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TO: Ann E. Misback
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

Chief Counsel's Office
Attention: Comment Processing
Office of the Comptroller of the Currency
400 7th Street SW, Suite 3E-218
Washington, DC 20219

James P. Sheesley
Assistant Executive Secretary
Attention: Comments RIN 3064-AF81
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

Re: Proposal to amend their regulations implementing the Community Reinvestment Act of 1977 (CRA) to update how CRA activities qualify for consideration, where CRA activities are considered, and how CRA activities are evaluated (Docket ID OCC-2022-0002, Regulation BB, Docket No. R-1769; RIN: 1557-AF15, 3064-AF81, 7100-AG29)

Dear Ladies and Gentlemen:

Better Markets¹ appreciates the opportunity to comment on the above-captioned joint notice of proposed rulemaking (“Proposal”) by the Board of Governors of the Federal Reserve System (“Federal Reserve”), the Office of the Comptroller of the Currency (“OCC”), and the

¹ Better Markets is a non-profit, non-partisan, and independent organization founded in the wake of the 2008 financial crisis to promote the public interest in the financial markets, support the financial reform of Wall Street, and make our financial system work for all Americans again. Better Markets works with allies— including many in finance—to promote pro-market, pro-business, and pro-growth policies that help build a stronger, safer financial system, one that protects and promotes Americans’ jobs, savings, retirements, and more.

Federal Deposit Insurance Corporation (“FDIC”) (collectively, the “Agencies”). The Proposal seeks to modernize, strengthen, update, and improve the rule² that implements the Community Reinvestment Act (“CRA”),³ a rule that was last materially updated in 1995.⁴

In the more than 40 years since the CRA was enacted and 25 years since its implementing rules have been materially updated, the CRA still has not fulfilled its promise due to implementation practices and procedures that have allowed for too much examiner discretion and too little transparency, oversight, and accountability. Thus, CRA modernization and strengthening are long overdue, including for the following reasons. First, the banking industry has changed substantially since the last major update of the CRA rule in both the structure and operations of the banks themselves as well as consumer behaviors and preferences, underscoring the need to modernize the rule. Second, the most important factor and the original intention of the law when it was enacted in 1977 – addressing economic inequality, especially racial economic inequality – has, in many ways, gotten much worse, highlighting the clear need to strengthen the rule. Third, banks repeatedly pass CRA tests year after year seemingly without the intended beneficiaries of the law receiving the benefits of the law, illustrating the need for rethinking, rewriting, and reimplementing the CRA.

Two shocking statistics highlight the gross disparity in the way the CRA is implemented (bank focused) and how it fails to achieve the actual goals of the CRA (people focused): despite 98% of banks passing their CRA examinations,⁵ homeownership rates among the lowest income earners as well as Black and Hispanic Americans are no greater today than they were when the CRA was passed into law.⁶ **Forty-five years of literally zero progress in home ownership:**

² 12 CFR 25, 12 CFR 228, 12 CFR 345

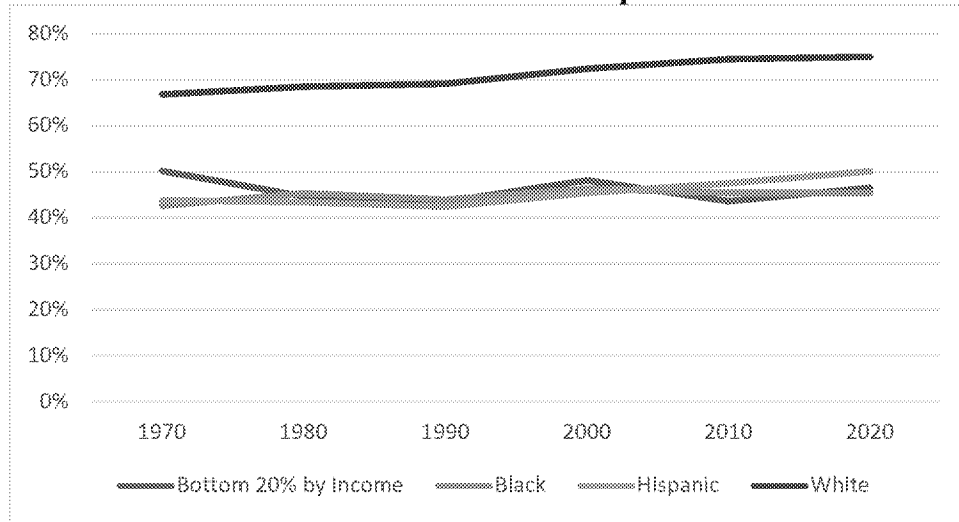
³ 12 U.S.C. 2901 et seq.

⁴ 60 FR 22156

⁵ Josh Silver and Jason Richardson, *Do CRA Ratings Reflect Differences In Performance: An Examination Using Federal Reserve Data*, NCRC (May 2020), <https://ncrc.org/do-cra-ratings-reflect-differences-in-performance-an-examination-using-federal-reserve-data/>.

⁶ Based on data from the U.S. Census Bureau. Data for 1970, 1980, and 1990 obtained from the IPUMS USA database, available at <https://usa.ipums.org/usa/sda/>. Data for 2000, 2010, and 2020 obtained from the Current Population Survey, available at <https://www.census.gov/programs-surveys/cps/data.html>.

Historical Home Ownership Rates



Source: U.S. Census Bureau decennial surveys

For a law that was intended, designed, and enacted to address the despicable injustice of depriving lower-income households, particularly minorities, credit to buy homes due to redlining, that is a failure that is hard to fathom. However, juxtaposed to the 98% pass rates for the banks, it is a travesty.

It cannot be denied that the rule that is supposed to implement the CRA to achieve its intended goals has failed and simply must change materially to ensure that the law achieves its intended goals, which is not a high CRA bank pass rate. Moreover, in an increasingly data-driven world, more data must be disclosed in an easily accessible format so that the public can see and understand exactly how the CRA is being implemented and whether it is achieving its goals. That transparency is essential for oversight of both the banks and the responsible Agencies.

If the Proposal is finalized, it would represent progress towards modernizing and strengthening the CRA rule as well as increasing data disclosure, but it could be -- and should be -- enhanced prior to finalization to ensure that the goals of the law are achieved in fact for the lives of the people who are the intended beneficiaries of the law. The most important modernization in the Proposal is the recognition that many banks take deposits electronically, and therefore physical branches are no longer representative of a bank's banking activities and, therefore, cannot serve as the only basis for determining areas of assessment, as is the case with the current rule. That is, banks accept deposits outside of physical branches, and so even though deposits are collected in areas other than where the bank maintains physical locations, the current rule still focuses on lending where the bank has physical locations.

However, the Proposal suggests addressing this issue by identifying assessment areas that are not linked to physical locations ("outside assessment areas") through a bank's lending activity rather than where the deposits are obtained. This will continue the disconnect between deposits and lending. That would fail to meet the "reinvestment" part of the CRA. Worse, it will possibly if not likely result in banks choosing more affluent areas that are not tied to physical locations for

making loans or even pushing for a faster transition to electronic banking to take advantage of being able to receive credit on CRA examination for taking deposits from one location and using them to invest in another. Put differently, this will be easily gamed by banks which will continue to get high CRA scores while still not achieving meaningful results for the intended beneficiaries.

As for strengthening the efficacy of the CRA rule, the Proposal goes a long way by laying out a framework that would make the assessment process more quantitative than its current form, which relies heavily on the qualitative judgement of examination teams. For example, the retail lending test – the most material part of the exams because it assesses mortgage and small business lending, among other activities, and is given the highest weighting in determining a bank’s overall rating – has a proposed framework that is entirely quantitative, onto which qualitative modifications can be made. Additionally, although qualitative assessment is still a material factor for the community development financing test, the assessment of community development activities now includes a quantitative metric and assessment benchmarks. There are also some appropriate backstop provisions suggested that would work to ensure the assessment aggregation does not encourage gaming of the process.

While the Proposal represents an improvement over the current methodology, the retail lending test should be strengthened by:

1. including benchmark methodologies that would provide an alternative view to the assessment process, and
2. having a set of strong and robust backstop metrics.

These improvements are essential. Benchmark methodologies are indispensable oversight components of any quantitative framework and even of structured qualitative frameworks. They help ensure the primary framework is operating as intended, and they can identify issues or weaknesses in the primary framework when there are material deviations in results between the two methodologies. Similarly, backstops within a framework prevent unintended consequences from occurring and help to prevent issues that may arise from the limitations of the framework. Additionally, the community development financing test should be more structured and less qualitative to increase its effectiveness.

Finally, as part of the Federal Reserve’s advance notice of proposed rulemaking in 2020⁷ (“2020 ANPR”), data tables were released that included significantly more information than currently disclosed and in a format that could be more easily digested and utilized by the public. Subsequently, the Agencies released further enhanced data tables concurrently with the Proposal that included more information than the release with the 2020 ANPR and in a similarly usable format. These data publications represent a much-improved disclosure of information and transparency from the Agencies, but more data should be disclosed in an even more user-friendly manner, and the Agencies should include those provisions when they finalize CRA rule.

⁷ 85 FR 66410

Background

Banks enjoy a special status in the American financial system and, accordingly, receive special privileges. Bank deposits are insured by the FDIC. Without this, depositors would demand higher rates to compensate for the risk of losing their deposits or almost certainly pull their deposits out altogether in times of stress, causing bank runs, failures, contagion, and financial crises. Additionally, banks with a federal charter benefit from the preemption of state laws, which allows them to avoid state laws such as interest caps and consumer protections where they are more stringent than federal standards. Further, banks have access to special services from the Federal Reserve: deposit accounts on which banks earn interest, a national payment system to transfer funds, and emergency borrowing programs in times of stress. And the largest banks make substantial profits from the financial transactions conducted with the Treasury and Federal Reserve as well as benefit from the ultimate backstop: a virtual guarantee that if they come to the brink of failure, they will be bailed out by the U.S. taxpayer.⁸

Banks are afforded these privileges because, among other things, they are supposed to provide the American people with access to credit to fuel the economy, creating jobs and growth, and, ultimately, enabling wealth creation, improving financial well-being, and making the American Dream widely available.⁹ Banking touches on every aspect of life: enabling savings, providing basic financial services, and providing credit for personal purchases such as groceries or other day-to-day necessities or, even more important, home purchases which, for many people, will be their most significant source of wealth.¹⁰ Simply put, it is nearly impossible to achieve any measure economic and financial security and success without banking.

Unfortunately, the access to or cost of banking products and services has never been fair or equal in America, with certain Americans, especially Black Americans and other Americans of color, being disproportionately affected.¹¹ The country's major attempt to remedy this disreputable situation was when Congress passed the CRA in 1977. In addition to addressing several injustices, it was intended to ensure that banks fulfill the public purpose that justifies their many privileges, i.e., to provide all Americans, including those that are economically marginalized, the opportunities that access to credit, banking, and the broader financial system afford. The CRA essentially requires the Agencies to evaluate a bank's record of meeting the credit needs of the communities it serves, including low- and moderate-income ("LMI") communities and individuals within communities, under a number of "assessment factors." The

⁸ See Better Markets letter to the Financial Stability Board on too-big-to-fail reforms (Sept. 30, 2020), https://bettermarkets.com/sites/default/files/Better_Markets_Comment_Letter_on_FSB_TBTF_Consultation_Report_.pdf; also see Better Markets presentation to the Financial Stability Board workshop at the Federal Reserve Bank of New York by Dennis M. Kelleher, *The Too Big To Fail Problem is Alive, Well and Getting Worse* (September 16, 2019), https://bettermarkets.com/sites/default/files/documents/Better_Markets_Too-Big-To-Fail_FSB_Conference-9-16-2019.pdf.

⁹ Mehrsa Baradaran, *How the Poor Got Cut Out of Banking*, 62 Emory L.J. 483, 489 (2013).

¹⁰ See Cassandra Jones Havard, *Doin' Banks*, 5 U. Pa. J.L. & Pub. Aff. 317, 320 (2020).

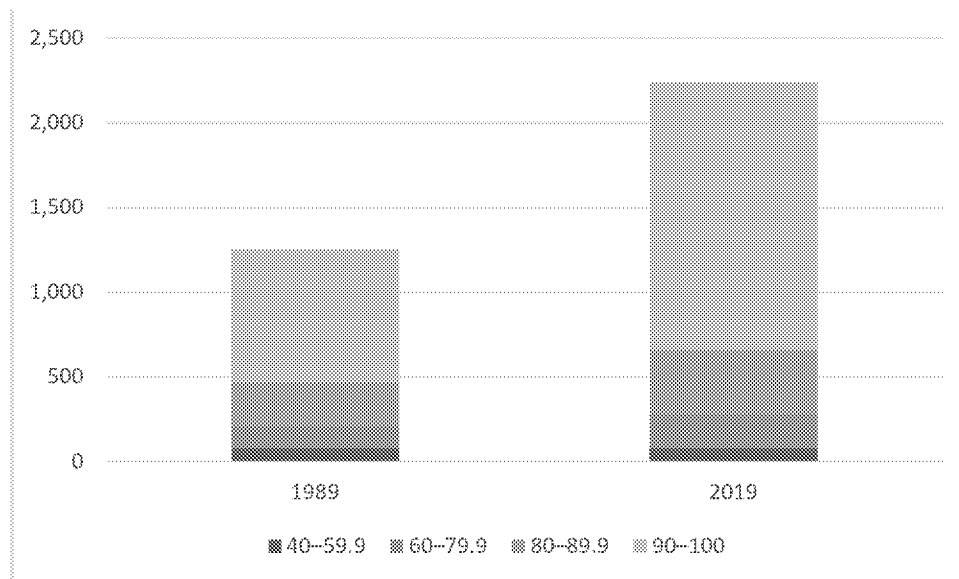
¹¹ Peter P. Swire, *The Persistent Problem of Lending Discrimination: A Law and Economics Analysis*, 73 Tex. L. Rev. 787, 793 (1995).

resulting top-line ratings, which are made public, are considered by regulators as they evaluate bank applications for mergers, acquisitions, branch openings, and other elements of a bank's business plan.

However, over 40 years after its passage, there is little evidence that the CRA has fulfilled its promise. Homeownership among low-income and Black Americans is no greater today than when the CRA was passed 45 years ago and is barely higher for Hispanic Americans, all well below the rates for higher-income and white Americans. As a result of that and other factors and actions interfering with access to credit and banking services, substantial wealth gaps have grown between various levels of income as well as along racial lines.

Data from the Federal Reserve's Survey of Consumer Finances¹² show that since the late 1980s the gap between the median wealth of white and Black Americans has grown by over 20% and by about 15% for Hispanic Americans. But ***those percentages understate the scale of the gaps*** – per the most recent survey, Black families' median and mean wealth is less than 15 percent that of white families, a similar statistic as for Hispanic families. Additionally, over that same period, the wealth gap between the top 10% and bottom 20% of income earners doubled, with gaps between the 40th to 60th, 60th to 80th, and 80th to 90th percentiles and the bottom 20% having also grown (by 8%, 50%, and 44%, respectively).

