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Capital for Communities – Opportunities for People®

March 20, 2020

Via Electronic Submission

Comptroller Joseph Otting
Office of the Comptroller of the Currency
400 7th Street SW, Suite 3E-218
Washington, DC 20219

Chair Jelena McWilliams
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

RE: Community Reinvestment Act Joint Notice of Proposed Rulemaking – Docket ID OCC-2018-0008

Dear Comptroller Otting and Chair McWilliams:

On behalf of Community Reinvestment Fund, USA, (CRF), I am pleased to share our views on the Joint Notice of Proposed Rulemaking (NPR) published in the *Federal Register* on January 9, 2020. We appreciate the efforts of the Office of Comptroller of the Currency (OCC) and the Federal Deposit Insurance Comporation (FDIC) to address the need to modernize and strengthen the Community Reinvestment Act (CRA). The OCC and the FDIC (the agencies) have proposed significant and, in some cases, sweeping changes to the regulatory framework that supports the CRA. CRF has been a strong proponent of the CRA for more than three decades submitting numerous comment letters on ways to strengthen this important law. In many respects, the CRA has been quite successful in meeting its stated purpose. As described in the NPR, the CRA, "has encouraged insured depository institutions (banks) to invest trillions of dollars into the communities they serve, including low- and moderate-income (LMI) neighborhoods."[1] These resources are vital to stimulating community investment in LMI areas that creates vibrant neighborhoods where people live, work and raise their families. We urge the agencies to carefully consider our comments and concerns before finalizing their proposal to "transform or modernize" the current CRA regulatory framework so as not to reverse the progress that has been made since the CRA was enacted. In the spirit of collaboration and deep commitment to LMI places and people, we offer specific recommendations as to how the proposed regulations could be strengthened to ensure they fulfill the original intent of the CRA to "…encourage banks to help meet the credit needs of communities that they serve," *including LMI neighborhoods*."[2] (emphasis added)

[1]Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation, "Joint notice of proposed rulemaking: Community Reinvestment Act Regulations," January 9, 2020, pg. 1204. https://www.Governor info.Governor /content/pkg/FR-2020-01-09/pdf/2019-27940.pdf

[2] Ibid, pg. 1206.

BACKGROUND

Community Reinvestment Fund, USA, a national Community Development Financial Institution (CDFI), is a leader in channeling resources from the capital markets to support community economic development and helping mission-driven organizations improve efficiency and build capacity. Our mission is *to empower people to improve their lives and strengthen their communities through innovative financial solutions*. For the past 32 years we have worked with community partners, investors, foundations, and financial institutions to deliver nearly $2.5 billion in loans, investments, and bonds, resulting in the creation or preservation of 85,000 jobs, the financing of nearly 19,600 affordable housing units and funding for a wide range of community facilities. Since its inception, CRF has funded more than 2,000 small business loans, over 600 of which were made to businesses owned by women or people of color. CRF has deployed resources in more than 1,000 communities in 49 states and the District of Columbia and served more than 1.8 million people.

CRF was founded on a vision of improving the lives of people living and working in economically challenged communities by providing access, in partnership with local community development organizations, to public and private sector resources throughout the country. We are best known as a financial innovator with expertise in adapting financing tools that connect underserved communities to new sources of capital such as establishing the first secondary market for small business and affordable housing loans to supply liquidity to development finance agencies, CDFIs and other mission-driven lenders. We pioneered the creation of securities collateralized by community development assets to offer mainstream institutional investors (banks, pension funds, and insurance companies) with a way to invest capital at scale in projects and businesses serving low-income people and revitalizing distressed communities. Since 1989, CRF has issued 19 series of Notes totaling $284.7 million backed by community development loans. Three of our debt offerings totaling $176 million have been rated and all of which included a senior tranche rated "AAA" by Standard & Poor's. We have also issued three multifamily affordable housing securities, including one Standard & Poor's rated issue totaling $84.9 million, backed by 45 multifamily affordable housing loans.

Similarly, CRF played an instrumental role in shaping and launching key federal community development programs, including the New Markets Tax Credit (NMTC) and the CDFI Bond Guarantee Program (BGP). Together with its affiliate, National New Markets Tax Credit Fund, Inc., (NNMTCF), we have received $869.5 million in tax credits all of which have been deployed in the form of flexible loans for both non-profit and for profit operating businesses located in low-income communities throughout the country. Since 2003, we have funded 377 NMTC loans totaling more than $912 million. In 2013, CRF was named the first Qualified Issuer (QI) for the CDFI Bond Guarantee Program. We are the only QI to issue bonds in six of the seven funding rounds conducted to date, and our total issuance since 2014 stands at $840 million on behalf of eight CDFIs.

When faced with the dramatic contraction in bank lending during the Great Recession, CRF found a way to bring responsible credit to marginalized small businesses unable to secure conventional bank loans. We acquired one of 14 national non-depository SBA 7(a) licenses to offer this Government guaranteed loan product to support our mission of lending to small businesses located in LMI areas or owned by people of color, women and/or veterans. Since launching

our SBA 7(a) lending product in 2012, CRF has made more than 468 7(a) loans totaling nearly $242 million helping to create or retain more than 7,771 jobs. CRF is a Preferred Lender under the SBA 7(a) program and has been ranked among the top SBA 7(a) lenders nationally.

IMPORTANCE OF CRA

Before turning to the specific questions raised in the NPR, we wish to share a few general comments regarding the Community Reinvestment Act and offer our perspective on the important role this law has played in spurring investment in communities where economic opportunity remains elusive. By many measures, our national economy has recovered from the Great Recession, however pockets of poverty and neighborhoods suffering from neglect exist across the country. Promoting community development is a key objective of the CRA. We must ensure that any proposed revisions to the CRA regulations strengthen this framework as changes could have a profound impact on the well-being of our most vulnerable communities and the future of our economy.

Passed in 1977, the intent behind the CRA was to end the bank practice of "redlining" or refusing to lend in lower-income communities that are also home to people of color and immigrants. The law placed an affirmative obligation on these institutions to make loans in the communities where they were chartered to do business or receive deposits. Since 1996, banks have made nearly $2 trillion in small business and community development loans to meet the requirements of the law.[3] According to the American Banker, "banks are now investing more than a $100 billion each year into low- and moderate-income neighborhoods."[4] These loans are directly attributable to the CRA and absent this credit flowing to LMI communities, these places would look very different today.

CDFIs are trusted partners for financial institutions when lending and investing in LMI communities because they bring significant expertise and intimate knowledge of the very neighborhoods that banks seek to serve. Although CDFIs were not envisioned when the law was enacted, they have developed strong, collaborative relationships with banks by helping them to fulfill their CRA eligible requirements in low- and moderate-income neighborhoods. Under current CRA regulations and guidance, banks receive positive CRA consideration for loans and investments to CDFIs under both the Community Development (CD) and Investment Tests.[5] Partnerships between banks and CDFIs have flourished in recent years creating benefits for both types of organizations. For banks, CDFIs are highly skilled community-based intermediaries offering specialized financial products and the capacity to make loans that sustain and grow borrowers in LMI communities. For CDFIs, banks provide a critical source of funding for their lending activities. According to Opportunity Finance Network

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[3] Van Tol, Jesse. "A Green Light for Banks to Start Redlining Again," *New York Times*, August 28, 2018.

[4] Hunt, Richard. "What bankers want from CRA reform." *American Banker*, November 8, 2018.

[5] Community Reinvestment Act: Interagency Questions and Answers Regarding Community Reinvestment: Guidance, Federal Register Vol. 81, No. 142, July 25, 2016, §_.12(g)(3)-1, §_.12(h)-1 and §_.12(t)-4.

(OFN), a CDFI industry association, banks invested nearly $4 billion in OFN member loan funds in 2018, an increase from less than $1 billion in 2005.[6] In 2018, more than 50% of borrowed funds held by OFN members came from banks.[7] These CRA-related funds are used to support their lending and investing to stabilize and revitalize distressed and struggling communities. Any changes to CRA regulations should carefully weigh the implications for CDFIs as vital partners and financial intermediaries able to supply credit to communities that banks are required to serve.

