying banks as small and intermediate small banks (ISB) would reduce community reinvestment activity

By adjusting asset thresholds for qualifying for various CRA exams, the agencies proposed to reclassify 779 ISB banks as small banks, which would involve no longer holding these banks accountable for community development finance. In addition, the agencies proposed to reclassify 217 large banks as ISB banks, eliminating their service test and accountability for placing branches in LMI communities. In the Pittsburgh MSA alone, this would result in about a quarter of all banks being reclassified to a lower asset threshold based on the FDIC's Institutional Summaries of Assets compiled in December 2021 and December 2020. Nationwide, this would represent 20.6% of the 4,839 FDIC-insured banks as of December 2021.

These changes lack justification since these banks have been successfully performing these activities for several years. This, along with changes to the community development financing test procedures to intermediate banks, could lead to a significant reduction in reinvestment activity. Therefore, we urge the agencies to eliminate this aspect of the NPR.

Conclusion

PCRG is appreciative of the alignment between agencies to offer the most robust and likely changes to the Community Reinvestment Act since the reforms passed in 1995. However, the agencies must ensure that these proposed reforms are not weakened in the final rule and allow another three decades to pass without addressing the needs of the most underserved and disenfranchised communities. PCRG is confident that through the collective public comments of community organizations, financial institutions, and other interested parties that the agencies will enhance CRA in a manner that is consistent with CRA's statutory obligations for a modern era of banking.

This NPR is a good start and promises to make parts of CRA exams more rigorous, but we urge the agencies to extend the rigor of the large bank lending test to the other tests. We also ask the agencies to incorporate race in CRA exams, to expand the public reporting of their data collection proposals, to bolster their assessment area proposal to make sure that smaller communities are not left out and to refrain from reducing reinvestment requirements for any segment of banks. If CRA is improved while maintaining public input and accountability, we believe the proposed rule could help reduce inequalities, disinvestment, and other disadvantages in America's overlooked communities.

Thank you for allowing PCRG, and our many membership organizations and financial partners the opportunity to comment on this proposed rule. If you have any remaining questions, comments, or concerns please do not hesitate to contact.

Respectfully,

[redacted]

Ernest Hogan
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