Wealth Gaps Between Selected Income Percentiles and the 20th Income Percentile



Source: Federal Reserve's Survey of Consumer Finances

Beneficial banking relationships still seem to be unattainable for many Americans as well. According to the Federal Reserve, in 2021 an estimated 6% of U.S. households remained

¹² Data for the Federal Reserve's Survey of Consumer Finances available at <https://www.federalreserve.gov/econres/scf/dataviz/scf/chart/>.

unbanked and 13% remained underbanked. That is a fifth of U.S. households that lack productive banking relationships.¹³ Also, they note that “unbanked and underbanked rates were higher among adults with lower income, adults with less education, and Black and Hispanic adults.”

Percentage of Population by Banking Relationship and Race

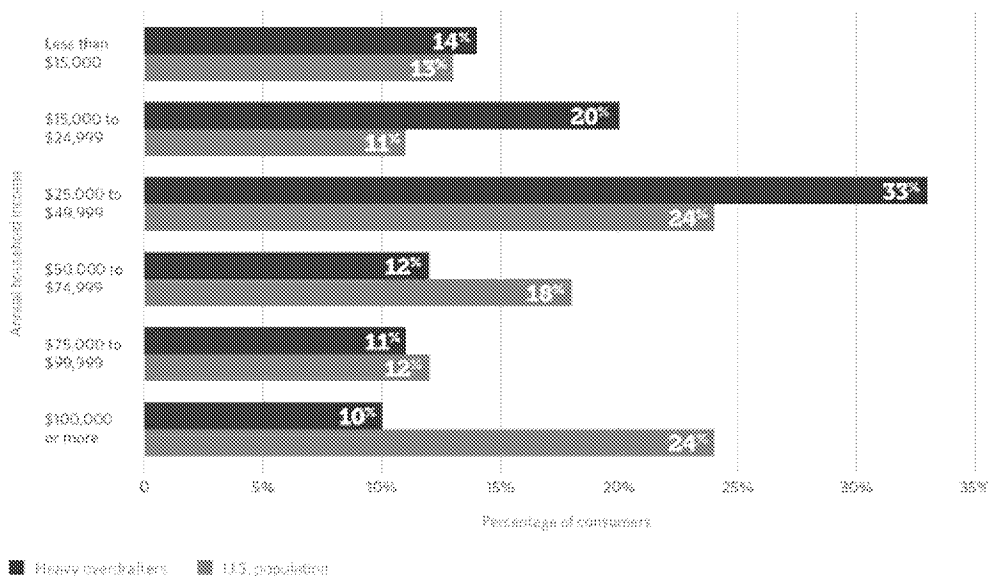
Race/Ethnicity	Unbanked	Underbanked	Fully Banked
White	3	9	88
Black	13	27	59
Hispanic	9	21	70

Source: Board of Governors of the Federal Reserve System (May 2021), *Economic Well-Being of U.S. Households in 2020*

Not only is access to banking troublesome for lower-income, Black, and Hispanic Americans, even if they have access to bank accounts and services, the fees and charges associated with bank accounts are higher in LMI and majority-minority communities.¹⁴

Nearly 7 in 10 Consumers Who Overdraft the Most Make Less Than \$50,000 a Year

Heavy overdrafters compared with U.S. population by annual household income, 2014



Reprinted from *Consumers Need Protection from Excessive Overdraft Costs*, Pew Charitable Trusts (December 2016). Copyright 2016 Pew Charitable Trusts.

¹³ Federal Reserve, *Report on the Economic Well-Being of U.S. Households in 2021* (May 2022), <https://www.federalreserve.gov/publications/files/2021-report-economic-well-being-us-households-202205.pdf>.

¹⁴ Migueis, Marco, Michael Suher, and Jessie Xu (2022), *Cost of Banking for LMI and Minority Communities*, Finance and Economics Discussion Series 2022-040. Washington: Board of Governors of the Federal Reserve System, <https://doi.org/10.17016/FEDS.2022.040>.

Put simply, there are still far too many households in America without fair and adequate access to banking products and services, and that lack of access disproportionately impacts the most vulnerable Americans—minorities, the less educated, and those with lower incomes. Being unbanked or underbanked, in turn, has a significant negative impact on people’s lives. As noted in previous research by Federal Reserve Vice Chair for Supervision Michael Barr, it is simply indisputable that:

“the consequences of not having access to mainstream financial services can be severe.”¹⁵

The agencies recognized this issue in the Proposal:

“Even with the implementation of the CRA and the other complementary laws, the wealth gap and disparities in other financial outcomes remain persistent.”

Clearly, the CRA’s implementation must be improved. Thus far it has allowed for too much examiner discretion and too little measurement, transparency, and oversight. Examiners currently utilize quantitative metrics, but there are no defined rules or thresholds that map from numbers to assessment conclusions, defying replication and measurability and promoting discretion. Results are presented in separate reports for each bank conducted at irregular intervals, defying aggregation or comparison. This heavily qualitative, balkanized approach may have fit the data management and data analytic reality of the early years of CRA implementation, but it has long been outmoded. Assessments under the CRA rule must be more meaningful and effective by making them quantitative, transparent, and measurable, which will shift the balance to where it really matters: the lives of those people who are supposed to be the beneficiaries of the CRA.

Also, through the release of more comprehensive data sets, the Agencies clearly recognize that more data must be disclosed in an accessible way so the public can see the CRA working and hold banks and regulators accountable. This is the fundamental foundation for trust and confidence in the people’s institutions and government. It is long overdue regarding the CRA.

Finally, the CRA rule is due for an update, in part, because of the significant technological shifts that have occurred since the last major update. It is now the case that not only can nearly every banking transaction, from depositing a check to applying for a mortgage loan, be entered on a computer, but they can also be entered on a smartphone. The most recent FDIC household survey of 2019 shows that 57% of households use either mobile or online banking as their primary method of account access.¹⁶ That number has likely increased throughout the Covid-19 pandemic. This has led to a disconnect (especially for online-based banks) between deposits that are sourced online, which can be from anywhere, and the CRA

¹⁵ Michael S. Barr, *Banking the Poor*, 21 Yale J. on Reg. 121, 134 (2004) (emphasis added).

¹⁶ Federal Deposit Insurance Corporation, *How America Banks: Household Use of Banking and Financial Services - 2019* (October 2020), <https://www.fdic.gov/analysis/household-survey/2019report.pdf>.

assessments, which are based on where banks have physical facilities. The Proposal seeks to remedy this issue as do our comments below.

Summary of Key Components of the Proposal

As the Proposal was being drafted, principals from the Agencies – including Acting Comptroller Michael Hsu of the OCC and Governor Lael Brainard of the Federal Reserve – stated there were three main goals they were trying to achieve in updating of the CRA rule:

1. An increase in the scale and quality of CRA-related activities;
2. Better clarity, consistency, and transparency of CRA supervisory expectations and standards; and
3. A reflection in the CRA rule’s standards of changes to the banking industry, in particular the material use of mobile and internet bank products and services.¹⁷

These goals are reflected in the modifications to the CRA rule that are presented in the Proposal. To summarize, they are attempted to be achieved through the following elements of the Proposal:

- Capturing banking activities that are associated with mobile or internet banking (i.e., not associated with a physical branch location) through
 - the addition of assessment areas without physical presence and
 - making large banks subject to state-wide review, multi-state MSA review, and a nationwide review.
- Increasing the stringency of the assessments by establishing concrete thresholds and certain backstop provisions that help to ensure a Satisfactory or Outstanding rating is justified.
- Enhancing clarity and transparency by
 - Establishing metrics and threshold-based frameworks for retail lending and community development financing and
 - More clearly defining eligible community development activities with a thorough, but non-exhaustive, list of qualifying activities.
- Encouraging increased activities in smaller or underserved communities by
 - Ensuring that loan, investment, or service activities with or related to minority depository institutions (“MDIs”), community development financial institutions (“CDFIs”), and women-owned depository institutions (“WDI’s) are eligible as community development activities
 - Providing credit in the assessment for community development activities outside of physical branch assessment areas
 - Providing extra consideration for activities in areas of persistent poverty or loans to very small businesses and farms and

¹⁷ See for example Michael J. Hsu, *The Community Reinvestment Act in Perspective* (February 14, 2022), <https://www.occ.gov/news-issuances/speeches/2022/pub-speech-2022-15.pdf>.

- Providing special consideration for banks that maintain or establish branches in low-to-moderate income (“LMI”) areas.
- Increasing data collection and disclosure by adding reporting requirements for larger banks related to deposits, community developments, and auto lending.

The most material modification is to the retail lending test through the addition of thresholds, based on benchmark metrics, that are directly tied to the final test conclusions. This direct relationship between the quantitative metrics and thresholds and the final conclusions for the retail lending test was included to help ensure that the conclusions are based as little as possible on the qualitative discretion of examiners, i.e., that the injection of examiner judgment in the conclusions is the exception and not the rule. According to the Proposal, based on analysis of historical data, had the proposed benchmarks and thresholds for the retail lending test been in place, they would have led to “a level of stringency that the Agencies believe to be appropriate.” The community development financing test similarly includes benchmark metrics, but unlike the retail lending test, they are not used to set thresholds that are directly tied to test conclusions.

Additionally, two backstop metrics were included for the retail lending test:

1. The retail lending test volume screen, which requires that banks engage in a minimum amount of LMI lending to even be considered for the retail lending test, and
2. The requirement that banks which operate in 10 or more assessment areas achieve a rating of Satisfactory in at least 60% of those areas to achieve a Satisfactory rating for the test overall (this backstop also applies to all other assessment categories).

To capture activities related to mobile and internet banking, the Proposal adds outside assessment areas for large banks that are not related to areas in which the banks have a physical presence. The agencies suggest basing the identification of such areas on areas in which a material amount of lending is done, which the Agencies define as:

- At least 100 mortgage loans or
- At least 250 small business loans at year-end of each of the two preceding calendar years.

This was chosen rather than basing these assessment areas on concentrations of deposits, as was done with the OCC’s finalized but never implemented 2020 CRA rule.¹⁸ Additionally, as noted above, in the Proposal the Agencies would allow for community development activities to qualify in outside assessment areas.

Outside of the elements of the Proposal, the Agencies published updated sample data sets that are supposed to represent the data disclosures the Agencies intend to publish on an annual basis in the future. A version of these data sets were originally published with the Federal

¹⁸ 85 FR 34734

Reserve's 2020 ANPR and were further updated and re-published with the Proposal. The data sets are disclosed by year, as opposed to in aggregate over the multi-year timeframe each bank's examination covers as is currently done. Additionally, the data sets are significantly less disjointed than the current data disclosures and include more data – in fact, all data necessary to compute the metrics and thresholds as well as additional data. As noted, however, the Agencies have not committed to making this or any other data disclosure by the Agencies in the Proposal.

Summary of Key Improvements Necessary to Make the CRA Rule Work as Intended

While the proposal includes elements that strengthen the structure of the assessments, modernize the view of the banking landscape within the rule, and increase transparency, there are key improvements that should be made to ensure the rule is working as intended and that there can be public trust in the process.

Strengthening the CRA rule requires benchmark methodologies and a robust backstop framework to ensure the assessment conclusions are commensurate with the efficacy of banks' activities.

- Home ownership rates among the lowest income earning Americans are no greater today than they were when the CRA was passed into law, and income gaps have grown since then, as shown above. While the fortunes of the borrowers the law was intended to protect have stagnated or gotten worse, almost all lenders pass their CRA Performance Evaluations.¹⁹ The remaining 3% who do not pass are too few to be the cause of the dismal lack of progress.
- The disconnect is a result of CRA exam practices and procedures that have allowed for too much discretion by the examiner to make final assessment conclusions. Rather, examiner discretion must be the exception rather than the rule.
 - The Proposal has made progress towards this goal by the inclusion of thresholds that are tied directly to assessment conclusions and backstop metrics.
- *Benchmark methodologies* must be included in the overall assessment framework to ensure its credibility and efficacy.
 - Benchmark methodologies are a necessary part of any quantitative or structured qualitative framework. They provide conclusions that are determined through a framework based on an alternate perspective, and those serve as a check on the conclusions of the primary framework.
 - Rather than entirely relying on the discretion of an examiner to determine if there are issues with the conclusions of the quantitative framework, a benchmark provides a quantitative approach to such determination.
 - Because the Proposal framework is not statistical, one benchmark should be a statistical methodology.

¹⁹ *Supra* note 5

- Because the Proposal framework utilities metrics that are based on the retail lending and consumer/ small business/ small farm activity that is occurring in an area during a specific period as a proxy for the needs of an area, another benchmark should use a metric that is exogenous to those activities or to an area and should account for changes over time.
- *A robust backstop framework* is necessary to ensure a minimum standard is met and to prevent known and material limitations of the Proposal framework from creating issues with the assessment process.
 - The proposed backstop of a requirement for banks that operate in 10 or more assessment areas achieve a rating of Satisfactory in at least 60% of those areas to achieve a Satisfactory rating for the test overall would fail to ensure smaller assessment areas are being served as well as larger assessment areas.
 - This backstop should be modified to either 1) apply the same threshold to each area size type, 2) require that a bank receive at least a Satisfactory under a “reverse weighting” of assessment areas, or some combination of those two methodologies.
 - This backstop should also apply similarly for the rating of Outstanding.
 - The proposed backstop of requiring that banks engage in a minimum amount of LMI lending to even be considered for the retail lending test has a threshold that is too low to credibly identify areas in which a bank is meeting a sufficient minimum amount of lending.
 - The threshold for this benchmark should be raised to 50% of an area’s lending, which is consistent with the Riegle–Neal Interstate Banking and Branching Efficiency Act.
 - A backstop should be added that addresses assessment areas or communities that are being underserved overall. The Proposal framework bases the metrics and thresholds on activity in an assessment area at a point in time, and so if an area is being underserved overall, these would be based on activity that is insufficiently meeting the community’s needs and perpetuate the situation.
 - Areas that are being underserved overall should be identified through statistical or non-statistical methods, and the conclusion thresholds for those areas should be adjusted upwards accordingly.
 - A backstop should be added for large banks that assess their aggregate lending across the institution at a national level. This would ensure large banks are performing at least as well as the nation as a whole and would account for any regional differences that might be influencing the overall assessment.
- *The assessment of community development lending and investments* should be made *more quantitative and structured* to have more measurability and transparency.
 - The proposed methodology leaves too much to the discretion of the examination team.
 - It should incorporate thresholds that are tied directly to conclusions in the quantitative portion of the evaluation, similar to the retail lending test.
 - Additionally, structure must be added to the qualitative portion of the evaluation, including how that structure maps to assessment conclusions.

Modernizing the CRA rule is long overdue, but it should be done in a way that is consistent with the intention of the CRA.