It is important to note, not only has CRA increased the availability of credit in LMI areas, but it has also created a "valuable community and economic development infrastructure."[8] Efforts to reform the CRA regulations should enhance this infrastructure to promote more, not less, CRA activity in underserved areas. As the Comptroller stated in testimony before the U.S. Senate Committee on Banking, Housing, and Urban Affairs, "We have an opportunity to modernize the regulatory framework around CRA to better serve its original purpose and encourage more investment and banking activity supporting the people and communities needing it most."[9]

KEY THEMES AND COMMENTS

As explained in the NPR, the purpose of the agencies' proposal is "to strengthen the CRA regulatory framework to better achieve the underlying statutory purpose of encouraging banks to help serve their communities by making the framework more objective, transparent, consistent, and easy to understand."[10] These objectives echo the goals detailed in the OCC's Advance Notice of Proposed Rulemaking (ANRP) that a new and stronger CRA framework would lead to banks "…more effectively serve the convenience and needs of their communities by (1) encouraging more lending, investment, and activity where it is needed most; (2) evaluating CRA activities more consistently; and (3) providing greater clarity regarding CRA-qualifying activities."[11] A modernized framework would "…facilitate more timely evaluations of bank CRA

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[6] Source: Opportunity Finance Network webinar on Proposed Changes to the Community Reinvestment Act (CRA), January 7, 2020, slide 8.

[7] Ibid, slide 9.

[8] Governor Lael Brainard, "Community Investment in Denver", Speech at a roundtable at the Federal Reserve Bank of Kansas City, Denver Branch, October 15, 2018.

[9] Testimony of Joseph M. Otting, Comptroller of the Currency before the Committee on Banking, Housing and Urban Affairs, United States Senate, pg. 7. https://www.occ.Governor /news-issuances/congressional-testimony/2019/ct-2019-46-written.pdf

[10] Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation, "Joint notice of proposed rulemaking: Community Reinvestment Act Regulations," January 9, 2020, pg. 1206. https://www.Governor info.Governor /content/pkg/FR-2020-01-09/pdf/2019-27940.pdf

[11]Office of the Comptroller of the Currency, "Advance notice of proposed rulemaking: Reforming the Community Reinvestment Act Regulatory Framework, September 5, 2018, pg. 45053. https://www.Governor info.Governor /content/pkg/FR-2018-09-05/pdf/2018-19169.pdf

performance, offer greater transparency regarding ratings, promote a consistent interpretation of the CRA, and encourage increased community and economic development in low- and moderate-income (LMI) areas."[12]

While all the objectives listed above are worthy in their own right, the ultimate objective is to ensure fair access for all communities banks serve to the credit they need to prosper. The most critical aspect of revising the CRA regulations is to properly balance the goals of simplifying and clarifying the regulations with the goal of encouraging more CRA activity through greater local community engagement. There are clearly pitfalls in trying to *oversimply* a set of regulations designed to redress challenging and entrenched patterns of disinvestment. The best way to achieve a proper balance may ***not*** be to dismantle the existing regulatory framework but to identify aspects that need to be improved and remedy those shortcomings with thoughtful solutions. A hasty approach to reform could result in a new framework that unintentionally undermines the original purpose of the law by failing to hold banks accountable and requiring them to be responsive to the credit needs of the communities they are chartered to serve.

In reviewing the proposal, several key themes emerged that we wish to underscore.

First, any expansion of the activities that qualify for CRA credit must be carefully considered. While the addition of an illustrative list of CRA eligible activities will provide greater certainty for both banks and their community partners, we are concerned that low- and moderate-income communities and people may receive less attention and resources rather than more as the NPR suggests. Expanding qualified activities to encompass a broader range of financing transactions and types of borrowers not envisioned by the original statute has the potential to divert banks' CRA activities away from the places and populations the CRA *was* intended to benefit.

Second, the proposed approach to measuring CRA performance as a ratio of the total dollar volume of a bank's qualified activities divided by the average of its quarterly retail domestic deposits could encourage these institutions to direct their CRA qualified activities so as to achieve a specific rating based empirical benchmarks set by the agencies. This raises the likelihood that banks would fulfill their CRA obligations through larger higher dollar transactions rather than smaller dollar financing that often brings critical capital to an LMI community. In addition, a ratio driven approach will reduce transparency by aggregating *all* qualified activities in the numerator of the so called evaluation measure making it difficult to discern how a bank is serving the credit needs of its communities. A far better approach to evaluating a bank's CRA activities would be to look at the *number* and *nature* of qualified loans and investments an institution has made and how their qualifying activities address identified credit gaps or needs in the market based on both qualitative and quantitative factors as are presented in a meaningful analysis of the performance context.

Third, as noted above, banks and CDFIs have forged strong synergistic and mutually beneficial relationships. Banks have been a significant source of both equity and loan capital for CDFIs who in turn deliver that capital using their knowledge and expertise at the community level. The investment test, in particular, has been critical to capitalizing CDFIs and thus enabling them to take on debt that they lend in LMI communities. With the elimination of a separate investment test, CDFIs

[12] Ibid, pg. 45053.

will find it difficult to raise the equity that banks provide and that has fueled their growth. While the agencies' proposal provides multipliers for CDFIs (as discussed below in Question 8) we believe it still lacks sufficient incentives to ensure that banks will make equity-like investments in CDFIs. These institutions have been valuable and trusted partners for banks, but they may be hard pressed to provide credit to LMI borrowers and distressed communities if they cannot access equity capital. It is essential that any CRA reforms stimulate equity-like investments that enable CDFIs to scale their balance sheets and supply credit to LMI areas. CRF supports the concept of multipliers but they must be accompanied by an effective set of guardrails to ensure that they have the intended outcome of encouraging equity-like investments in CDFIs. Given the strong support the OCC and the FDIC have shown for CDFIs, it would be unfortunate if their proposal did not promote and increase investment in these vital community partners.

Finally, it is imperative that there be a common CRA framework embraced by all three bank regulatory agencies, not a fragmented system that confuses, banks, community-based organizations and other stakeholders. The agencies must agree to a unified set of regulations to ensure that the Community Reinvestment Act meets its mission of assuring *all* communities that banks serve, including LMI neighborhoods, have fair and equitable access to credit.

We appreciate this opportunity to share our perspective and recommendations for strengthening the regulatory framework for this important statute. Our comments follow the format presented in the NPR and address the following topics: (1) the proposed criteria for the types of activities that qualify for CRA credit; (2) the issue of how to expand the geographical areas where CRA activity will be considered; (3) the proposed method for evaluating CRA performance; and (4) data collection, recordkeeping, and reporting requirements associated with the proposal.

WHAT QUALIFIES FOR CRA CREDIT

The original purpose behind the Community Reinvestment Act (CRA) was to eradicate the practice of redlining and decades of discriminatory lending by banks in LMI communities and, by extension, communities of color. The intent of the legislation was to reverse the damaging effects of these lending practices by imposing an affirmative obligation on banks to meet the credit needs of *all* the communities they serve, including low- and moderate-income (LMI) neighborhoods. Both the law and the existing regulatory framework were designed to ensure that LMI communities and LMI people are the central focus of bank activities that receive CRA credit. By providing proper incentives for banks to seek lending and investing opportunities in their local markets, the framers of the CRA believed that market failures in LMI areas could be overcome. CRF is concerned that the agencies' proposal shifts the focus away from LMI communities by expanding the types of activities eligible for CRA credit (especially community development activities) and how consideration would be awarded. The result of this proposal would be to significantly diminish the CRA's impact in helping to revitalize LMI communities and ultimately undermine the purpose of this law.

We see three counterproductive aspects of the proposal (discussed in greater detail below) that would alter *what counts as an eligible CRA activity* and contribute to this shift in focus away from the places and populations the law was intended to benefit. First, the agencies are proposing changes to the criteria of what constitutes a qualifying activity that do not support

the underlying intent of the CRA. For example, the NPR removes established regulatory language, including the phrases "*economic development*" and "*revitalize and stabilize,* that have been used to determine if activities would receive CRA consideration. At the same time, new eligible CRA activities, such as "*essential infrastructure*" (bridges, roads, etc.), have been added but were never envisioned by the framers of the statute.

Second, the proposal would expand the focus of qualifying activities to encompass non-LMI populations and places. For example, the agencies propose to move away from the existing language of "*primarily benefits low- or moderate-income individuals or families*" to a broader standard of "*partially or primarily benefits*" LMI individuals or families. This small change represents a fundamental shift in the focus of who the CRA is intended to benefit. In a similar vein, the increased use of pro rata credit without requiring a means of accurately verifying how much credit should be awarded could result in CRA benefits flowing to individuals and families the law was not designed to support. Although awarding pro rata credit is an established practice in the current CRA framework for affordable housing projects, it may not be easily adapted to other types of projects where the number or percentage of LMI beneficiaries cannot be easily determined. A third example is the expanded definition of affordable housing to include housing for "*middle-income individuals or families in high-cost areas*" and which suggests banks would be allowed to serve a wider population of individuals or families not envisioned by the original intent of the statute. Finally, the ability to receive CRA credit for providing financial education and literacy classes to any individual or family *regardless* of their income confirms this shift in the agencies' proposed regulations away from the neighborhoods and populations the CRA was intended to serve.

A third trend we see in the NPR is an effort to expand the list of qualifying activities without proper safeguards or assurances that benefits are accruing to LMI people. For instance, while we welcome the addition of Naturally Occurring Affordable Housing (NOAH), we believe there should be a process to confirm that the occupants of such housing are LMI individuals or families, *not* middle- or upper-income people. The inclusion of athletic stadiums located in Opportunity Zones raises a similar concern regarding the absence of safeguards to ensure these projects provide benefits to LMI residents beyond simply being located in qualified low-income census tracts.

Efforts to include more non-LMI activities or general community-wide activities that benefit middle- or even upper-income areas with only limited benefit for LMI communities raise serious questions. Reforms to modernize and strengthen the Community Reinvestment Act regulations will only be successful and preserve the progress made under this law over the past 40 years, if it the framework maintains a commitment to serving the needs of LMI communities and LMI people.

Questions:

The agencies invite comment on all aspects of the proposal related to establishing clear criteria for the type of activities that would qualify for CRA credit and determining the dollar value of qualifying activities, including with respect to the following questions:

1. Are the proposed criteria for determining which activities would qualify for credit under the CRA sufficiently clear and consistent with the CRA's objective of encouraging banks to conduct CRA activities in the communities they serve?

Response:

The proposed criteria for CRA qualifying activities are ***not*** sufficiently consistent with the CRA's objective of encouraging banks to conduct CRA activities in the communities they serve. Moreover, the proposed criteria shift incentives for banks away from engaging in qualifying activities in LMI areas by expanding the types of activities that could receive CRA credit. In many cases, the new criteria would give CRA credit to banks for activities they already conduct or that they should be conducting without a CRA incentive. The following examples illustrate the trend described above of diverting activities away from LMI communities and LMI people in opposition to both the intent of the law and the existing CRA regulations:

- The proposed criteria add several new categories of eligible activities such as financing *essential infrastructure* in the form of roads, bridges and other similar projects that are not located in or exclusively serving the needs of LMI communities. While these types of projects are certainly important, they would, most likely, reduce activities that would directly benefit or serve LMI neighborhoods which is the central focus of the CRA. Banks would naturally gravitate to financing larger-scale infrastructure to the detriment of smaller-scale, potentially, high impact initiatives that better serve the needs of distressed or underserved communities. **Recommendation: Remove *essential infrastructure* as a CRA qualifying activity from the proposed criteria.**

- *Essential community facilities* are also added to the proposed criteria. The example in the NPR preamble of a public hospital that "*serves an entire community*"[13] as an eligible activity is particularly confusing because it is unclear whether the hospital needs to be in an LMI community or be accessible to residents of such a community. The reference in the preamble to the hospital serving the whole community rather than directly targeting LMI areas further reinforces the dilution of LMI-focused financing activities. **Recommendation: Remove *essential community facilities* as a CRA qualifying activity from the proposed criteria unless such facilities directly serve LMI communities and / or provide services to LMI individuals and families.**

- The proposed criteria would introduce some new language that would allow community development financing activities that "*partially or primarily benefits*" LMI households or individuals to qualify for CRA consideration. The existing regulations require that these financing activities "*primarily benefit*" LMI individuals or families. By amending the language to allow activities that may only "*partially*" benefit LMI populations, the agencies are vastly expanding opportunities for banks to engage in activities that have marginal benefits for those of low- and moderate-income. This new language would certainly help banks to more easily meet their CRA obligations but at a cost to financing activities that directly benefit LMI communities and which may be desperately needed in these areas. It also introduces concerns about the process or procedures that would be used to allocate CRA credit for activities, such as large infrastructure projects (like a road or bridge), where there is an absence of clear, verifiable data that can be used to identify the benefits for LMI communities. The proposal fails to establish a rigorous and thoughtful procedure to account for such situations. **Recommendation: Remove the word "*partially*" from the language noted above to read "*primarily benefits*" as is the case under the current regulations except where a clear case can be made for a pro rata allocation of CRA credit based on**

[13] Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation, "Joint notice of proposed rulemaking: Community Reinvestment Act Regulations," January 9, 2020, pg. 1210. https://www.Governor info.Governor /content/pkg/FR-2020-01-09/pdf/2019-27940.pdf

verifiable data that a specific percentage of the benefits (e.g. rental units) will be directed to LMI families.

- The agencies' proposed criteria redefine qualifying affordable housing activities as those which "*partially or primarily benefits LMI individuals or families or middle-income individuals or families in high-cost areas.*"[14] Adding "*middle-income individuals or families in high-cost areas*" is a significant departure from the current regulations and demonstrates similar disconcerting trend of shifting the emphasis away from LMI people in the criteria for qualifying affordable housing activities. The addition of "*or*" to the definition of affordable housing suggests that a bank could concentrate exclusively on financing housing in high-cost areas to middle-income households without any resources dedicated to housing activities supporting LMI households. Although the illustrative list of qualifying activities contains numerous examples where *middle-income individuals or families* are mentioned, there are several, such as one that refers to "*an investment in a project in a high cost area where 30 percent of the rental units are set aside as affordable to middle-income individuals through local inclusionary zoning,*" that specifically reserve a portion of the housing for middle-income households but which do not accord LMI households the same treatment.[15] This raises questions as to whether there should be a limit on the amount of middle-income housing for which a bank could receive CRA credit and whether if there should be additional consideration or weighting given to banks that address the affordable housing financing needs of LMI households. **Recommendation: Remove language "*or middle-income individuals or families in high-cost areas" as a CRA qualifying activity from the proposed criteria.***

- The proposed criteria related to affordable housing activities would also be expanded to include Naturally Occurring Affordable Housing (NOAH). We recognize the need to broaden the type of housing that can qualify for CRA credit however, it is equally important to ensure that NOAH is actually benefitting LMI households by requiring verification (through rent rolls or other such measures) in the criteria. **Recommendation: Establish and seek public comment on procedures for verifying that LMI households are occupying a reasonable percentage of NOAH units.**

- Under the proposed criteria for financial education and literacy programs, all income restrictions would be eliminated continuing a pattern of ignoring the CRA's focus on LMI individuals and families that have suffered from redlining and discriminatory lending practices. The FDIC has documented that LMI households are more likely to be under- or un-banked.[16] With lower rates of homeownership and fewer personal assets, financial education programs should target LMI individuals and families to address the impact of prolonged and systemic lack of access to banking services for this population. **Recommendation: Reinstate the income restrictions for financial education and literacy programs to target those of LMI.**

- Also added to the proposed criteria for qualifying activities are projects or investments made in Opportunity Zones. While Opportunity Zones (OZ) offer the potential to bring additional credit and capital to low-income census tracts, there are aspects of this tax provision that should be addressed before providing a blanket

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[14] Ibid, pg. 1210.

[15] Ibid, pg. 1231.

[16] FDIC National Survey of Unbanked and Underbanked Households, 2017, pg. 19. https://www.economicinclusion.Governor /downloads/2017_FDIC_Unbanked_HH_Survey_Report.pdf

approval allowing all OZ investments to receive CRA consideration. Unlike the New Markets Tax Credit (NMTC) program, the OZ initiative allows investments to be made in "contiguous" census tracts. These tracts do not meet the low-income criteria included in the NMTC program and adopted by the OZ initiative. Instead they are contiguous to census tracts that are qualified as low-income.