- The banking industry has changed substantially since the last major update of the CRA rule in both the structure and operations of the banks themselves as well as consumer behaviors and preferences. The rule needs updating to address electronic banking and the numerous banking activities that no longer entail customer interactions with a physical branch.
- This is addressed in the Proposal by adding assessment areas outside of areas that have physical locations in which banks have material lending activities.
- However, basing such locations on lending rather than deposits is not consistent with the CRA's intention of the reinvestment of deposits obtained from an area back into that area.
- Therefore, additional assessment areas should be based on locations from which a material amount of deposits are obtained.

Transparency of CRA in the evaluation process is vital to the public's trust.

- The Agencies must commit to publishing available data annually for every bank, regardless of whether they are undergoing or have undergone a CRA-related examination in a format that is easily accessible, digestible, and able to be analyzed.
- This includes providing a user interface that allows the public to dissect the data along any categorical dimension(s) with visual representations of the results and download the resulting data set.

The Critically Important Retail Lending Test Must Include Benchmark Methodologies and a More Comprehensive Backstop Framework

The retail lending test is the most material portion of the CRA rule's assessment framework for a very good reason – it covers mortgage and small business lending. These two types of loans are the most impactful towards individuals and communities building wealth and increasing incomes.

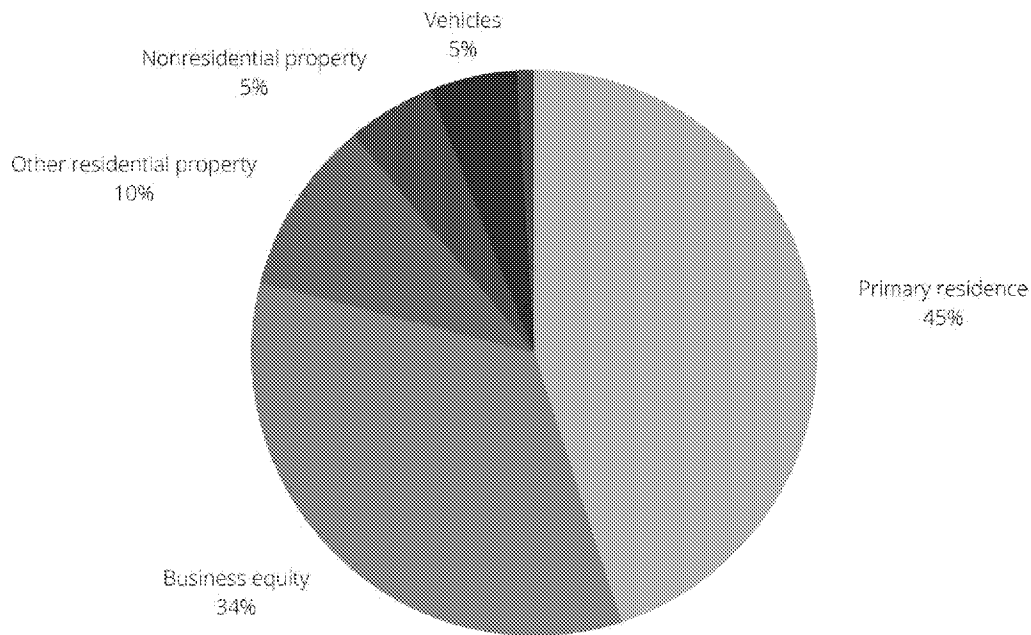
Homeownership has been shown to be the best way for the average household to build wealth over time, accounting for 45% of household wealth across U.S. households.²⁰ After all, mortgages allow borrowers to make at least a 5-to-1 leveraged investment in a unique asset that serves as both an investment and a place to live. This leverage allows for greater returns. If a \$200,000 property increases in value 10% over time, the homeowner would gain \$20,000 upon sale (less closing costs), representing a 50% return on a down payment of \$40,000. Mortgages provided through the Federal Housing Administration allow for even greater financial returns,

²⁰ Board of Governors of the Federal Reserve System, *2019 Survey of Consumer Finances* (2020), <https://www.federalreserve.gov/econres/scfindex.htm>.

only requiring purchasers to provide 3% of the purchase price as a down payment. In fact, households that own their home have 40 times more wealth than households that do not.²¹

Small businesses are the backbone of many communities, allowing income and wealth to remain within a community rather than being siphoned out to a corporate headquarters in another region entirely. Local economic growth has been shown to be positively impacted by the ownership of local small businesses.²² More generally, small businesses account for over 45% of employees in the U.S. and in many years are a major source of job creation. According to the Small Business Administration, in 2019 small businesses added 1.6 million of the 2.1 million total net new jobs for that year.²³ Additionally, small business ownership can provide a path to wealth creation. Business equity represents 34% of the wealth of households across the U.S., close to the 45% that comes from homeownership.²⁴

Proportion of Household Wealth from Nonfinancial Assets



Source: Board of Governors of the Federal Reserve System (2020), *2019 Survey of Consumer Finances*.

²¹ *Supra* note 20

²² See David A. Fleming and Stephan J. Goetz (2011), “Does Local Firm Ownership Matter?” *Economic Development Quarterly* Vol. 25, Issue 3. <https://doi.org/10.1177%2F0891242411407312>.

²³ Data for increase in net new jobs created through small businesses in 2019 obtained from U.S. Small Business Administration, *2020 Small Business Profile* (May 2020), <https://advocacy.sba.gov/2020/05/20/2020-small-business-profiles-for-the-states-and-territories/>. Data for increase in net new jobs created by all businesses in 2019 obtained from the Bureau of Labor Statistics, *Monthly Labor Review* (April 2020), <https://www.bls.gov/opub/mlr/2020/article/employment-expansion-continued-in-2019-but-growth-slowed-in-several-industries.htm>.

²⁴ *Supra* note 20; also see U.S. Small Business Administration Office of Advocacy fact sheet, *Small Business Facts: The Importance of Business Ownership to Wealth* (August 2021), <https://cdn.advocacy.sba.gov/wp-content/uploads/2021/08/17095726/Small-Business-Facts-Business-Owner-Wealth.pdf>.

Therefore, banks must be held accountable in the CRA rule for their mortgage lending to low- and moderate-income households and their small business lending in low- and moderate-income communities in a transparent, meaningful, and measurable way.

As has been well-known and proven repeatedly, if something is not concretely and granularly measured, monitored, and benchmarked in a meaningful way, it will never have its intended effect. This clearly has been the case with the current CRA rule's framework for mortgage and small business lending. While there are benchmark metrics that examiners use and include in their assessment reports, the framework relies entirely on the discretion of examiners to determine the final test conclusions. That is, the actual record and effect of bank lending to LMI individuals and communities are not being measured and there is no certification that the examinations apply any principle of aggregation consistently across assessment areas, banks, or time. Given that the financial health of LMI households has continued to stagnate, contrary to the intent of the CRA, these barriers to accountability have to be removed.

Fortunately, the proposed framework puts in place an actual means of measuring the level of performance by adding thresholds that are tied directly to the final conclusions of the retail lending test. That is, banks must achieve certain levels of lending as compared to the benchmark metrics to receive a particular conclusion, such as Low or High Satisfactory, in an assessment area. These thresholds also seem to be logically consistent with the intended goal of increasing CRA-related lending. For example, to receive a conclusion of Outstanding in an assessment area, a bank must have lending activity that is over 125% of the mortgage or small business lending benchmarks. This ensures that a bank will only receive an Outstanding rating if it is in fact outperforming the market as a whole with its LMI lending.

However, the Proposal's framework still generally relies on the metrics and simple distribution analysis that is utilized in the current framework. There is an advantage to the simplicity of the metrics and the analysis, but the simplicity also likely often leads to a sacrifice in efficacy. Indeed, the metrics on which the mortgage lending thresholds are based are crude proxies for the needs of communities, and in many cases are not appropriate representations of the needs of a community or the individuals in that community. Specifically, there are four benchmark metrics for single-family mortgage loans, two that are intended to represent the community and its demographics and two that are intended to represent the market:

- Community benchmarks are intended to reflect the demographics of an assessment area and measure the presence of potential borrowers.
 - Geographic: Percentage of owner-occupied residential units in low-income census tracts or moderate-income census tracts, as applicable, in the assessment area
 - Borrower: Percentage of low-income families or moderate-income families, as applicable, in the assessment area

- Market benchmarks are intended to reflect local demand by measuring the actual loan distribution resulting from aggregate lending in the area
 - Geographic: Percentage of home mortgages in low-income census tracts or moderate-income census tracts in the assessment area, as applicable, by all lender-reporters
 - Borrower: Percentage of home mortgages to low-income borrowers or moderate-income borrowers in the assessment area, as applicable, by all lender-reporters

The benchmarks for small business, small farm, and automobile loans have a similar structure. The primary deficiency with these metrics is that they assume whatever lending is happening in a given community at a point in time is representative of the needs of that community. That is, the metrics assume that the needs of a community are the same as the landscape of overall lending that is occurring within a community at a particular point in time. That simply may not be the case. A community may be underserved overall and largely avoided by banks and other financial institutions, and so using its aggregate status as a benchmark would only serve to perpetuate it being underserved. That is, a benchmark metric could be assuming the amount of lending that is occurring in a community is meeting the needs of that community when actually it is being underserved and actively avoided by financial institutions. Furthermore, the metrics provide only an impression of what a community or the individuals in it need to *sustain* their current status (i.e., the status quo) and no impression of what they may need to *improve* themselves. Finally, the metrics only provide a point-in-time assessment rather than also providing a picture of how the needs of a community are being met over time.

Therefore, the validity and effectiveness of the retail lending test should be improved by including:

1. alternate methodologies and metrics that would serve as benchmarks to the proposed framework to ensure it is performing as intended and
2. strong and robust backstop metrics that would ensure a minimum standard is being met.

Benchmark Methodologies Must Be Included

Benchmark methodologies are a critical component to any quantitative or structured qualitative approach. They provide an alternative perspective and approach that serves as a check on the primary framework or methodology. By approaching the same problem in two different but sensible and defensible ways, the results can be compared to identify potential issues that might exist in the primary methodology. Indeed, the Agencies consider benchmarks to be a necessary and integral component of model risk management, advising banks through model risk management guidance to “design a program of ongoing testing and evaluation of model performance... [that] should include process verification and benchmarking,” and noting that

“discrepancies between the model output and benchmarks should trigger investigation into the sources and degree of the differences.”²⁵

Since the current and proposed frameworks are more simplistic comparisons of metrics to their relative place on a distribution, the Agencies should implement a benchmark that utilizes statistical analysis. The scope and extent of the data available suggest a statistical approach, built around an explicit hypothesis about a bank’s LMI lending behavior. We developed an example of such a methodology that should be utilized by the Agencies in absence of a better alternative (see Appendix).

The metric addresses the hypothesis that, in a geographical area, a bank’s LMI lending strategy is the same as all lenders in aggregate. For example, assume in a particular geography and time interval all lenders made 1,000 loans, of which 200 were LMI, and the bank being examined made 300 of these loans, of which 50 were LMI.

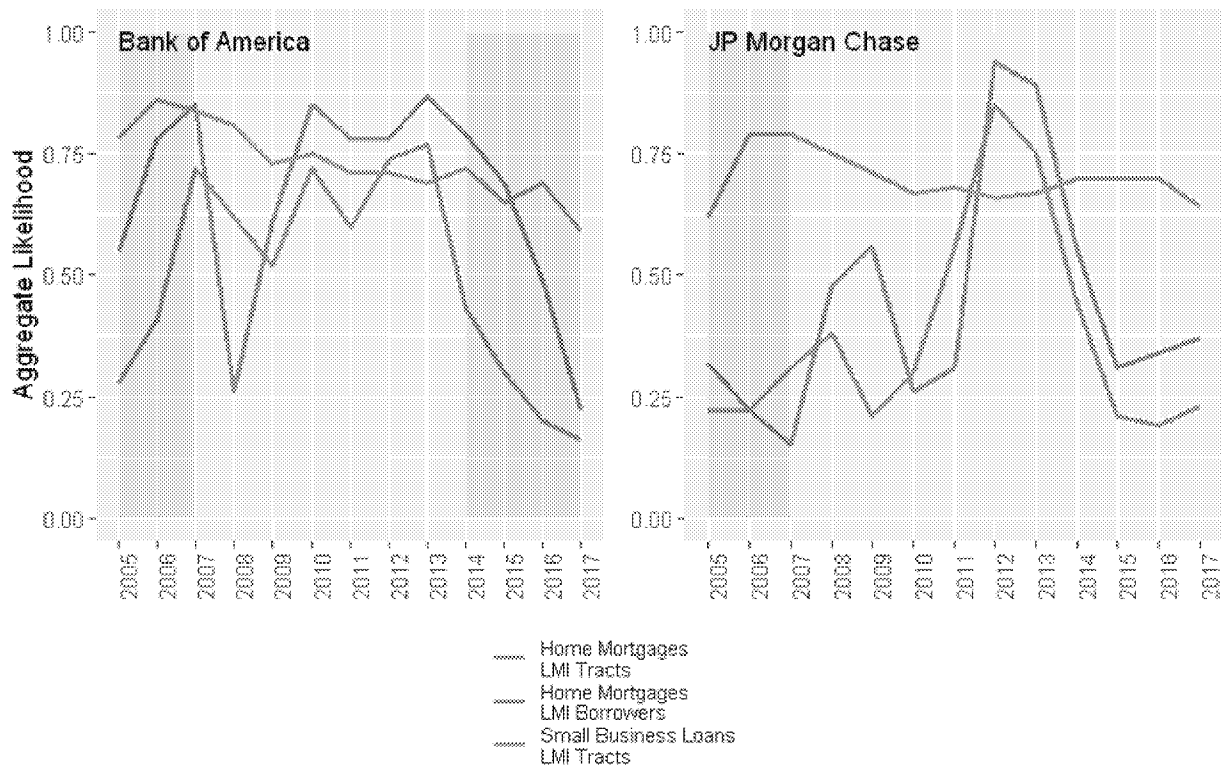
The current framework would compare 20% (200/1000) with ~17% (50/300), and likely conclude that the bank’s activity is close to the aggregate activity in the assessment area. The metric we developed instead asks: if the bank were indeed targeting a 200/1000 LMI lending policy, what is the probability that having made 300 loans 50 (or less) of them would be to an LMI individual. The probability, or “Likelihood,” in this example is 5%. So, according to the Likelihood benchmark metric, it’s not easy to support the conclusion that the bank’s lending strategy is in line with all lenders in aggregate. In contrast, had the bank made 60 LMI loans, its Likelihood would be 50%, and there would be no evidence against the view that it conforms to the average LMI lending rate in the geography.

This benchmark metric can be calculated for each bank, in each geography, each year. Additionally, it standardizes for sizes of banks and markets. Most importantly, it allows for aggregation of Likelihoods across time and geographies for a particular bank, providing a high-level profile for that bank. There are several approaches to aggregation, but a weighted average is the simplest. Thus, if we average across geographies at a point in time, a geography’s weight is the share of the bank’s total loans that it made in that geography. A bank’s Likelihood may differ from 50% in individual geographies, but if it is indeed in line with LMI lending policies in general, then its aggregate Likelihood should be very close to 50%, a concept that can be defined formally in terms of statistical significance. Some year-by-year results of the analysis we conducted utilizing that methodology (on the data tables that were published with the Proposal) are shown below.

²⁵ Board of Governors of the Federal Reserve System and Office of the Comptroller of the Currency, *Supervision and Regulation Letter 11-7: Supervisory Guidance on Model Risk Management* (April 4, 2011), <https://www.federalreserve.gov/supervisionreg/srletters/sr1107a1.pdf>.

Overall Lending Test Performance Evaluations

█ : Outstanding; █ : High Satisfactory; █ : Year not covered by Exam



As can be seen, the likelihood numbers in many cases tell a different story than the CRA examination results. For example, Bank of America most recently received a conclusion of Outstanding on its retail lending test, but the Likelihood analysis shows that its lending has become significantly less likely to be representative of the overall lending that is occurring in the communities in which it operates. That is, its most recent Likelihood scores for LMI tracts and LMI individuals are below 25% and very far from the 50% “average” Likelihood benchmark, suggesting their LMI lending is not consistent with the markets in which they operate. Similarly, JP Morgan’s almost consistently low likelihood figures indicate the bank has generally been underperforming. These results should at least raise questions regarding the validity of examination conclusions, as with any case in which the results of the benchmarking methodology differ materially from those of the primary methodology.

Another way to consider a benchmark is to use a methodology of similar complexity but to conduct the analysis with other factors that might be relevant or from an alternative perspective. As an example, instead of assuming that the current state of a community’s home ownership and lending is representative of the needs of a community, we supposed a reasonable alternative would be to have a metric that assesses the amount of lending relative to the health of a community *over time*. That is, all else equal, if the amount and type of lending indeed is exactly meeting the needs of a community (no more, no less) then the health of that community

should be static. On the other hand, if the health of a community is deteriorating, for example, it would be reasonable to ask the question of whether banks in that community are working to prevent the deterioration, keeping pace with it, or exacerbating it by shutting off credit more quickly than the deterioration in community health or more quickly one bank relative to other banks in a community.

As an example of a metric to represent this approach, the percentage of LMI individuals in an area could be considered a proxy for the health of a community, especially when looking at that metric over time (see Appendix). Then, the percentage of LMI lending can be used to assess whether banks are meeting the needs of the community. Therefore, if the percentage of LMI lending relative to the percentage of LMI individuals is increasing over time, then, generally speaking, banks are working to improve the health of the community. More importantly, if the opposite is true, then a bank or banks are exacerbating the decline in community health.

Such an analysis can be utilized to conduct numerous types of benchmark comparisons. As an example, we created a regression that can be used to identify communities in which their LMI population is increasing but bank lending is decreasing. Specifically, we identify the counties where, from 2005-2017, the LMI share of the population increased. Among these counties, we identified those with a statistically significant negative relationship between annual growth of the LMI share lending across all banks and the LMI share of the population. So, in these counties, as the share of LMI individuals in the county increased, the share of LMI lending decreased to a statistically significant degree. From the ~800 counties for which we have annual data, and the ~500 whose LMI population share grew, 26 counties were identified as also having statistically significant decreases in the LMI share of lending.

It is also possible to conduct this analysis on the loans of a single bank, particularly one of the large banks. By way of illustration, we use the data for JP Morgan Chase, who had some business in every county referred to above. This exercise identifies 18 counties for JP Morgan Chase. However, the analysis can be extended and modified to compare:

- the banks in one area against the banks in another area
- one bank against all the other banks within an area, or
- one bank against banks in another area or group of areas, including nationally.

These options represent a non-exhaustive list of the possible benchmarks such a methodology could allow. The most impactful way in which it could be modified would be to run the regressions for areas regardless of whether the LMI share of the population is decreasing and perform relative evaluations. For example, regardless of whether the LMI share of a population in an area is increasing, decreasing, or staying flat, one bank's coefficient could be compared to that of the cumulative coefficient for all other banks in an area or in other areas with similar trajectories in their share of LMI populations or even a national comparison. This would provide a relative comparison that indicates whether an individual bank's activities are positive, negative, or neutral.

It is quite possible that anything identified through this or other benchmarks can be explained and are no more than false positives. However, the effective challenge with these benchmarks is to require examiners to scrutinize the results in detail for an explanation of why the benchmark results deviate from the primary methodology. The explanation could be benign or a cause for action, such as an adjustment to a bank's assessment conclusion.

The Backstop Metric Framework Must Be Strong and Robust to Help Ensure Minimum Standards Are Met

We are supportive of the two backstop metrics that are included in the Proposal, but those metrics need to be strengthened. Additionally, we suggest two other backstop metrics be included to make a truly robust backstop framework. Backstops are necessary to help mitigate issues that may arise from limitations within a framework. Any quantitative or structured qualitative framework has assumptions and limitations, and there are always cases that lead to issues arising from those limitations, hence the imperative of backstops

First, we support the backstop that requires a minimum percentage of assessment areas to have a Low Satisfactory conclusion for the overall conclusion to be Satisfactory. Specifically, the backstop requires that a bank with 10 or more assessment areas must have at least a Low Satisfactory conclusion in 60% of its assessment areas to receive an overall Satisfactory conclusion. Because the conclusion of each assessment area is weighted by the volume of lending in that area when aggregating them to an overall conclusion, assessment areas with smaller amounts of lending would be assigned a smaller weighting for – and so have less influence on – the overall conclusion. Therefore, it is possible that smaller assessment areas can receive failing conclusions, but, due to the weighting, a bank could still pass the assessment overall. This backstop could help prevent such occurrences, especially if it is strengthened as it should be.

The 60% threshold easily could still ignore small metropolitan and rural assessment areas. For example, if a bank with 10 assessment areas has six that are large metropolitan areas and four that are small metropolitan and/or rural, then the bank would only need to achieve a Low Satisfactory in its large metropolitan assessment areas and could achieve a lesser conclusion in the rest. The agencies should mitigate this by taking into account of this possibility. Two suggested methods are:

1. Requiring that the 60% threshold be met for the assessment areas within each of the size categories of large metropolitan, small metropolitan, and rural (as suggested by the National Community Reinvestment Coalition), and
2. Requiring that the aggregate conclusion at least be Satisfactory under a “reverse weighting” scheme, under which the weights assigned to each assessment area would be reversed according to the assessment area size.

Additionally, however, the ultimate backstop is designed, the backstop requirement should be in place for an overall conclusion of Outstanding as well. For example, under the proposed methodology, a bank with 10 or more assessment areas would need a conclusion of Outstanding in at least 60% of its assessment areas to achieve an overall conclusion of Outstanding.

Second, we also support the “retail lending volume screen” backstop metric included in the Proposal that requires a bank to be lending at a volume, relative to its deposits, in an assessment area that is at least 30% of the same ratio overall for an assessment area. Under the Proposal, banks that do not meet this threshold would have a recommended conclusion of Needs to Improve or Substantial Noncompliance. Such a screen appropriately assigns a low and failing conclusion to banks that clearly are not meeting the needs of an area at any income level. However, the threshold has been set too low and should be increased. As the National Community Reinvestment Coalition has advocated, Section 109 of the Riegle–Neal Interstate Banking and Branching Efficiency Act established a loan-to-deposit ratio requirement for interstate banks of at least 50% of the host state’s overall ratio. This 50% threshold is more appropriate and would more effectively ensure banks are indeed putting their deposits to work as intended.

While these two backstops are helpful, as noted above, two other backstops simply must be added to ensure not only that banks are lending but also that the needs of communities indeed are being met, which is, of course, the point of the law in the first place.

First, because each of the benchmark metrics and thresholds are set based on the data of an overall assessment area, these benchmarks and thresholds would not appropriately assess whether banks are meeting the needs of an area if that assessment area is being underserved overall. That is, if in aggregate the LMI population of an assessment area is being underserved, then the benchmark metrics and thresholds would be meaningless and in fact effectively would only serve to inflate conclusions for that assessment area. It would not be surprising to find that the LMI population in assessment areas around the country are being underserved, and banks should not be receiving credit for perpetuating such a state. Worse yet, using the benchmark metrics and thresholds that are based on an underserved LMI population would guarantee the perpetuation of the LMI population being underserved.

Therefore, the Agencies should have a framework that identifies whether the LMI population within an assessment area is being underserved *prior to* setting the thresholds for the benchmark metrics. For such assessment areas, the thresholds should be increased to reflect the fact that the LMI population is being underserved and to ensure that a Satisfactory conclusion in that assessment area carries a materially similar meaning to an assessment area in which the LMI population is not underserved.

To this end, the Agencies suggest the possible introduction of a methodology that would identify areas that are “underperforming.” In Section XI.H of the Proposal, the Agencies put forth one possible methodology of using “statistical models that predict the level of the market

benchmark that would have been expected in each assessment area” that are based on certain categories of predictive factors. They suggest that the identification of underperforming areas would be used to “apply additional qualitative review of retail lending in these assessment areas, the results of which could be used to adjust the recommended conclusion.”

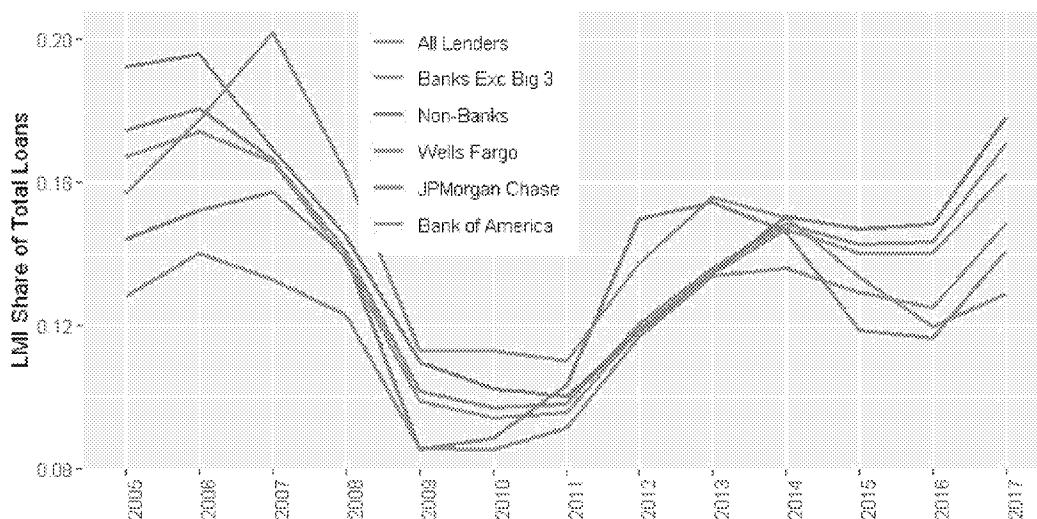
We support the implementation of a methodology to identify underperforming (underserved) areas, and it should be implemented and not merely be a suggestion. However, as noted, the resulting designation simply must affect the quantitative assessment rather than being used qualitatively, as proposed. The quantitative nature of the proposed retail lending test gives the assessment conclusions more credibility, accountability, and efficacy, and so each aspect of the test should be part of an overall quantitative framework, including this aspect.

Instead of leaving any adjustments to the conclusions to the discretion of the examination teams, the designation of underperforming areas should lead to increased thresholds for the assessment conclusions. For example, if an area is designated as underperforming, instead of 80 to 110 percent of the market benchmark resulting in a Low Satisfactory conclusion, the adjusted range could be 90 to 120 percent of the market benchmark or even higher. The final range for the thresholds would depend on the level of underperformance in the assessment area, and the “grossing up” of the thresholds would be done quantitatively as well. In the example within the Proposal of using a statistical model to predict the level of a benchmark, the thresholds could be scaled up linearly based in some way on the deviation between the predicted and actual benchmarks.

While a statistical model is a good option to identify underperforming areas, non-statistical methods provide a more transparent and less challenged determination of such areas. Additionally, no other part of the primary framework relies on statistical methods. One example of a simpler methodology that previously was put forth by the National Community Reinvestment Coalition in a previous comment letter – taking the share of loans to population for areas around the country and designating the lower decile of areas as underperforming. Other options could include a similar analysis for mortgage denial rates by income group (see Appendix) or a combination of factors all being in the lowest decile.

Second, the aggregate performance of large banks also should be considered against national benchmarks. The proposed framework (i.e., analyzing bank performance across assessment areas and aggregating those into an overall conclusion) likely effectively results in a national-like benchmark for the very largest banks, but a backstop needs to be in place to ensure truly national as well as regional banks are performing at a minimum level as compared to the nation as a whole. Therefore, a backstop metric should be added that requires a large bank’s aggregate share of low- and moderate-income lending to be some minimum percentage of the national share of low- and moderate-income lending to receive overall conclusions of Satisfactory and Outstanding. For example, the thresholds could be set such that a large bank would be required to have a lending share that is 80 to 110 percent of the national benchmark to receive an overall conclusion of Satisfactory.

As an example, the graph below shows the LMI share of mortgage loans for the three largest bank mortgage lenders as compared to the national share. In 2017, the share for JP Morgan Chase is 75% of the national total share, suggesting that for that year they are underperforming LMI lending on a national level and so, using the example threshold above, would be below the Satisfactory threshold in that year.



Regular Data Disclosures to the Public Should Be a Required Part of the CRA Rule

Historically, the Agencies have made CRA examination-related data available to the public on the website of the Federal Financial Institutions Examination Council. However, these data disclosures have been disjointed, being disseminated in numerous tables that are only available by a single cross-section and are in several material ways incomplete. This disjointed structure creates a high hurdle for any member of the public who attempts to perform analysis on the data, requiring them to first download many files (for example, one file for each assessment area by loan type by firm) and merge them together.

Such an exercise is not only very time-consuming but also beyond the technical ability of most members of the public. For example, we downloaded the files published by the Agencies with the 2020 ANPR and the Proposal, uploaded them to a statistical analysis software, assessed the data structure and searched for any possible issues, and finally combined tables and performed various analyses. This exercise took many hours and required knowledge of data and statistical software.

Therefore, the Agencies must publish data for the public in a format that is easily accessible, digestible, and able to be analyzed. While that may be the intention of the Agencies, the Proposal does little to ensure this intention becomes a reality. That is, the Proposal does not explicitly state that intention or even outline a baseline set of information they would be required to share with the public. Amendments to the CRA were made in 1991 that required that the

Agencies “discuss the facts *and data*” supporting their conclusions to increase public accountability.²⁶ Technological advancements since 1991 allow the public to conduct their own analysis more easily, and so to further transparency and public trust, the Agencies must make disclosing the maximum amount of data in a convenient format for the public as a material part of the finalization of the Proposal.