CRF recommends a two-tiered approach to the CRA treatment of OZ investments: (1) investments in projects in Qualified Opportunity Zone (QOZ) tracts that are qualified under the NMTC program would automatically be eligible for CRA consideration; (2) for investments in contiguous tracts that are non-NMTC qualified, banks would be required to demonstrate (using a set of qualitative factors or standards to be established) that these investments provide a positive benefit for low- to moderate-income individuals or families. For instance, in the case of a Low Income Housing Tax Credit (LIHTC) project which provides benefits to lower-income families by setting aside a certain number of units as "affordable" for low-income households, OZ investments in contiguous tracts would be required to demonstrate specific benefits for LMI individuals or families.

This approach for qualifying OZ investments would align with the purpose and focus of the CRA by showing evidence that these projects are serving LMI people even if they are not located in an eligible census tract. Similar steps could be taken to allay concerns raised by projects included on the illustrative list, such as "an investment in a qualified opportunity fund, established to finance improvements to an athletic stadium in an opportunity zone that is also an LMI census tract."[17] **Recommendation: Develop a process and set of standards by which banks can demonstrate that an OZ investment in a non-NMTC qualifying census tract is providing positive benefit for low- and moderate-income people and therefore may receive favorable CRA consideration.**

- On a positive note, we strongly support adding Community Development Financial Institutions (CDFIs) to the criterion for ventures, including capital investments and loan participations, made by banks in cooperation with a minority depository institution, women's depository institution, or low-income credit union (MWLIs) if the activity helps to meet the credit needs of local communities in which such institutions are chartered, including activities that indirectly help to meet community credit needs by promoting the sustainability and profitability of those institutions and credit unions.[18] As noted in our comment letter on the Advance Notice of Proposed Rulemaking on the Community Reinvestment Act,[19] we wholeheartedly agree that including CDFIs in this criterion recognizes these organizations, like MWLIs, are dedicated to serving the credit needs of LMI areas and underserved markets. They share a common purpose of expanding economic opportunities in these communities by providing access to financial products and services for local residents and businesses. CRF is pleased to see CDFIs are being placed on equal footing with their MWLI counterparts and believe according CRA credit for these activities will encourage more lending and investing in low- and moderate-income communities.

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[17] Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation, "Joint notice of proposed rulemaking: Community Reinvestment Act Regulations," January 9, 2020, pg. 1234. https://www.Governor info.Governor /content/pkg/FR-2020-01-09/pdf/2019-27940.pdf

[18] Ibid, pg. 1234.

[19] Community Reinvestment Fund, USA Comment Letter on the Advance Notice of Proposed Rulemaking: Community Reinvestment Act – Docket ID OCC–2018-008, November 19, 2018, pg. 21.

- Finally, as previously mentioned, the proposed criteria for qualifying activities eliminates key phrases and terms from the current regulatory definition of community development. Specifically, the phrase "*revitalize and stabilize*" would no longer be used to describe activities that reinvigorate or rejuvenate distressed or underserved areas. In the same fashion, the term "*economic development*" has been removed from the proposed criteria and replaced with specific examples of what constitutes economic development activities. As the preamble suggests, one reason for removing the reference to general economic development is that it also eliminates the requirement that banks demonstrate their activities result in various positive outcomes such as job creation, and other benefits for LMI people and places. The agencies' rationale for this change is that they are not able to identify objective methods for measuring these positive outcomes. We are surprised by this response given the tremendous growth in the field of impact measurement and the plethora of commercially available and widely used tools for evaluating the economic impact of community development financing such as IMPLAN (https://www.implan.com/). While the OCC and the FDIC repeatedly stress their intent is to expand the types of activities that qualify for CRA credit, eliminating these key phrases signals a less flexible, more rigid approach to defining what constitutes qualified activities thereby narrowing the kinds of financing activities that may meet the needs of an LMI community to an illustrative list (albeit dynamic), and leaving less room for creative activities that could develop through collaboration between banks and community partners. **Recommendation: Reinstate key phrases of "*economic development*" as well as activities that "*revitalize*" and "*stabilize*" distressed or underserved areas and provide a more precise definition of these terms that gives greater clarity and certainty to banks as well as other community stakeholders.**

In our view, the NPR expands qualifying activities in way that will make it easier for banks to meet their CRA obligations by financing activities that do not as closely align to the original intent and spirit of the CRA. Under the new criteria qualifying activities would no longer have a *primary purpose* of benefiting LMI communities and LMI people. The focus of CRA activities would shift from small dollar, high impact artisanal transactions serving historically disinvested communities that have suffered redlining to large scale, more lucrative (and less risky) projects that benefit a more economically diverse population. FDIC Board Member Marten Gruenberg's captured our concerns in his comments on the NPR when ne noted "This broadening of what counts in the proposal comes at the cost of CRA's historic focus on serving low- and moderate-income communities and individuals, while giving the appearance of expanding the overall level of CRA activity."[20] In fact, we believe the opposite will occur if the proposed criteria are implemented and that these criteria would lead to less CRA qualified activity in the communities and for the people the law was designed to serve. Therefore, we strongly urge the agencies to revisit the proposed criteria for CRA qualifying activity.

2. Are there other criteria for determining which activities would qualify for CRA credit that the agencies should consider?

Response:

The proposed criteria remove retail mortgages in LMI communities as an eligible CRA activity on the grounds that this type of lending has fueled displacement associated with gentrification in many underserved communities. Under the proposal banks would no longer receive CRA credit for making mortgage loans to non-LMI borrowers for homes located in LMI

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[20] Statement by Marten J. Gruenberg, Member, FDIC Board of Directors, on the Notice of Proposed Rulemaking: Community Reinvestment Act Regulations, December 12, 2019, pg. 5.

communities. We understand the logic of this change, however there could be other ways of containing gentrification in LMI areas by identifying LMI tracts experiencing this trend and capping the number of mortgage loans to non-LMI borrowers for which a bank could receive CRA credit to limit displacement in these communities. Restricting loans to non-LMI borrowers in LMI areas (e.g. removing retail mortgage lending in LMI areas) could result in concentrated areas of poverty as non-LMI borrowers may have challenges obtaining mortgage loans from banks that perceive LMI tracts as carrying higher risks. Excluding retail mortgage loans as a qualifying activity in LMI areas may curb banks' tendencies to make mortgage loans to higher income borrowers in these areas as they are often easier to originate than loans to LMI borrowers. Nonetheless, we are also concerned that LMI tracts can develop a more diverse economic base while not encouraging displacement of LMI residents. Perhaps the solution lies somewhere in between with restrictions on the percentage of loans to non-LMI borrowers in LMI areas capped at one third of all originations in such markets. This approach would limit the amount of CRA credit banks could receive for loans to higher income borrowers in LMI communities while stimulating economic revitalization in these communities. **Recommendation: Establish a limit on the amount or percentage of CRA qualifying retail mortgage loans a bank can originate in LMI communities based on data for LMI census tracts in each of its assessment areas.**

On a separate note, there have been concerns raised about adding credit cards as a qualifying activity for CRA purposes. Cathie Mahon, President and CEO of Inclusiv, the industry association for community development credit unions, has spoken about the issues low-income households face with the increasing array of consumer credit products available in the marketplace. She notes there is plenty of credit available to low- and moderate-income consumers, yet her credit union members find that the greatest need among these borrowers is to restore or strengthen their credit history due to improper use of consumer credit. The issue for LMI households is ***not*** access to credit but the ability to use appropriate credit products paired with financial education to build their personal credit. One option the agencies may wish to consider would be to develop a qualitative framework or set of criteria to determine if the terms of these consumer credit products (e.g. interest rates, fees, penalties, etc.) pose risks to LMI consumers rather than helping to improve the financial well-being of these individuals and families.[21]

3. Under the proposal, CD activities conducted in targeted areas, such as Indian country or distressed areas, would qualify for CRA credit. Should there be any additional criteria applicable to the types of CD activities that qualify for CRA credit in these areas? If so, what should those criteria be?

Response:

We urge the agencies to revise their definition of *underserved* and *distressed* tracts to better target CD activities. The proposed criteria create a new category of tracts known as "*underserved areas*"[22] and revised their definition of "*distressed*

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[21] Comments by Cathie Mahon, President and CEO of Inclusiv, "CDFI Coalition Webinar on CRA Reform," January 28, 2020.