The agencies have made progress towards this goal, and there have been public statements from senior leadership that affirm this intention. Along with its 2020 ANPR, the Federal Reserve published data tables that had significant improvements over the prior data disclosures:

- the data were consolidated across entities and geographies;
- information for each year was represented separately as opposed to being grouped by evaluation period; and,
- significantly more detail was shared that allows a user to conduct analysis beyond the metrics used in the exam.

These data tables were further improved upon in the Proposal, which included a format that allows for easier merging between tables and even more information. However, the final rule must require the Agencies to publish available data annually for every bank, regardless of whether they are undergoing or have undergone a CRA-related examination. Almost all data are available on at least an annual basis and are already being collected; for example, data from the Home Mortgage Disclosure Act reporting requirements and small business data that will be reported through the CFPB’s collection associated with section 1071 of the Dodd-Frank Act once that is finalized. That is, *this disclosure would require no additional data collection and associated burden* for either the banks or the Agencies other than the action of putting the data on a public website so that it is accessible and digestible.

The final rules must also require that the data be disclosed at a more granular level than was included in data files shared along with the Proposal. County-level data is necessary for the public to assess how banks are performing in their specific community and to be able to compare their community to other communities. Additionally, the minimum data categories and granularity of data to be shared by the Agencies must be outlined. This should include all data used to conduct the CRA examinations, including data that is used in the qualitative aspects, such as demographic data and any regular data that is used to identify community development needs.

Finally, the agencies should also be required to provide a easy-to-navigate user interface that allows the public to dissect the data along any categorical dimension(s) with visual representations of the results and a downloadable data set, similar to the “lending tool” provided

²⁶ 12 USC 1811

by National Community Reinvestment Coalition.²⁷ The interface must include a means for users to easily locate data for their community, ideally with a map feature that allows users to search visually or by address. The interface must allow users to extract observations, aggregated across subsets of these dimensions, for example:

- Nationwide LMI loan shares by a bank over time;
- A community's LMI loan share relative to LMI population share;
- A bank's LMI loan share in densely versus sparsely populated communities; and
- Changes in characteristics of communities in which a bank does business.

Adding these elements to the final rule are essential to improve the trust and confidence of the public in the CRA, the Agencies and the banks. Importantly, it will allow the public to – among many other analyses – compare a bank's performance across communities, including in their own community, and at a national level; compare the amount of CRA related activities and demographic information across communities; and conduct their own analysis to assess whether the conclusions of the Agencies are credible.

The Determination of Assessment Areas Outside of Areas with Physical Facilities Should be Based on Deposits and Not Loans

It is well recognized that the adoption of technological advancements by both banks and consumers has altered the landscape of banking. When the CRA law was passed in 1977, the internet and mobile phones did not exist. And when it was most recently materially updated in 1995, the concept of online banking had just been introduced.²⁸ Since then, online and mobile banking have proliferated. For example, the most recent FDIC household survey of 2019 shows that 57% of households use either mobile or online banking as their primary method of account access. That number has likely increased throughout the Covid-19 pandemic. Notwithstanding that being the case, bank branches are still an integral part of banking life for many people as proved by that same survey which showed that 83% of banked households visited a bank in person.

Accordingly, the Agencies have left banks' physical locations as the primary basis for determining assessment areas; but in recognition of online and mobile banking, the Agencies have proposed to add assessment areas for the retail lending test that are outside of areas with physical locations ("outside assessment areas") for large banks. As noted in the Proposal,

"the Agencies recognize that changes in technology and in bank business models have resulted in banks serving local communities that may extend beyond the geographic footprint of the bank's main office, branches, and other deposit-taking facilities."

²⁷ A video describing National Community Reinvestment Coalition's "lending tool" is available at <https://ncrc.org/ncrc-video-fair-lending-tool/>.

²⁸ See Wells Fargo Stories, *Wow! Two decades of banking online* (May 18, 2015), Wells Fargo, <https://stories.wf.com/wow-two-decades-of-banking-online/#:~:text=On%20May%2018%2C%201995%2C%20Wells,and%20bank%2Dprovided%20floppy%20disks.>

The agencies propose to capture this change in business models with assessment areas that are based on concentrations of retail lending. Specifically, these areas would be identified as areas outside of those with physical locations in which, as of year-end in the prior two years, a bank has made 1) at least 100 mortgage loans or 2) at least 250 small business loans (“lending assessment areas”).

This method would increase the amount of lending that is captured under the retail lending test. The agencies estimate that 90% of total mortgage lending and 84% of total small business lending would be covered for large banks if the additional lending assessment areas were included and would capture 50% and 62%, respectively, of all lending that is done outside of areas with physical locations.

However, this methodology does not necessarily capture whether a “reinvestment” of deposits is occurring in the areas from which the deposits were obtained because there is no link to the source of funding. That is, by only focusing on the amount of lending, there would not be a match to the areas from where the funding for the loans originated. This can be particularly problematic for online-based banks that accept their deposits and make loans entirely or almost entirely through their online and mobile platforms. Under the proposed framework, it is entirely possible such banks could obtain all their deposits from one set of areas but make all their loans in an entirely different set of areas. The same issue exists for other banks as well, albeit to a lesser extent. This disconnect could encourage banks to do exactly that and target their lending towards areas with lower proportions of LMI individuals. It could also encourage banks that obtain only a fraction of their deposits from online and mobile platforms to make attempts to hasten the transition to more online-based deposit-taking and lending, i.e., encouraging a sort of regulatory arbitrage.

To prevent such adverse incentives, the Agencies should base the additional assessment areas on concentrations of deposits rather than concentrations of loans (“deposit assessment areas”). This would ensure conceptual consistency between the assessment areas that are based on physical locations and the assessment areas outside of those. That would in turn preserve the “reinvestment” aspect of the retail lending test assessment for assessment areas outside physical location-based areas and promote lending in the areas from which the funding for loans is obtained. Although the OCC’s 2020 CRA rule was disastrous and rightfully rescinded, it sensibly did create outside assessment areas that were based on an area being the source of 5% or more of a bank’s total deposits. The agencies could take a similar approach or modify that 5% threshold.

It is unclear why the Agencies have not chosen to take a similar approach. Perhaps it could be said that introducing deposit assessment areas instead of lending assessment areas would create too much of a data collection burden on large banks, but the Agencies have included in the Proposal a data collection requirement for large banks over \$10 billion to “collect and maintain county-level deposits data based on the county in which the depositor’s address is located.” Also, in justification of this requirement, the Agencies point out that the collection and

maintenance of depositor location data is consistent with Customer Identification Program requirements. This data requirement should be extended to include all large banks and used to set the deposit assessment areas.

The Community Development Financing Test Should Be Made Less Subjective

Similar to the proposed retail lending test, the proposed community development financing test includes an assessment metric for each bank that is being assessed and benchmarks against which the assessment metric is compared. Specifically, the metrics are:

- Assessment metric is the dollar amount of community development investments and loans divided by total deposits.
- Assessment area benchmark is the average community development investments and loans divided by average deposits in an assessment area.
- Nationwide metropolitan benchmark is the average nationwide metropolitan community development investments and loans divided by average deposits.
- Nationwide metropolitan benchmark is the average nationwide non-metropolitan community development investments and loans divided by average deposits.

However, unlike the retail lending test, the framework for the community development financing test does ***not*** include thresholds that are directly tied to test conclusions. Rather, the assessment metric and benchmarks are only used to inform the qualitative assessment of the examiners. This is not entirely unreasonable since the community development assessment also includes a separate qualitative “impact” assessment that rightfully also considers – as noted in the Proposal – “responsiveness of activities to local context, including community development needs and opportunities that vary from one community to another,” whether that is the specific size of the loans and investments or where they are targeted. But that is not a valid reason to ignore thresholds altogether.

There is no reason the quantitative portion could not have thresholds that result in test conclusions specifically for the quantitative portion, i.e., separate from the qualitative impact assessment portion. Such thresholds and conclusions could be considered just as qualitatively in the final assessment as the assessment metric and benchmarks on their own, but it would provide a more meaningful and measurable basis on which the overall qualitative assessment is made. Furthermore, it would extend the concept of qualitative factors being the exception and not the rule. That is, the quantitative portion of the test would serve as the basis for the final assessment conclusion, and the qualitative factors would serve to adjust that basis but only if justified in a complete written assessment with accompanying rationale.

Additionally, the qualitative impact assessment could also benefit from some level of structure. As proposed, this portion of the assessment is left entirely to the discretion of the examiner. The agencies have put forth a non-exhaustive list of “impact review factors” for the

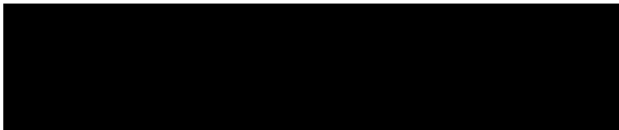
evaluation of the impact and responsiveness of a bank's activities. These should serve as the starting point for a more structured approach to the qualitative assessment. In that case, examiners would determine which of these factors and what other factors are most important to a given community for a particular examination year. This would then be the list of impact review factors that define the set of community development needs by which every bank is assessed within a given community. Examiners then would assign an impact "score" to each of the factors to develop a relative determination of impact, assign no score at all for an absolute determination of impact, or take an average of the two approaches.

However it is done, laying out a structured framework for the qualitative impact assessment would be greatly beneficial and result in less subjectivity on the part of the examiners. If structure were added to the qualitative impact assessment, the final conclusion would be a structured combination of the quantitative and qualitative conclusions. This could take the form of a matrix of final conclusions based on the various quantitative and qualitative conclusions. It could also be a simple or weighted average between the two. Whatever the final form, such structure is necessary because it would greatly improve measurability, accountability, and transparency for the community development finance test.

CONCLUSION

We hope these comments are helpful as the Agencies finalize the Proposal.

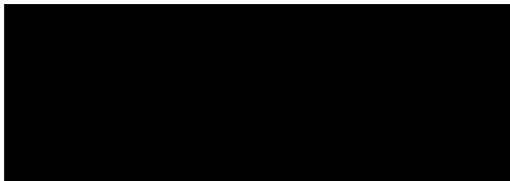
Sincerely,



Dennis M. Kelleher
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Appendix: Analysis of Community Reinvestment Act Related Data

Analysis of Community Reinvestment Act Related Data

Peter Rappoport
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Summary

- Some members of the public have repeatedly expressed concern over the now often-cited statistic about banks “passing” Performance Evaluations consistently, with passing evaluations being assigned to about 98% of banks by Community Reinvestment Act (CRA) examiners.²⁹ On its face this seems to be obvious grade inflation, but it is difficult to support that conclusion with strong evidence. That is because the CRA evaluations are difficult to reconstruct, as they aggregate numerous qualitative decisions based on undisclosed criteria into a final score. They also are difficult to analyze, as they are reported in numerous separate text documents.
- The Federal Reserve Board’s release of datasets along with its 2020 Advance Notice of Proposed Rulemaking as well as with the current proposal³⁰ that comprise the quantitative inputs to past evaluations allows for analysis to be performed that can benchmark the historical assessment conclusions.
- We use this data to construct a comprehensive quantitative picture of banks’ lending to Low- and Moderate-income (LMI) groups, a key component of CRA Performance Evaluations, that should serve as a benchmark to the primary methodology (without identification of a better benchmarking methodology).
 - **Our analysis asks whether a bank “pulled its weight” in LMI lending:** is the LMI share of its total loans reasonably in line with the overall market?
 - We score each bank in each year and county in the Federal Reserve data and calculate aggregate annual scores.
 - **The largest banks often score quite low,** indicating significantly less LMI lending than the market. **This contrasts with their routinely high grades in CRA Lending Tests.**
 - This data and our calculations **provide a comprehensive picture of banks’ LMI lending performance** that is
 - uniform, across banks, geographies, and time
 - objective and reproducible
 - cheap to produce, timely and compact
 - We also examine LMI lending over time relative to the “health” of a community over time.

²⁹ Josh Silver and Jason Richardson, *Do CRA Ratings Reflect Differences In Performance: An Examination Using Federal Reserve Data*, NCRC (May 2020), <https://ncrc.org/do-cra-ratings-reflect-differences-in-performance-an-examination-using-federal-reserve-data/>.

³⁰ Data tables released by the Board of Governors of the Federal Reserve Reserve System are available at https://www.federalreserve.gov/consumerscommunities/data_tables.htm.

- Additionally, we outline a framework for **identifying outliers for in-depth investigation** that we believe should become part of CRA Exam practice
 - It can draw from a wider range of indicators than the current approach; we use loan denials and the LMI population share to illustrate.
 - Communities with improbably large numbers of denials, or where LMI lending and population trends are significantly in opposite directions are hard to dismiss outright
 - The tests are statistically simple, and **community-focused rather than bank-focused**.

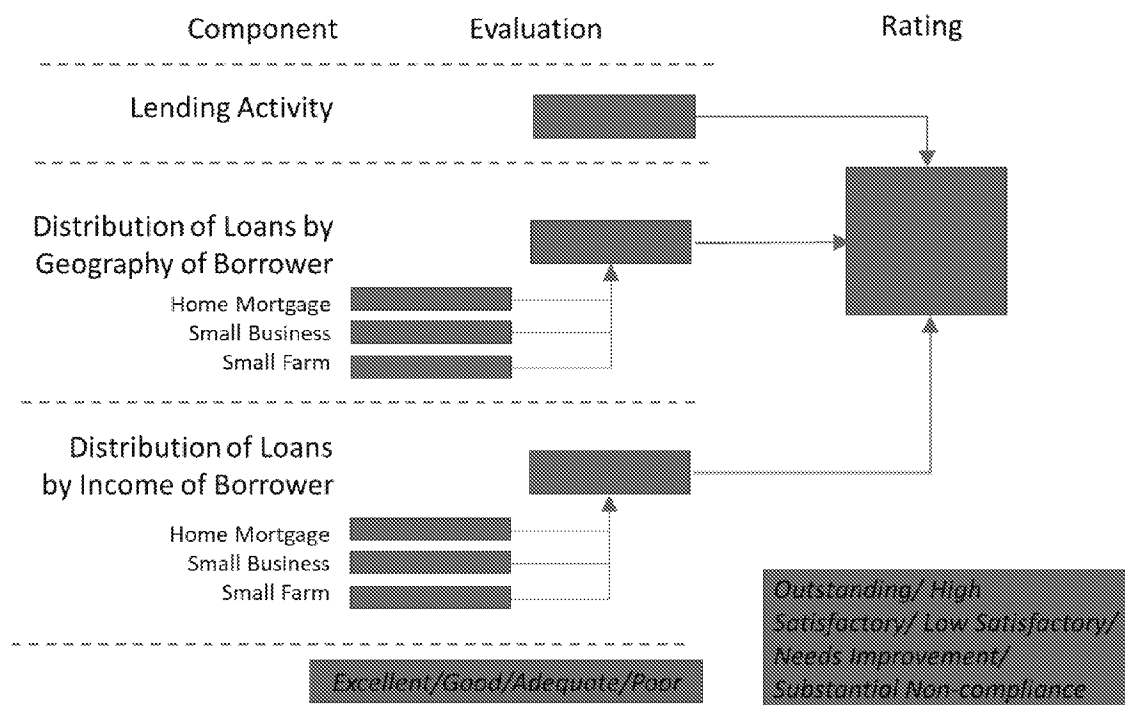
CRA Performance Evaluations

CRA exams comprise tests of three broad categories of bank activity:

- Lending: home mortgage and small business loans
- Investment: community development grants and initiatives
- Service: provision of branches and other banking services

Examiners assign a qualitative rating ranging from “Outstanding” to “Substantial Noncompliance” to each category. These ratings are then aggregated using a points system into an Overall rating for the bank. The lending test bulks largest, in the sense that any given rating for the lending test scores at least twice as many points as it does for the other two.³¹ The lending test rating is aggregated from ratings on the bank’s lending performance in several geographies –typically MSAs within a state, or that span several states. These ratings derive from yet other qualitative “evaluations” of several perspectives as depicted in Figure 1.