[22] Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation, "Joint notice of proposed rulemaking: Community Reinvestment Act Regulations," January 9, 2020, pg. 1212 and 1242. https://www.Governor info.Governor /content/pkg/FR-2020-01-09/pdf/2019-27940.pdf

areas". In both cases, these tracts are defined as "*middle-income tracts*" along with other additional characteristics such as low population levels, lacking access to branches, high levels of unemployment and poverty. To our knowledge there has not been any research or data analysis to support the creation of these new types of tracts eligible for CRA credit, nor do we know how many tracts would meet these new definitions. It would be helpful to determine if these newly qualified census tracts would be underserved based on low loan levels. An analysis of census tracts based low levels of home mortgages and small business loans could reveal that many lower and middle-income communities as well as communities of color would meet the definition of "*underserved*". Using this approach would capture middle-income tracts and communities of colors that legitimately lack access to credit and capital and which the CRA is intended to support. **Recommendation: Revise the definitions of "*underserved*" and "*distressed*" areas to target CD activities to communities that demonstrate the greatest need for lending and investment.**

4. Under the proposal, the small business and small farm revenue thresholds and the size thresholds for a small loan to a business and a small loan to a farm would increase to $2 million. Do these increases appropriately incentivize banks to engage in small business and small farm lending activities, or should other changes be made to the revenue and loan size thresholds?

Response:
Raising the size threshold for a small loan to a business from $1 million to $2 million could discourage lending to truly small businesses and further reduce access to credit for the businesses that already face significant challenges when trying to obtain a loan. According to the Federal Reserve's 2019 Small Business Credit Survey of Employer Firms, 43% of the firms applied for financing in the prior 12 months, and of those 57% sought $100,000 or less. Furthermore, 92% of the firms applying for financing were seeking less than $1 million.[23] Given the strong demand for loans of $1 million or less, it would be counterproductive to increase the size of a small business loan. Moreover, research conducted the Association of Enterprise Opportunity (AEO) documents that 11.2 million or 43% of small businesses are located in low income communities.[24] These small businesses are powerful economic engines in their communities and more than 2 million seek credit every year. With the strong demand credit and particularly, for smaller size loans among small businesses in LMI communities and among LMI small business owners, we believe it would be inappropriate to increase the size threshold for small business loans to $2 million.

In our opinion, increasing the small business revenue threshold is not warranted and would simply make it easier for banks to meet their CRA obligations by directing loans to larger businesses as the expense of smaller firms. Based on data reported by the Consumer Financial Protection Bureau (CFPB), the vast majority of small businesses have annual receipts

[23] "Small Business Credit Survey: 2019 Report on Employer Firms," Federal Reserve Banks, Accessed February 7, 2020. https://www.fedsmallbusiness.org/medialibrary/fedsmallbusiness/files/2019/sbcs-employer-firms-report.pdf

[24] Association of Enterprise Opportunity, The Big Picture – A Larger View of the Small Business Market, 2014, pg. 8; https://aeoworks.org/wp-content/uploads/2019/03/the-big-picture.pdf

under $1 million with about 20 million firms (76%) with annual receipts of under $100,000.[25] If an additional 5.2 million (19%) with receipts of between $100,000 and $999,999 are combined with the 20 million firms (with receipts of less than $100,000), these two categories account for 95% of all businesses in the United States.[26] Raising the revenue size for small businesses to $2 million would encourage banks to target their small business lending activities to these larger businesses, when the majority of small businesses in this country have annual revenues of less than $1 million. The revenue data on small businesses from the CFPB does not support this proposed change to the CRA criteria and thus appears intended to make it easier for banks to fulfill their CRA obligation. Some have suggested indexing the small business revenue threshold to inflation, however, because so many small businesses in this country remain quite small, as measured by revenue and number of employees, a more reasonable approach to increasing the revenue threshold would be to consult and align with data collected by the CFPB and the Small Business Administration. **Recommendation: Based on reports documenting greater need for smaller dollar business loans and the access to credit challenges facing smaller businesses we recommend maintaining the loan size and the revenue threshold at $1 million as there is still significant unmet need for credit among small businesses and businesses located in LMI communities.**

5. The agencies plan to publish the illustrative list on their websites and to update the list both on an ongoing basis and through a notice and comment process. Should the list instead be published as an Appendix to the final rule or be otherwise published in the Federal Register? In addition, how often should the list be updated?

6. The proposal includes a process for updating the illustrative list on an ongoing basis through submission of a form to seek agency confirmation. The agencies considered an alternative process where an agency would accept all requests from banks for confirmation that an activity is a qualifying activity, aggregate these requests, publish the list of requested items in the Federal Register for public comment and feedback, and update the list following this process once every six months. What process, including any alternative process, should the agencies adopt to update the illustrative list of qualifying activities?

Response:

The proposal would establish a process for updating the illustrative list of CRA qualifying activities by allowing a bank to submit a Qualifying Activity Confirmation Request Form through the agency's website to confirm that the activity is deemed to be a qualifying activity and therefore eligible for CRA credit. While this process has yet to be spelled out in detail, it raises several issues. First, the process for updating the list should be transparent and open to public comment. Any modifications should be published in the Federal Register where they would be subject to an established notice and public comment process. It is also noteworthy, that only banks would be requesting confirmation that an activity is qualified for CRA consideration – a one-sided approach that prevents community-based organizations or other interested stakeholders from seeking agency confirmation. The agencies should collect forms on their website from *both* banks and other

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[25] Consumer Financial Protection Bureau (CFPB), *Key Dimensions of the Small Business Lending Landscape*, p. 10, May 2017, https://www.consumerfinance.Governor /data-research/research-reports/key-dimensions-small-business-lending-landscape/
[26] Ibid.

interested parties, compile a list of new qualifying activities as well as a list of those activities that should not be, and then publish proposed updates to this list in the Federal Register for public comment. Once the agencies have reviewed public comments, made final revisions, and published the updated list in the Federal Register, they should make it available on their websites with proper notification. This process will allow banks, community organizations, and other interested parties to have easy access to the most up-to-date list of qualifying activities. Publishing the illustrative list as an Appendix to the final rule relegates it to end of long detailed document where could easily be overlooked. Moreover, since the list will be periodically updated, it should be treated as separate guidance (like the CRA Interagency Questions and Answers[27]) subject to on-going revision. The list should be updated every six months or at the most, once a year, and include all new qualifying activities as well as those that have been removed from the list. The approach we are proposing aligns with the confirmation process included in the agencies' proposal whereby an agency must notify a bank of its concerns or objections regarding a proposed activity within 6 months of receiving a complete Qualifying Activity Confirmation Request Form.[28] **Recommendation: Adopt the process described above which includes the ability for other stakeholders to request activity confirmation and offers maximum transparency and opportunity for public participation when updating and publishing the list of illustrative CRA qualifying activities**

7. Are certain types of retail loans more valuable to LMI individuals and geographies than other types? If so, which types? Should the regulations recognize those differences? If so, how? For example, could multipliers be used to recognize those differences and provide incentives for banks to engage in activities that are scarce but highly needed?

Response:

Retail loans that support small businesses in LMI neighborhoods or LMI borrowers are the most valuable type of retail loans. Loans that offer affordable terms that enable LMI communities and individuals to grow and sustain themselves should be encouraged under the proposed CRA regulations. CRA exams and criteria should create incentives for banks to engage in prime lending rather than high-cost and subprime lending activities. We know all too well that subprime and predatory practices led to massive home foreclosures, small business failures, and the crushing debt burden consumers faced during and after the Great Recession. Banks were certainly *not* the primarily providers of these subprime or high-cost loans that fueled the financial crisis. In fact, as was demonstrated by Federal Reserve research, mortgage lending by banks was safer than that of independent mortgage firms which are not subject to the CRA.[29] New CRA regulations should

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[27] Federal Register, July 25, 2016, Vol. 81, No. 142, Community Reinvestment Act; Interagency Questions and Answers Regarding Community Reinvestment; Guidance; https://www.Governor info.Governor /content/pkg/FR-2016-07-25/pdf/2016-16693.pdf

[28] Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation, "Joint notice of proposed rulemaking: Community Reinvestment Act Regulations," January 9, 2020, pg. 1257. https://www.Governor info.Governor /content/pkg/FR-2020-01-09/pdf/2019-27940.pdf

[29] Elizabeth Laderman and Carolina Reid, Federal Reserve Bank of San Francisco, "CRA Lending during the Subprime Meltdown" in *Revisiting the CRA: Perspectives on the Future of the Community Reinvestment Act*, a Joint Publication of the Federal Reserve Banks of Boston and San Francisco, February 2009, p. 122, and Neil Bhutta and Daniel Ringo, Assessing the Community Reinvestment Act's Role in the Financial Crisis, Feds Notes, May 2015, https://www.federalreserve.Governor /econresdata/notes/feds-notes/2015/assessing-the-community-reinvestment-acts-role-in-the-financial-crisis-20150526.html

not encourage risky or questionable lending practices (such as offering subprime or high-cost loan products), instead they should build on banks' past record of safe and responsible retail lending.

We have two issues of concern related to retail lending products. The first issue involves the addition of consumer loans as a new class of CRA eligible retail loan. We urge the agencies to take a cautious and careful approach to incorporating the various types of consumer loans (such as auto loans) into the overall CRA framework so ensure these products offer a true alternative to payday or alternative lenders. While consumer lending can be beneficial in making credit accessible to LMI individuals it largely depends on the terms of these products. As noted above, Cathie Mahon, President and CEO of Inclusiv, recently explained, it is no longer a lack of access to consumer credit that is the problem for low-income households but how these households are using credit. What many families need is help restoring their credit. There is plenty of credit available and Inclusiv members work with borrowers every day who may have misused or misunderstood credit products they accepted. The issue today is ***not*** access to credit but are LMI consumers being offered safe, appropriate products with supportive services. If consumer credit is added as a qualifying activity, it is imperative that the quality of these products (e.g. their terms) be carefully considered and that those with credit challenges receive help to build their financial health. Thus, there needs to be a strong qualitative framework to guide the evaluation of consumer products and to assess whether they are improving the financial health of LMI people.[30]

There is also concern that some wholesale or limited purpose banks could meet their CRA requirements on the basis of their credit card lending alone. This should not be permitted for reasons cited above that LMI consumers have ample access to credit cards and the CRA framework should not allow the concentration of qualified activities in an existing line of business that does not address credit gaps or challenges for customers, especially those who are of low- and moderate-income or live in LMI areas. **Recommendation: Develop a set of qualitative measures to evaluate the safety and suitability of consumer credit products for LMI customers. Consider the educational and support services banks providing consumer products offer to credit challenged customers to help them strengthen their financial health. Limit the volume of consumer products (such as credit cards) a bank may count towards its qualifying activities to prevent an institution from meeting its CRA obligations through a single consumer product.**

A second area of concern involves small business lending. As a national small business lender, we are keenly aware of the pitfalls facing small business borrowers as they struggle to decipher the terms of the loans they are being offered, particularly by non-bank online lenders. Small business credit products are notoriously opaque and difficult to compare because of the lack of rigorous, clear disclosure requirements, such as those applied to consumer loans. Without legally mandated disclosure requirements, small business borrowers enjoy far less protection from abusive and even predatory credit products than individual consumers. Many small business customers come to CRF looking to refinance high-cost loans they have taken on without fully understanding how dangerous these products can be. To steer banks away from these questionable lending practices, the proposed CRA regulations should create incentives for banks to make prime

[30] Comments by Cathie Mahon, President and CEO of Inclusiv, "CDFI Coalition Webinar on CRA Reform," January 28, 2020.

conventional loans or to use Government programs that set terms on their products. One option might be to give prime loans greater weight than high-cost loans in CRA exams. Examiners use a similar weighting approach under the current CRA framework so this would be an extension of current practice. **Recommendation: Give prime retail loans greater weight than subprime or high-cost loans in CRA exams.**

We also favor reintroducing qualitative factors such as the "flexible and innovative criterion" included in the lending test in the current CRA regulations. Under the existing framework, examiners can consider qualitative criteria such as the affordability, flexibility and innovative features of loan products designed to serve the needs of LMI borrowers or LMI communities. Retaining this qualitative criterion and rewarding loans that exhibit these characteristics would be one way to provide incentives to banks to offer these types of loans that are badly needed but which may be more labor intensive and less profitable. It would also be helpful to strengthen this qualitative criterion by including quantitative data on these types of lending activities, such as volume, rates, terms, and peer comparisons. This criterion could be assigned a higher weighting on the CRA exam to encourage banks to engage in these types of activities. Providing additional weighting should also be complemented with a more rigorous fair lending review to ensure proper and thorough enforcement of anti-discrimination and consumer protection laws.

Finally, the proposal penalizes banks that sell retail loans 90 days after they are originated. Under the NPR, these loans would only count for 25% of their dollar value. Ignoring our deep-seated concerns about using a dollar value measure to evaluate banks' CRA performance, this approach to banks utilizing a loan sale strategy as part of their business model may ultimately result in less ***not*** more retail lending. We are sympathetic to agency concerns about banks buying a large volume of loans to LMI borrowers just before their CRA exam (also known as "churning") to improve their rating. However, there are better ways of addressing this issue using HMDA data and excluding any loans purchased less than a year before a CRA exam. This would permit banks that rely on secondary market sales to recapitalize their balance sheets to continue to grow the volume of mortgage, small business and consumer retail loans they originate. **Recommendation: Retain the "flexible and innovative" qualitative criterion in the current CRA regulations to encourage banks to make affordable loans tailored to the needs of LMI communities and LMI individuals. Create incentives for banks to offer affordable products by assigning these products more weight on CRA exams. Rather than restricting banks from using the secondary market to buy and sell loans, review an institution's loans purchase activities within a year of their CRA exam to identify potential churning activities designed to improve their rating.**

8. The use of multipliers is intended to incentivize banks to engage in activities that benefit LMI individuals and areas and to other areas of need; however, multipliers may cause banks to conduct a smaller dollar value of impactful activities because they will receive additional credit for those activities. Are there ways the agencies can ensure that multipliers encourage activities that benefit LMI individuals and areas while limiting or preventing the potential for decreasing the dollar volume of activities (e.g., establishing a minimum floor for activities before a multiplier would be applied)?

Response:

At first glance, the use of multipliers would appear to encourage banks to engage in activities that benefit the LMI communities and individuals as well as other distressed or underserved areas. If this were true, it would be a positive outcome. The agencies' proposal applies multipliers to all community development activities except those involving mortgage-backed securities and municipal bonds. As a CDFI, we appreciate that CDFI-related activities were specifically mentioned in the proposal acknowledging the vital role these institutions play in community development financing. CDFIs are skilled intermediaries with detailed knowledge of the LMI communities they serve. Their capacity, coupled with long standing relationships, helps CDFIs to target critical capital and credit resources to LMI areas and LMI people in a highly effective and impactful way. Thus, a multiplier for the CDFI-related activities appears to a positive aspect of this proposal.

However, upon further reflection, we see several potential outcomes of the overall proposal that could severely reduce the value of multipliers *for* CDFIs as well as other community development activities. First, will the benefits of multipliers will simply be overwhelmed and significantly diminished by the implementation of the so-called evaluation measure or one ratio to assess a bank's CRA performance. In our comments on the Advance Notice of Proposed Rulemaking on the Community Reinvestment Act,[31] we expressed serious concerns about the implementation of a single metric to determine a bank's CRA rating. Evaluating a bank's CRA performance based on one ratio reduces the ability of examiners to consider important qualitative factors. In addition, relying so heavily on a single ration creates incentives for banks to "game" the system to achieve a desired CRA rating by manipulating components of this ratio as described in greater detail below. Large financial institutions with the ability to buy or sell assets would be well positioned to take advantage of a single ratio framework by engaging in a few larger, less impactful CRA qualified activities that produce a desired rating rather than pursuing potentially high impact activities in small communities or markets where there is less capital available and where transactions may take more time or require multiple parties to make a deal work.[32] The use of a single ratio could make CDFI-related activities, which are generally smaller in dollar volume, far less attractive from a CRA perspective, thus reducing the ability of CDFIs to benefit from the multiplier effect.

Second, the agencies' question suggests, multipliers may unintentionally encourage banks to reduce their overall community development activities by 50 percent since they can still receive CRA credit for half the initial amount of financing activity. Thus, multipliers could lead to lower levels of financing for impactful activities unless a minimum floor for qualifying activities is established before a multiplier can be applied. This unintended effect of multipliers argues against increasing multipliers for certain high impact community development activities, such as those associated with CDFIs, since it might result in banks significantly decreasing the level of their financing activity.

The third issue related to the use of multipliers is the lack of transparency about the true volume of banks' community development activities at both the assessment area and the bank level. Since banks present their presumptive rating to the

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[31] Community Reinvestment Fund, USA Comment Letter on the Advance Notice of Proposed Rulemaking: Community Reinvestment Act – Docket ID OCC–2018-008, November 19, 2018, pg. 8.