Figure 1: CRA lending test



³¹ For example, “High Satisfactory” scores 9 points when awarded to the Lending test, and 4 points when awarded to the Investment or the Service test. See “The Effectiveness of the Community Reinvestment Act”, Congressional Research Service (2019).

The lending activity component of the assessment addresses the bank’s home mortgage and small business lending in the context of its deposit-taking activity in a geography. It best illustrated by an example:

“Lending activity in the Allentown-Bethlehem-Easton, PA-NJ Multistate MSA is excellent. Based on FDIC deposit data as of June 30, 2016, the bank has a deposit market share of 9.2 percent. The bank ranks fourth among 31 depository financial institutions in the multistate MSA, which places it in the top 13 percent of depository financial institutions. According to peer mortgage data for 2016, the bank has a market share of 1.5 percent based on the number of home mortgage loans originated or purchased. The bank ranks 17th among 502 home mortgage lenders in the multistate MSA, which places it in the top 4 percent of lenders. According to peer small business data for 2016, the bank has a market share of 5 percent based on the number of small loans to businesses originated or purchased. The bank ranks eighth among 120 small business lenders, which places it in the top 7 percent of lenders. [...] Considering the bank’s higher ranking among all lenders for home mortgage and small loans to businesses relative to its ranking for deposits, overall lending activity is excellent.”³²

To paraphrase, while the bank’s share of deposits was six times its share of home loans, its percentile ranks among lenders were higher than among deposit-takers, resulting in an “excellent.”³³

This evaluation of lending activity contains no LMI dimension. This contrasts with the other major categories in the lending Test, which examine the LMI share of the bank’s home

³² Community Reinvestment Act Performance Evaluation, Bank of America, (2018), p.18. Lending Activity tests variously refer to a bank’s dollar volume and count of loans, market share, rank among banks in the Assessment Area in a loan category, and comparison with the banks’ share of deposits. For example, Wells Fargo’s 2021 evaluation concludes “excellent responsiveness” in the Chicago MSA, displaying loan amounts, counts and ranks, but no deposit comparison. (p.42). JP Morgan Chase’s 2013 Performance Evaluation concludes “excellent” Lending Activity, in the Charleston MSA, only citing ranks and market shares of deposits and loan categories. Chase’s deposit share was 10%, while its home purchase, refinance and small business loan shares were 8.2%,9.2%, and 7.8%, respectively. (p. 154 of <http://www.occ.gov/static/cra/craeval/jul12/8.pdf>) The CRA Examination Procedures Manual is similarly not definitive on criteria for the Lending Test, e.g., “Evaluate the bank’s lending volume considering the bank’s resources and business strategy and other information from the performance context, such as population, income, housing, and business data.” (p.38). <https://www.occ.gov/publications-and-resources/publications/comptrollers-handbook/files/cra-exam-procedures/index-cra-examination-procedures.html>

³³ In the OCC’s CRA Examination Procedures Manual, a “Lending Test Matrix” (p.51) reveals that the terms “Excellent, Good, Adequate, Poor, Very Poor” map to “Outstanding, High Satisfactory, Satisfactory, Needs to Improve, Substantial Noncompliance”, respectively. For example, the explanation of High Satisfactory is “The [test name] of loans reflects good penetration throughout the assessment area(s).” So there is effectively only one scale involved. However, there is no reference to this table anywhere else in the document, nor did a word search identify any other occurrence of “Excellent,” “Good,” “Adequate,” “Poor,” or “Very Poor.” Consequently, we have not succeeded in understanding the linkage of these grades to observable indicators.

mortgage, small business and small farm loans. These tests of the distribution of loans compare the LMI share of the bank's loans to

- a “demographic” indicator, such as the LMI share of owner-occupied housing in the case of home mortgages,
- the share of LMI loans in the aggregate number of loans made in the geographical area (“geography”).

These distribution tests thus use simpler and more explicit criteria than the lending activity test. Until 2020, the details of CRA evaluations were accessible only through periodic reports on each bank. The quote above is from one of them. The layers of qualitative decisions depicted in Figure 1, combined with the reports' format as PDFs whose structure has changed repeatedly, make constructing an accurate, comprehensive view of CRA from these documents an immense, effectively manual task.

Federal Reserve Board Data

In 2020, the Federal Reserve released a comprehensive dataset of banks' loan activity. The data cover the years 2005-2017 and comprise over 3.5 million records, each detailing annual lending activity of one of 6,800 banks in one of 3,200 counties.³⁴

We have used this dataset to reconstruct the figure relevant to “Distribution of Loans by Income Level of the Geography” lending test metric for the banks and years covered by the Federal Reserve data. The results of this exercise provide *a uniform measure of bank lending performance that that can be compared and aggregated over time, across banks and across geographies*.

The lending Test we describe here compares the LMI proportion of a bank's loans to the LMI proportion of loans made by all banks in a geography. Based on a review of the assessment reports, the examiners are positively disposed to the first ratio exceeding the second.

One difference between our analysis and CRA exams is that we evaluate banks county by county, whereas CRA uses Metropolitan Statistical Areas/ assessment areas. Our choice is the simplest given the organization of the Federal Reserve data, which is by county. We do not anticipate qualitatively different results from MSA-level calculations.

Reconstructing the Lending Test

We focus on the “Distribution of Loans by Income Level of the Geography” component of the lending Test, as the Federal Reserve dataset contains the data on which it draws, and it is easy to discern the mechanics of examiners' comparisons of bank performance to a benchmark.

³⁴ We use the tables published in March 2021, which run to 2017. A May 2022 release of the data has more granular data on loan types and covers 2018 and 2019. We do not anticipate any material difference in conclusions would result from using the latest dataset. <https://www.federalreserve.gov/consumerscommunities/historical-cra-analytics-data-tables.htm>

In each assessment area (“AA”), examiners observed the nine counts (aggregated over the years covered by the exam) in the following table, and calculated the six associated shares:

Figure 2

	Total Count	Low- or Moderate-income geography Count	Low- or Moderate-income geography Share
Loans made by the bank during the evaluation period	B	BL, BM	BL/B, BM/B
Loans made by all lenders during the evaluation period	M	ML, MM	ML/M, MM/M
Owner-occupied housing units	O	OL, OM	OL/O, OM/O

For simplicity of exposition, we discuss here only evaluations of Low-Income data. Everything in the next few paragraphs holds for Moderate income calculations (just substitute ‘L’ with ‘M’).

Choosing a Benchmark

In each of a bank’s Assessment Areas, examiners compare BL/B with ML/M (“M-Shares” test) and BL/B with OL/O, (“O-Shares” test), and look favorably on the B-shares exceeding their respective M- and O-shares. The “Scope of Examination” section of the Evaluation states more weight is placed on the O-shares comparison. However, exceptions arise in circumstances where O-share exceeds M-share, in which case the M-share is used as the benchmark.³⁵ This hybrid rule amounts to: “Compare B-share with the smaller of O-share and M-share”. (“O-Shares-H” test)

In what follows, we use the M-shares test to benchmark banks’ performance by income level of the geography. There are several reasons for this:

1. The M-Shares test is more demanding of bank performance than the hybrid test. A bank will outperform M-shares less frequently than it will outperform O-Shares-H.

³⁵ For example, *see* Wells Fargo Performance Evaluation, 2019, p.10, <https://www.occ.gov/static/cra/craeval/Jun20/1.pdf> (“Additionally, consideration was given to the impact of home affordability on LMI borrowers in higher cost areas when comparing the distribution of WFBNA mortgage loans to the demographics. In these higher cost markets, it is difficult for many LMI borrowers to afford a home as the area’s median housing value is typically too high for conventional mortgage loan qualification. As such, more emphasis was placed on the bank’s lending results to LMI borrowers relative to the aggregate’s performance rather than demographic data.”) ; *also see* Bank of America Performance Evaluation, 2018, p.12 <https://www.occ.gov/static/cra/craeval/oct19/13044.pdf> (“In general, examiners gave more weight to the bank’s lending performance relative to demographics and less weight to performance relative to aggregate lenders. However, in some cases, it was more appropriate for examiners to place more weight on performance relative to aggregate lenders such as when bank performance exceeded aggregate, but bank performance and aggregate are less than demographic. In those cases, performance relative to aggregate lenders can be more reflective of market conditions such as loan demand and opportunities for lending.”)

2. There is a tenuous relationship between the LMI share of loans and of owner-occupied housing. ML/M is a ratio of “flows”, (number of loans initiated per year), while OL/O is a ratio of “stocks” (number of owner-occupied dwellings at a point in time).
 - a. Why would one view BL/B (equivalently, ML/M) exceeding OL/O as a good thing? There may be sound economic reasons for them to differ. For example, selling an existing dwelling and buying a new one entails paying off an existing mortgage and contracting a new one, and involves substantial fixed and variable costs.
 - b. It turns out that for 85% of the ~3,200 counties in the Federal Reserve dataset, the difference between O-Share and M-Share measures is less than five percentage points. There are some significant outliers, in which differences of over 10% persist over the entire 2005-17 period. We shall return to the role of O-shares later. For the moment we remark that if one is concerned about the gap between BL/B and OL/O , it seems sensible to break it down into two questions:
 - i. “Is the bank pulling its weight relative to other banks?”, measured by BL/B versus ML/M , or the M-Shares test, and
 - ii. “Is the banking sector serving the community?”, measured in the first instance by ML/M versus OL/O .
3. Using M-shares allows us to measure the performance of each bank in each AA in a uniform way that takes account of the size of the AA relative to others, and which we can aggregate transparently to an Overall score for “Distribution of Loans by Income Level of the Geography.” This contrasts with the several layers of qualitative aggregation of which Figure 1 shows a part. While Figure 1’s manual process gives examiners the flexibility to correct for comparability issues among geographies and banks of different sizes, with a little help from probability theory, we can get by without any of these qualitative elements.

Likelihood Benchmark for Measuring Bank Performance

We think of a bank as having a “business strategy” of making a chosen proportion of its loans to LMI borrowers. If this strategy is in line with the LMI lending of the aggregate market (i.e., all lenders combined), the bank’s LMI loan numbers will behave in a statistically very predictable way: as if they selected their B loans randomly from the aggregate market pool of M loans, of which ML are LMI. This means that BL/B will roughly equal ML/M , and more precisely, there is an exact probability associated with making BL LMI loans out of B total, when the market makes ML LMI loans out of M total.

We call this probability the bank’s *Likelihood* (for the geography and year).³⁶ A likelihood of 50% means there is no evidence that the bank’s strategy is a different LMI

³⁶ In probability terminology, BL has a hypergeometric distribution with parameters B, M, and ML. The Likelihood is just the p-value of Fisher’s Exact Test. See for example https://en.wikipedia.org/wiki/Fisher%27s_exact_test.

proportion than the market. The lower the likelihood, the more credible it is that the bank is targeting a lower LMI loan proportion than the market.

The fact that we view the bank's loans as randomly drawn from the market pool takes account of the reality that the bank's precise number of LMI loans is not completely under its control. However, at some (low) level of BL this source of randomness becomes an implausible explanation, the notion that the bank's strategy targets a lower LMI loan proportion than the market dominates, and the Likelihood decreases accordingly.

To illustrate, say a total of 1,000 loans (M) were made in a geography, of which 200 (ML) were LMI:

- Say a bank under examination made 300 loans in total (B), of which 50 (BL) were LMI. $50/300 = 17\%$ may seem quite close to $200/1000=20\%$. In fact, the probability that 300 loans selected randomly from the population of 1,000 contain as few as 50 LMI loans is less than 5%. In other words, there is a very small chance this bank's business strategy is representative of the market, and some other policy drives their acquisition of LMI loans.
- Say another bank made 60 loans of which 10 were LMI (again, about 17%). The chance of as few as 10 LMI loans being present in a group of 60 loans randomly selected from the 1,000 is 32%. There is thus much less evidence that this bank's business strategy deviates from the market, even though their LMI share is the same as the first bank's.
- Last, any bank whose LMI share equals the market LMI share scores 50% according to this metric.

This calculation provides a score for each bank in each year in each geography. To get an aggregate annual score for the bank, we aggregate the scores across geographies, weighting each by its share of all loans made by the bank. The final aggregate score is thus a weighted average likelihood that the bank's LMI lending is in line with the market.

Here are the results for banks in Calhoun County, Alabama, for the year 2012. The aggregate data corresponding to Figure 2 are:

Figure 4

	Total Count	LMI Count	LMI Share
Loans made by all lenders during the evaluation period	2458	282	11%
Owner-occupied housing units	32818	6770	21%

Figure 5 below shows data for banks who made more than 5 loans in the county during 2012. As in the examples above, the more loans a bank makes, the more extreme is the

judgement for any given ratio of BL/B. For example, both Branch Banking and Trust and Ameris made 8% of their loans to LMI tracts. However, they made, respectively, 251 and 51 loans in total. If BB&T's business strategy indeed targeted the 11% LMI of the aggregate market, there is only a 2% chance they would end up with 8% (or less) of their loans (i.e., 19) falling in the LMI category. In contrast, if Ameris' lending strategy indeed targeted 11% LMI, the chance of their ending up with 8% (or less) LMI loans (i.e., 4) is 29%.

Figure 5

Bank	B	BL	B/BL (%)	Likelihood (%)
BRANCH BKG and TC	251	19	8	2
REGIONS BK	147	13	9	19
WELLS FARGO BK NA	137	9	7	4
JPMORGAN CHASE BK NA	120	16	13	79
FARMERS and MRCH BK	109	39	36	100
CITIBANK NA	63	8	13	71
AMERIS BK	51	4	8	29
CHEAHA BK	47	9	19	96
U S BK NA	43	6	14	78
BANK OF AMER NA	42	2	5	12
COMPASS BK	41	5	12	67
USAA FSB	38	5	13	73
NOBLEBANK and TR NA	36	12	33	100
GMAC AUTOMOTIVE BK	28	3	11	60
FLAGSTAR BK FSB	22	0	0	7
FIDELITY BK	22	0	0	7
METRO BK	20	4	20	93
FIRST FED BK A FSB	20	1	5	31
EVERBANK	18	0	0	11
SOUTHERN ST BK	13	5	38	100
SUNTRUST MTG	11	3	27	97
EVABANK	10	4	40	100
AMERICAN BK OF HUNTSVILLE	8	0	0	38
FIRSTBANK	6	0	0	48

A bank that lends in line with the market average (11%) will achieve a likelihood of 50%. However, one can get close even without making a single LMI loan, as long as the bank's total

loans (B) is small enough to effectively give them the benefit of the doubt. Firstbank falls into this category, scoring a likelihood of 48%, even though they make no loans to LMI borrowers.³⁷

Banks whose LMI share exceeds 11% produce Likelihoods above 50%. For example, JP Morgan Chase's likelihood says that a bank whose LMI lending strategy was on a par with the market proportion of 11%, and made 120 loans, would make 16 or less of them to LMI borrowers 79% of the time. This is the likelihood that JP Morgan Chase's lending strategy was at least on par with the market. Uncertainty figures here as well: USAA had the same LMI proportion (BL/B=13%) as JP Morgan Chase, but because their total number of loans was smaller, the evidence is less conclusive, and so their likelihood is closer to 50%, i.e., 73%.

To get to the Aggregate Likelihood, we calculate a weighted average of the bank's likelihood in each county, where the weight contribution for each county is B, the total number of loans the bank made there (so for Wells Fargo, Calhoun County's weight contribution was 137, attached to a likelihood figure of 4%).

Evaluations for the Largest Banks Using the Likelihood Benchmark

Figure 6 displays aggregate likelihoods calculated from the Federal Reserve files for home mortgage and small business loan originations by Bank of America, JP Morgan Chase, Citibank and Wells Fargo. These four are also the biggest home mortgage lenders, although in small business loans they are dominated by American Express and Chase Manhattan (which is examined separately from JP Morgan Chase). Each year is also shaded according to the evaluation the bank received in the CRA Exam covering that year, if there was one.

For example, in 2016, Wells Fargo's Aggregate Likelihood for Home Loans was 0.25, which is to say that the likelihood they were allocating the same share of their loans to LMI borrowers as the average bank operating in a county averaged 25%. Wells Fargo's Aggregate Likelihood was well below 50% for most of the period, but they received "Outstanding" lending test evaluations in the three exams conducted during this time (2009, 2012, 2019). Indeed, the three largest home loan lenders have similarly low aggregate likelihoods for last three years in the Federal Reserve data; only Citibank, the smallest, does not.

These figures are in line with the results shown in Figure 3, namely that the large banks' LMI lending is significantly lower than the market's in the last three years of the Federal Reserve data. Figure 6 demonstrates the difference between the quantitative scores and Overall lending test Performance Evaluations. Since aggregation is relatively transparent (even if it is qualitative in the CRA Exams), the differences likely stem from differences between the Likelihood and the CRA Exam Assessment Area Level scoring procedures.

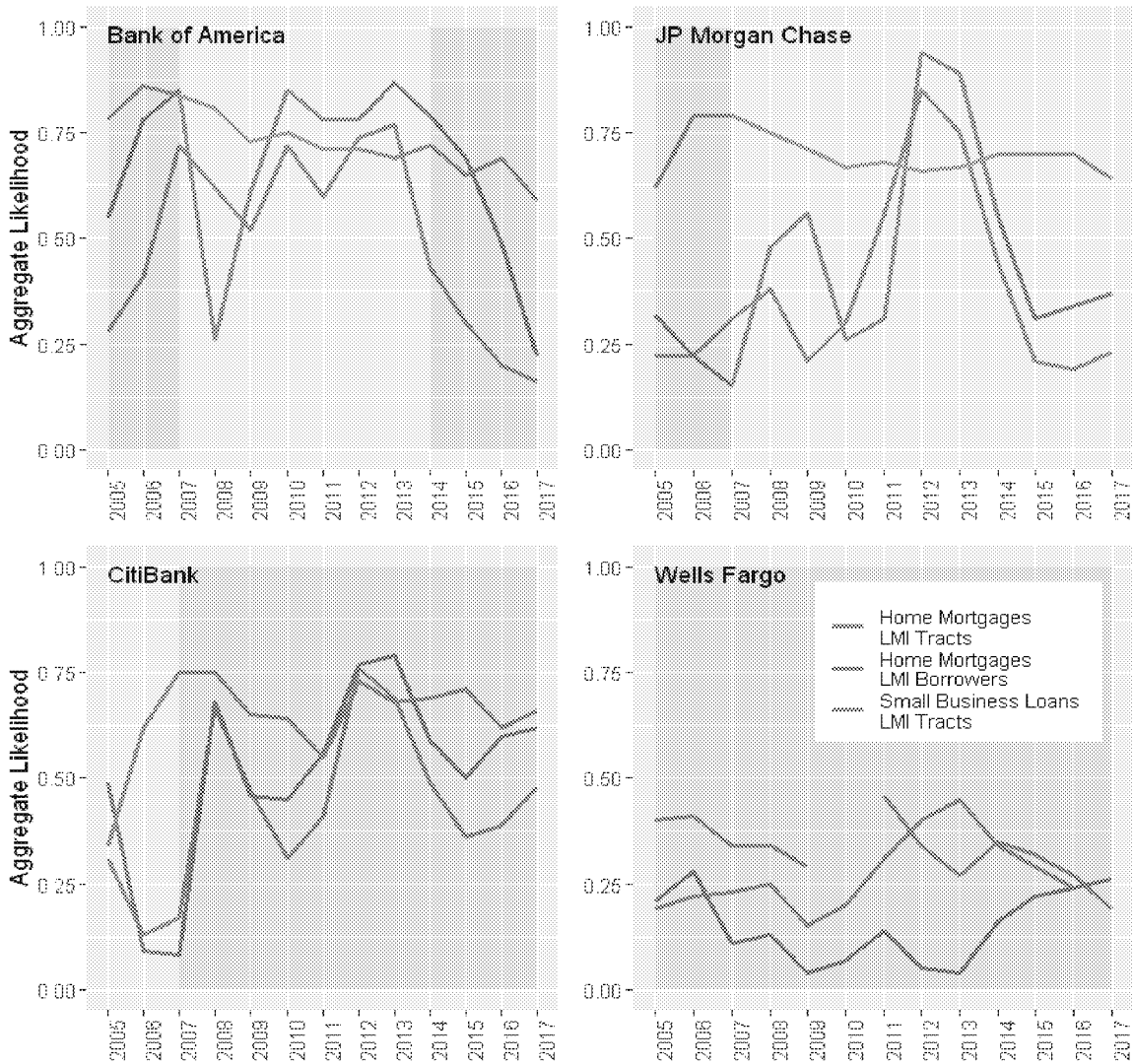
³⁷ This perhaps surprising number is just the probability of 6 loans drawn at random from the pool of 2458 (of which 282 are LMI) all being to non-LMI borrowers: $(1-282/2458)^6$.

Aside from Wells Fargo, the other three large banks consistently scored high in small business loans. However, the two largest participants in that market (American Express and Chase Manhattan) performed similarly to Wells Fargo. These institutions underwent CRA Exams less frequently than the large bank entities.

Figure 6. Loan Originations by Largest Banks: Aggregate Likelihoods and

Overall lending test Performance Evaluations

■ : Outstanding; ■ : High Satisfactory; ■ : Year not covered by Exam



We found no material difference in the profile of results when the calculation was altered along the following dimensions:

- Whether the bank's lending activity is limited to Originations by the entity and its affiliates and subsidiaries, as in the Table, or includes just Originations of the bank, or Purchases by all these entities and
- whether the calculation is limited to counties in AAs or covers all counties;

We have yet to test whether the statistics calculated at the MSA level produce a different perspective.

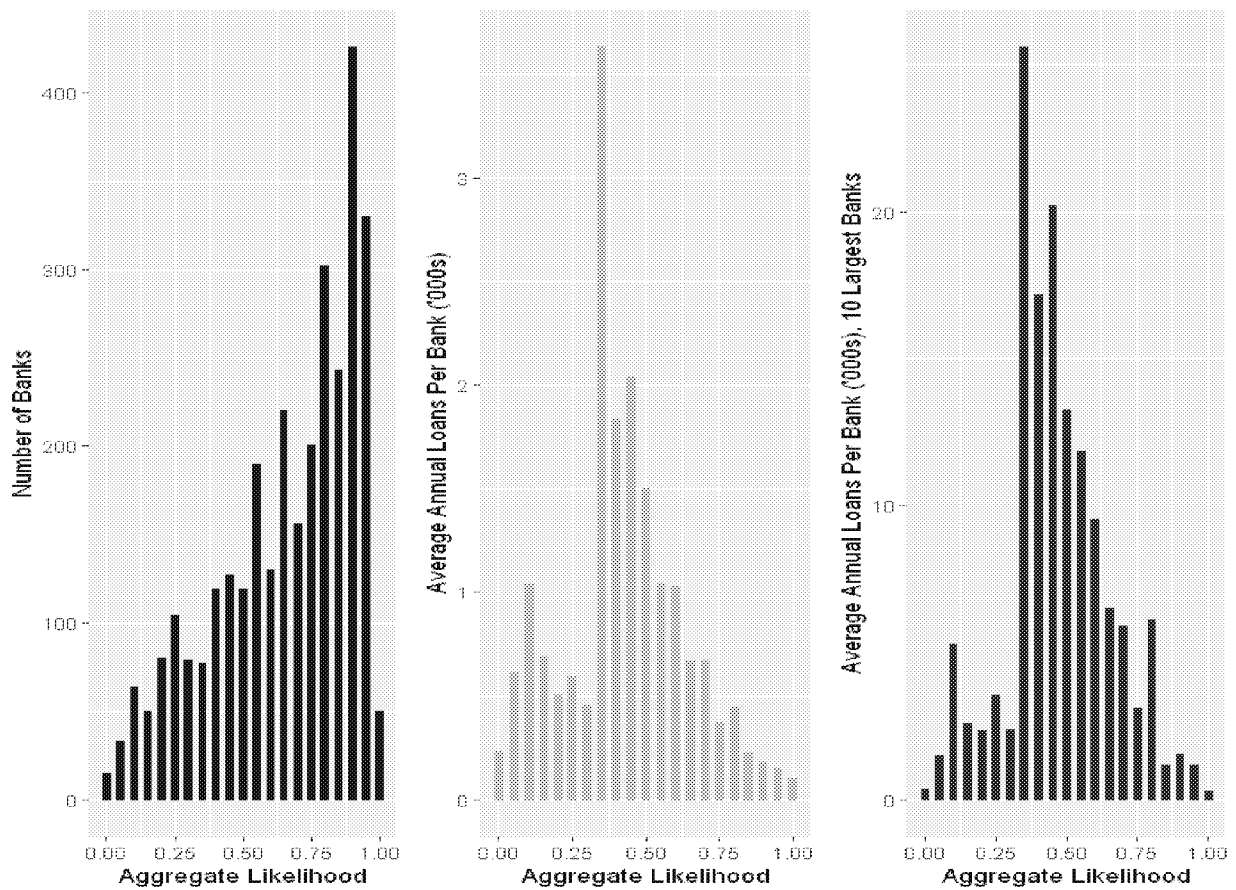
Evaluations for All Banks Using the Likelihood Benchmark

How representative are these figures for the large banks? Is a relatively low Aggregate Likelihood a necessary consequence of size? It seems that all the biggest banks managed high or midrange Aggregate Likelihoods for home loans at some point between 2005 and 2017.

Figure 7 provides some information on these questions. It shows home loans Aggregate Likelihoods in 2017, for all banks *except* the largest four. The left panel suggests that many banks had a Likelihood above 0.5, although the middle panel suggests that high-scoring banks tend to be small. However, the right panel, which averages the loans of the 10 largest banks in each Aggregate Likelihood group, shows that there are banks making 10-20,000 loans a year that score in the mid- to upper range.

These Aggregate Likelihood statistics are derived from the same underlying data as the qualitative evaluations of the CRA Exams. The likelihoods can be determined across banks, time and location, and also summarized into a compact view of each bank.

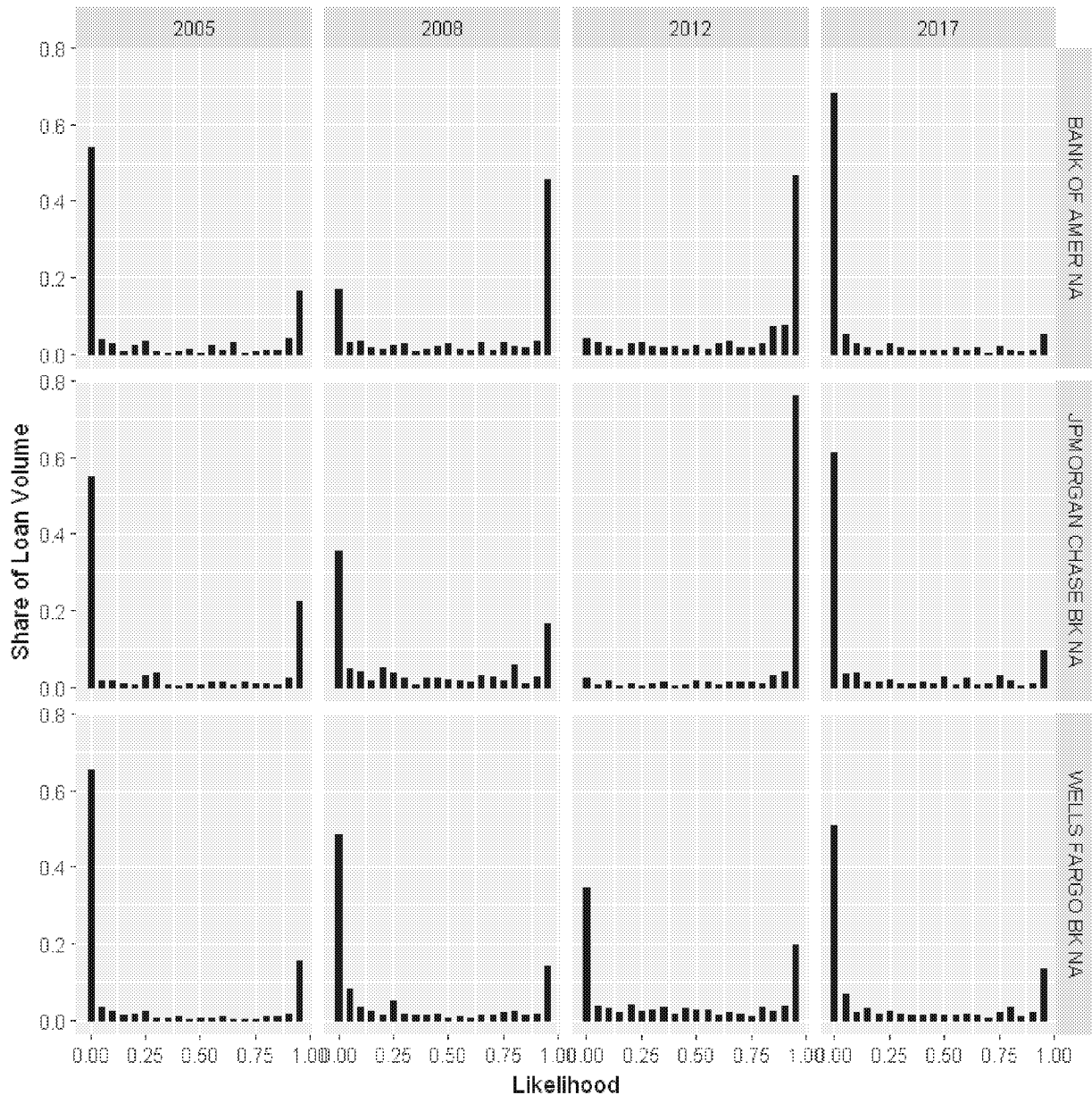
Figure 7. Aggregate Likelihoods: Banks Other than the Four Largest



Can we learn anything more about the lending patterns of the large banks? Is their Aggregate Likelihood a decent summary of their LMI lending, or is there more information in the pattern of likelihoods across geographies? Is this pattern correlated with any demographic factors? Once again, the existence of a uniform measure for each bank/county/year combination enables us to address these questions swiftly and comprehensively.