[32] Ibid, pg. 6-7.

agencies for validation, it is not clear that examiners, let alone the pubic, would be able to determine the actual level of community development financing without additional data and an explanation of how the rating was calculated. Unless the banks are required to disclose the initial value of these activities before multipliers are applied, both examiners and the public may be unable to assess whether CD financing activities have increased or decreased and the extent these activities are meeting the credit needs of local communities.

Thus, while multipliers for CD activities are intended to encourage banks to engage in financing activities that specifically benefit LMI communities and LMI individuals, we believe these benefits may yield limited increases in financing for the types of high-impact, smaller dollar projects that most CDFIs conduct. The exception may be large tax credit financing programs (which can involve CDFI participation), such as the Low Income Housing Tax credit, the New Markets Tax credit or similar tax credit programs, which support larger scale transactions that are more profitable as well as helpful to a bank seeking to achieve a specific CRA rating under a single metric system. **Recommendation: Establishing a minimum floor for activities before a multiplier would be applied may reduce the likelihood that banks would limit or decrease their smaller dollar value, high-impact community development financing activities. However, a better approach would be to replace a single ratio framework with a framework that combines quantitative and qualitative factors into the CRA examination process as is currently the practice. A*t the very least*, we urge the agencies to establish a single transaction limit that would restrict the amount any one transaction could count under a one ratio system to mitigate an over-reliance by banks on large projects or deals.**

9. The proposal quantifies the value of CD services based on the compensation for the type of work engaged in by the employees providing the services as reflected in the Bureau of Labor Statistics calculation of the hourly wage for that type of work. Alternatively, CD services could be valued based on a standardized compensation value for the banking industry or occupation type. For example, the median hourly compensation value for the banking industry is approximately $36, when calculated using Bureau of Labor Statistics data. Would using standardized compensation values reduce the burden associated with tracking CD services while still appropriately valuing CD services? If so, how should the agencies establish the standardized compensation values?

Response:

CRF strongly disagrees with the use of a standardized method for quantifying CD services which could distort the types of services provided, influence who provides them, and ignore significant community needs to achieve a higher level of CRA activity. We believe trying to quantify the dollar value of bank CD services is a flawed method for measuring these services. In our comment letter on the ANPR, we indicated that CD services may not be effectively evaluated in using the quantitative method proposed by the agencies because it is simply not possible to determine the value of a CD service by multiplying an hour of such service by a standardized compensation rate.[33] This approach is fraught with potential problems. For instance, calculating the value of volunteer hours according to this method, might incent banks to encourage their higher paid employees to engage in services to increase the banks' CRA qualifying activities. A lower paid employee,

[33] Ibid, pg. 11.

who might bring more valuable skills to a community-based organization or project, could be discouraged from engaging in CD services because he/she would not contribute as high a dollar value to the bank's overall CRA activity.

More importantly, it simply does not make sense to monetize CD services as the value of such services may not be accurately measured by the dollar value of an employee's time. Federal Reserve Board Governor Lael Brainard underscored this point in her recent speech on how to strengthen the Community Reinvestment Act when she explained, "Volunteer and other services provided by banks can provide meaningful support to communities whose value is unlikely to be adequately captured on a comparable basis using aggregate dollar value metrics. In areas with a low density of financial services, a bank officer on the board of local community organizations could provide considerable value to the community that is not accurately reflected by monetizing volunteer hours based on their compensation."[34] Governor Brainard's comments clarify that the value of CD services provided by a small bank in a rural community may *actually* be essential to the success of that community, even if the dollar value of those services is small as compared to similar services offered by banks in urban areas. Thus, the true value of a bank's CD services may far exceed the dollar value assigned to these services under the methodology proposed by the agencies. Rather than monetizing the value of CD services, the Federal Reserve advocates for the use of qualitative measures or standards to evaluate these services. We support this approach and encourage the agencies to create a separate set of qualitative standards to assess CD services that would be included in a separate community development test as described in Governor Brainard's speech.[35] A set of qualitative standards could also be established to evaluate the value of retail services within the retail test.

CRF is also concerned about the agencies' proposed amendments to the definition of CD services which would allow all general volunteer activities (such as manual labor on a CD project) to qualify for CRA credit.[36] Under the current definition, CD services must be related to the provision of financial products for the benefit of LMI people. By expanding the definition to include all volunteer activities, the proposal continues to shift the focus away from CD services that directly advance the original purpose of the CRA – to end the practice of redlining and provide access to credit for LMI customers and LMI communities. We oppose expanding the definition to include general volunteer activities as CRA-qualifying CD services.

Further, we urge agencies not to include the CD services test in the evaluation measure but rather to retain and improve the services test. One way to improve the CD services test would be to provide a variety of options as to how a bank can measure such services. Hours might be the appropriate unit for some banks to quantify the volume of their CD services while other banks might choose a different unit to measure their CD services. For example, many small business lending

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[34] Federal Reserve Governor Lael Brainard, *Strengthening the Community Reinvestment Act by Staying True to Its Core Purpose*, speech at the Urban Institute, January 8, 2020, pg. 5. https://www.federalreserve.Governor /newsevents/speech/brainard20200108a.htm

[35] Ibid, pg. 5.

[36] Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation, "Joint notice of proposed rulemaking: Community Reinvestment Act Regulations," January 9, 2020, pg. 1213. https://www.Governor info.Governor /content/pkg/FR-2020-01-09/pdf/2019-27940.pdf

CDFIs, like CRF, develop referral relationships with local and national bank partners which allow these banks to refer small business customers to a CDFI for financing. These referral relationships are tremendously valuable for the banks, their CDFI partners, and the borrowers who might never have found a CDFI lender without the benefit of this relationship. The agencies have acknowledged in existing guidance that small business referral relationships are eligible for community development services consideration[37] but these activities could not be quantified or measured based on hours. A more appropriate way to measure or evaluate the value of these referral relationships might be the number of loans a bank has referred and the percentage of loans that have been funded by CDFI partners. We encourage the agencies to develop a menu of metrics to evaluate different types of CD services that would also consider the qualitative aspects of these services.

We offer an additional recommendation regarding CD services. As noted in our ANPR comment letter,[38] current CRA guidance (also known as the Interagency Questions and Answers Regarding Community Reinvestment) do not *explicitly* list CDFI-bank referral programs as an example of a CRA-eligible CD Service although the preamble to this guidance clearly acknowledges that bank loan referral programs for small businesses do qualify for community development service consideration when the financial institution "[provides] technical assistance on financial matters to small businesses or community development organizations, including organizations and individuals who apply for loans or grants under the Federal Home Loan Banks' Affordable Housing Program."[39] The absence of a specific example of small business referral programs with CDFIs as type of CD service creates potential uncertainty for banks. Given that there is clear guidance that these small business referral relationships should receive CRA consideration, CRF strongly recommends explicitly adding bank loan referrals to CDFIs as an eligible activity on the proposed illustrative list of qualifying activities. Further, as part of the qualitative standards developed for evaluating CD services, we urge greater weight or consideration (20 – 30%) should be given to banks that work with CDFIs to create systematic small business loan referral programs. Currently, there is no mechanism in place for banks to ensure declined loans will automatically be placed in a referral program, and not all banks encourage their lending staff to make such referrals. CRF is pioneering the first of several such programs in the country and believes that a systematic referral program can be applied consistently to applications banks are unable to fulfill thus helping more small businesses obtain access to safe and affordable credit products. Banks could be required to document and quantify the impact of these services by collecting data on the number of small business customers that are referred, the dollar volume of such referrals, how many small businesses ultimately receive financing as a result of the referral relationship. **Recommendation: Establish a set of qualitative standards to evaluate CD services (and a separate set for retail services) rather than monetizing the value of these services using a flawed approach that does not**

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[37] Federal Register, July 25, 2016, Vol. 81, No. 142, Community Reinvestment Act; Interagency Questions and Answers Regarding Community Reinvestment; Guidance; pg. 48519 – 48520; https://www.Governor info.Governor /content/pkg/FR-2016-07-25/pdf/2016-16693.pdf

[38] Community Reinvestment Fund, USA Comment Letter on the Advance Notice of Proposed Rulemaking: Community Reinvestment Act – Docket ID OCC–2018-008, November 19, 2018, pg. 23.