To illustrate, here are snapshots of the three largest banks' likelihood profiles across geographies, at different points in time. Each bar on a graph represents the share of the bank's Dollar Loan Volume going to geographies with the Likelihood value marked on the horizontal axis

Figure 8. Large Banks' Likelihood Distributions Across Counties



The patterns are broadly consistent with Figure 6, which shows a large decline in Aggregate Likelihoods for Bank of America and JP Morgan Chase between 2012 and 2017. This would necessarily involve some leftward shift of the bars in the 2017 panels in Figure 8, relative to the 2012 panels. The actual shift was quite precipitous, taking the two banks from domination by counties with significantly more-than-market LMI share (Likelihood=1), to the opposite extreme. Some LMI communities must have undergone a significant decline in their coverage by these two banks. Added to this, 2012-2017 also witnessed a dramatic fall in Total Loan Volume of at least 2/3 by all three banks.

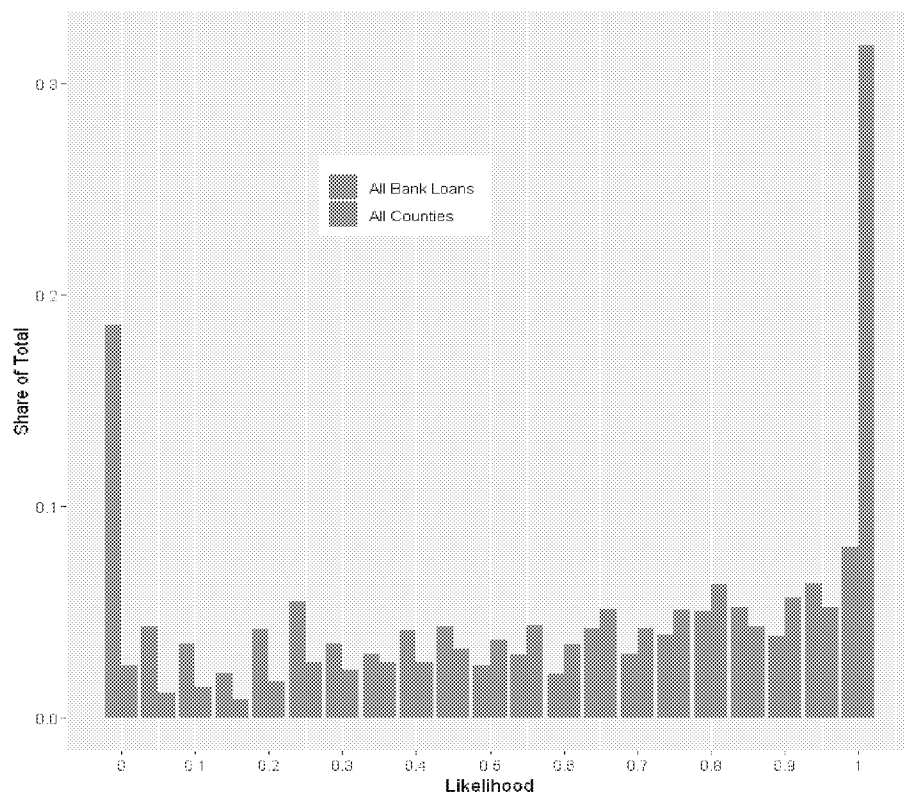
Likelihood Differences among Counties in Bank Lending

As communities are the focus of CRA, it is useful to look at differences in aggregate LMI lending across counties, rather than at differences among individual banks, which aggregate across communities. The current examination format provides at best a partial picture, which would require extracting information about a community from several individual bank exam reports. These reports are produced intermittently, and, as far as we understand, not with a view to coverage of communities.

As a first step, we ask how banks in aggregate have lent to LMI borrowers in each county. Our measure is the average likelihood across banks, each weighted by their total loans. If banks were the only lenders in a county, this would be a circular measure, as every underperformer must be matched by outperformers. However, in recent years, banks' share of total loans has fallen to about one-third (Figure 3), and so it is possible to see differences across counties if banks' LMI lending strategy differs from non-banks'.

Figure 9 buckets counties by their weighted average likelihood across banks. The pink bars represent each county by their share of total loans by banks between 2014 and 2017. For example, the leftmost pink bar records that 18% of all bank loans went to counties whose banks' likelihoods averaged 0-0.05.

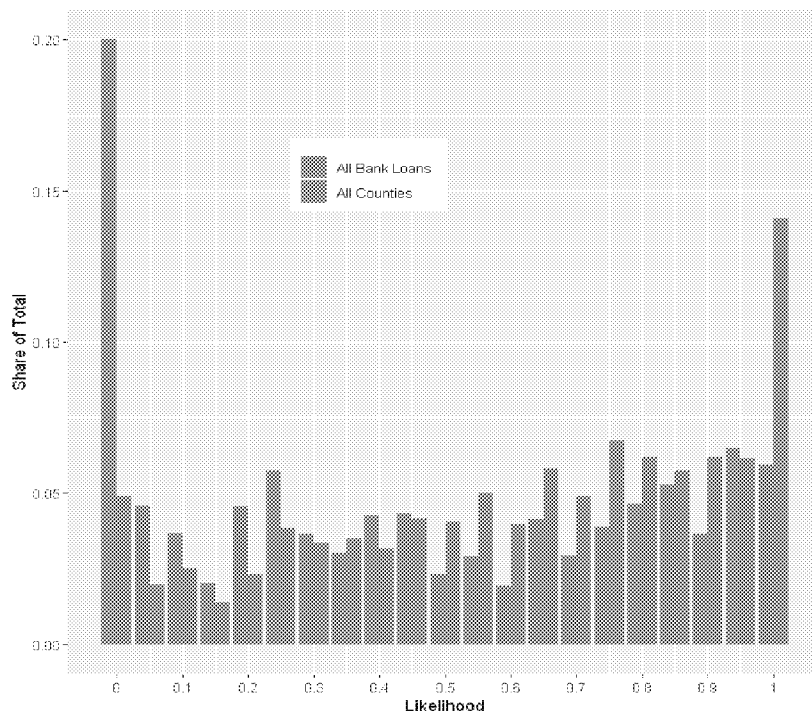
Figure 9: County Average Likelihoods, 2014-2017



The turquoise bars record the proportion of counties in each Likelihood bucket. The 0-0.05 -likelihood counties made up about 2.5% of the total. So it is reasonable to conclude that some large counties experienced significant bank underperformance in LMI lending. It may be useful to identify these outliers and investigate more fully why banks consistently underperform there.³⁸ At the other end of the scale, about 32% of counties by headcount saw significant LMI lending outperformance (Likelihood = 1) by the group of banks that loaned to them. These banks accounted for 8% of total bank loans (pink bar), and so it is reasonable to believe that they are small counties.

This interpretation is confirmed by separating counties according to the definition³⁹ of “Rural or Underserved” maintained by CFPB. Approximately half of counties fit this description in 2017. All summary statistics evidence that these counties have materially smaller loan volumes than those excluded from the category. For example, 2017 mean (median) total loan volumes in Rural/Underserved counties were 6% (11%) of those in the non- Rural/Underserved group. The effect of limiting Figure 9 to the latter group is shown in Figure 10, which is very similar to Figure 9, except at the far right.

Figure 10: Non-Rural/Underserved County Average Likelihoods, 2014-2017



³⁸ It may also be useful to check that this result is not a statistical artifact. These calculations represent very large quantities of loans, as they aggregate over banks and years, and so one would expect to see more Likelihood figures at the 0 and 1 extremes. However, we cannot come up with a reason why large counties should be biased at all, or toward 0 rather than 1.

³⁹ While the definition of “underserved” is quite transparent, it is hard to find the precise definition of “rural.”

These results do not mean that large counties are suffering, and small ones are not. They just mean that banks as a whole tend to underperform non-banks in their share of LMI loans in large counties. Whether this matters to the inhabitants of those counties obviously turns on other factors, like differences in loan terms between banks and non-banks. The more important metric for a community relates to whether financial institutions as a group are providing them with sufficient access to credit, to which we now turn.

Benchmark Based on Lending Trends

Our second statistic is an attempt to compare community needs with provision of loans. As noted above, CRA exams use the LMI share of Owner-Occupied housing, which suffers from two problems. First, there is no reason to expect the level of this share to align with the level of the LMI share of loans. Second, as a measure of community needs, it is contaminated: redlining produces a low level of OL/O, which is a low target for the LMI share of loans by the bank or the market.

A less-tainted metric is the LMI share of a county's population as it is not so directly tied to bank lending behavior. Again, there is no reason why the level of this measure should be comparable to the LMI share of bank loans. However, some useful information can be gained from comparing rates of change of both measures.

Outliers should be identified for communities where the LMI population share is rising while the LMI loan share is falling. To this end, for each county we regress the annual change in LMI loan share (ML/M) on the annual change in the LMI population share. We identify outliers as counties satisfying two conditions:

1. From 2005-2017, the LMI share of the population increased
2. The slope of the regression is significantly negative (t-statistic < -2)

The regression condition is quite demanding as a representation of communities whose LMI loan and population characteristics have moved in the opposite direction, as it requires the correlation to obtain year-by-year. An unsynchronized secular decline could be just as serious, but the second condition would be less likely to detect it. In other words, this method of detecting outliers could have a false negative issue. The other side of this coin is that the outliers identified may be that much more serious, because of the stringent test they had to pass.

Some 819 counties are of sufficient size to be represented in the annual data in the American Community Survey, and have sufficient annual observations for a meaningful regression. Of these, 473 satisfy condition 1 above. Of these, we would expect under 2.5%, or 12, to satisfy condition 2 as well. We find 26.

It is also possible to conduct this test on the loans of a single bank, particularly one of the large ones. By way of illustration, we use the data for JP Morgan Chase, who had some business in every county referred to above. This exercise produces 18 outliers. We would again expect 12, just by the luck of the draw. Seven counties appear in both lists.

It is quite possible that these outlier counties are all “false positives” because our rudimentary method of identifying them has omitted some feature. Similarly, the seven common counties may be the result of coincidence (or because JP Morgan Chase “is the market” in those counties). The effective challenge here is to require examiners to scrutinize the outliers in detail for an explanation of why there are so many. The explanation could be benign, or a cause for action.

Analysis of Home Loan Application Denials

Denials are closely related to the quality and outcome of lending practices, and are available at the loan level for home mortgage data. The probability a lender denies an individual mortgage application can be related to the individual borrower’s ability to pay, but should not be related to the applicant’s location, especially if the mortgage is guaranteed by a government program. CRA examiners should be interested in communities where, after accounting for borrower characteristics, denial rates for LMI applicants are high. These communities’ lending records could be examined in detail, to ascertain whether their high denial rates are indeed just random, or whether they result from identifiable motives, incentives or constraints that can be remediated. Such a procedure could take the following form:

1. Assume we have loan-level historical data on application outcomes (Accept or Deny), across geographies (counties).
 - a. For example, the public HMDA data provided by CFPB and the Federal Reserve for 2017 comprise 195,000 FHA loan applications by borrowers in the Low-Income category for their MSA. Among these, 51,000 (26%) were denied. After limiting to counties with more than 20 FHA applications during the year, 1,200 counties are represented.
2. Each county is represented by their number of Low-Income applications and denials. We want to ascertain whether these numbers are to be expected, given economic characteristics of the county’s borrowers, or if the county is an outlier. For this, we need a benchmark probability of denial for each applicant.
 - a. Expected accept/deny outcomes can be calculated from fair-lending-type models, with or without the inclusion of race variables.
 - b. The economic variables in the public HMDA data have little explanatory power in this kind of model, and one gets almost identical results by simply using the nationwide denial probability for each applicant.
 - c. The cost of this simplification is largely a higher false positive rate in the investigation step below (i.e., counties identified as outliers turn out to have mitigating conditions). It is unlikely that false negatives (problem communities not identified as outliers) would be a consequence.
3. Using the nationwide denial probability, calculate the likelihood of each county’s denial outcomes⁴⁰.

⁴⁰ As with individual bank likelihoods, this is derived from a hypergeometric distribution. *Supra* note 6.

4. Identify the outlier counties
 - a. A definition of “outlier” is needed. For illustration we designate a county an outlier if there is a less than 1% chance of seeing more denials, based on the nationwide rate of denial.⁴¹
 - b. We identify 125 out of 1,170 eligible counties as outliers according to this metric.
 - c. Obviously, one would expect some counties to be outliers just by the luck of the draw, even if all counties’ behavior conforms to the nationwide denial rate (the “No Problem” hypothesis): around 25. So there is apparently some concentration of denials in counties, although it may yet have a benign explanation.
5. Investigators should focus on understanding lending outcomes in the outlier counties
 - a. It may help to look at banks whose denial performance differs significantly between outlier and non-outlier counties. There are 400 banks (strictly, “Respondents” providing HMDA data) who were active in 2017 in both outlier and non-outlier counties. For 70 of these, their (high) outlier county denial rates would occur with less than a 1% chance, were their accept/deny policy the same in outlier and non-outlier counties.

⁴¹ A more sophisticated approach would be to select outliers in a way that controls for false positives. See for example https://en.wikipedia.org/wiki/False_discovery_rate