[39] Federal Register, July 25, 2016, Vol. 81, No. 142, Community Reinvestment Act; Interagency Questions and Answers Regarding Community Reinvestment; Guidance; pg. 48519 – 48520; https://www.Governor info.Governor /content/pkg/FR-2016-07-25/pdf/2016-16693.pdf

accurately reflect the value of these services. Remove CD services from the evaluation measure and improve the measurement of these services for inclusion in a separate community development test as outlined by the Federal Reserve. Maintain the current definition of CD services as the provision of financial products for the benefit of LMI people rather than expanding it to include all volunteer activities that do not advance the purpose of the CRA. Add small business referral relationships between banks and CDFIs to the illustrative list of qualified activities to clarify and explicitly recognize these loan referral programs as CD services eligible for CRA credit. Provide greater weight for these referral relationships in the qualitative standards used to evaluate CD services.

10. Should the range of retail banking services provided—such as checking accounts, savings accounts, and certificates of deposit—be considered under this proposal? If so, how could retail banking services be quantified? For example, could the types of checking and savings accounts that are offered by a bank (e.g., no fee, fixed fee, low interest-bearing, high interest-bearing) be considered in performance context?

Response:
Yes, the range of retail banking services provided should absolutely be considered under the OCC/FDIC proposal. Unfortunately, under this proposal the agencies have eliminated the service test where the range of retail banking services provided to LMI customers and communities is measured. In place of the service test, the agencies, are proposing to quantify retail banking services and then add them to the overall evaluation measure (discussed in detail below). Rolling retail services into a single ratio could result in banks reducing the number and types of low-fee retail services they offer since these services would no longer be separately evaluated and considered for CRA credit.

Affordable retail banking services, such as deposit accounts, provide a safe place for LMI customers to save their money and are essential to bringing un-banked and under-banked individuals into the banking system. Low cost savings and checking accounts offer an alternative to check cashers and other fringe financial service providers who charge exorbitant fees for cashing a check or making a payment to a third party. The first step for many LMI families to becoming a part of the economic mainstream is to establish a banking relationship where they can build savings, make payments, and access reasonably priced credit services. Retail banking services should be recognized as they are a key aspect of what the CRA was designed to achieve – fair access to credit for LMI communities and LMI individuals. These services are part of the essential infrastructure that makes credit available in *all* communities and to *all* people.

Unlike the approach detailed in the NPR, CRF favors strengthening the existing service test and including it as part of a separate retail test as proposed by the Federal Reserve.[40] As discussed in Question 9, these services could be evaluated on the basis of *both* quantitative factors, such as the number and types of basic or low-cost retail services available in LMI communities and/or to LMI customers, as well as qualitative factors, such as features that make these retail services well suited to the credit needs of these communities and individuals. One important feature is the affordability associated with retail services including terms such as cost, minimum balances and other requirements that are often a major barrier for

[40] Federal Reserve Governor Lael Brainard, *Strengthening the Community Reinvestment Act by Staying True to Its Core Purpose*, speech at the Urban Institute, January 8, 2020, pg. 3. https://www.federalreserve.Governor /newsevents/speech/brainard20200108a.htm

LMI customers seeking to open a checking account. Providing separate consideration for retail services available to LMI people and places outside of the proposed evaluation measure has two advantages. First, banks would have an incentive to maintain or expand these retail service offerings rather than reducing them since deposit accounts for LMI customers are generally for smaller dollar amounts than those held by more affluent customers. Second, retail services would not be placed in competition with large scale financing transactions that can contribute significantly more to a bank's evaluation measure and, by extension its presumptive CRA rating.

We acknowledge there is a clear need to account for new service delivery channels, such as online and mobile banking services, which provide greater convenience for all types of customers, including those of low- and moderate-income. With the exponential growth in cell phone usage, there is an opportunity for additional data collection that could inform the extent to which retail banking services are available to and being used by LMI customers and in LMI census tracts. We could also collect data on the costs of online and mobile retail services to determine if they are truly affordable as compared to services provided through other delivery channels. Better data collection and analysis on all types retail services across a variety of delivery channels would be especially useful if complemented with information on the performance context for individual assessment areas to gauge the degree to which a bank is reaching large numbers or a high percentage of un-banked and underbanked customers in different geographic areas.

One final note, we wish to underscore the concern raised by FDIC Board Member Marten Gruenberg in his dissenting statement on the NPR that "There would be no consideration of a bank's efforts to provide affordable products and services intended to expand access to the banking system to low- and moderate-income individuals who are currently unbanked. This would undermine the FDIC's long-term effort to address this issue. Low-cost transaction and savings accounts, which the FDIC has helped to promote, will no longer be considered for CRA credit simply because these accounts cannot be quantified under the single metric system that would be set up under the NPR."[41] **Recommendation: We urge the agencies to establish qualitative and quantitative standards for evaluating retail services for CRA credit as part of a separate retail test as proposed by the Federal Reserve. Including retail banking services in the numerator of the evaluation measure could result in banks decreasing rather than increasing the availability of these services for LMI communities and LMI consumers. Qualitative and quantitative retail standards should be accompanied by enhanced data collection on retail services delivered through both traditional and alternative delivery systems. Performance context should be taken into consideration when evaluating a bank's retail service activities to determine whether efforts to increase financial inclusion are succeeding.**

WHERE CRA ACTIVITY COUNTS

There is general agreement on the need to update the process for delineating geographic assessment areas used to evaluate bank CRA performance. Assessment areas are a fundamental element of the evaluation process but have

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[41] Statement by Marten J. Gruenberg, Member, FDIC Board of Directors, on the Notice of Proposed Rulemaking: Community Reinvestment Act Regulations, December 12, 2019, pg. 6.

become outdated with the advent of branchless and internet-based banks. These institutions are increasingly using digital channels to gather deposits and make loans. However, it is important to note that the current process of delineating assessment areas based on a bank's branch and ATM network *still* captures a substantial portion of an institution's deposit and lending activities. Reforms to the CRA regulations must balance the need to account for the technological changes transforming how banking products and services are delivered to customers through mobile and online channels with existing channels that continue to play a meaningful role in defining a bank's assessment area.

Since current procedures for determining assessment areas capture majority of traditional lending, reforms should focus on capturing those areas where non-traditional and internet-based banks are conducting a significant amount of their business or lending activities. The goal should be to build upon the current delineation procedures to make sure digital channels and the geographic areas these banks are reaching are accounted for in the CRA evaluation process. Assessment areas where banks have branches should be retained and new assessment areas should be added to encompass geographic areas where banks do not have branches but are engaged in significant lending or related activities.

Thus, changes to the process of delineating assessment areas should accomplish two objectives: (1) preserve the current process based on a bank's physical presence in the communities it serves; and (2) develop new methods to capture lending activities of non-traditional banks using mobile or online channels. An additive approach of focusing on lending activities beyond branches can be accomplished without abandoning the use of physical bricks and mortar facilities to delineate assessment areas. We also see a need for the CRA framework to adapt and keep pace with on-going technological developments that continue to transform how banks engage with their customers and conduct their activities across geographies. As part of the proposed reforms, the agencies should develop a forward-looking set of procedures to anticipate the future state of banking and how the CRA regulations can remain relevant in the context of this future state.

Unfortunately, due to data limitations, such as the lack of information on deposit-taking activities outside of branch networks, it is difficult, if not impossible, to estimate the impact of the agencies' approach to delineating assessment areas in terms of how many banks would be affected and which new geographic areas that would be covered. We recommend that the OCC/FDIC address these data limitations before implementing their proposal so the impact of their proposal can be fully understood.

Questions

The agencies invite comment on all aspects of the proposal related to establishing a modernized and standardized process for identifying a bank's community—i.e., assessment area(s)—in which the bank's qualifying activities receive credit, including with respect to the following questions:

11. Are the proposed methods for delineating assessment areas clear, simple, and transparent?

Response:

While the proposed methods for delineating assessment areas appear to be clear, simple, and transparent they leave several unanswered questions. To its credit, the proposal attempts to address the issue of how to delineate assessment areas for wholesale and limited purpose banks, as well as those banks that the make significant use of the Internet to collect deposits and conduct their lending activities. However, the proposal does not take into consideration current deposit data limitations nor are the agencies able to provide a thorough analysis of the impact of proposed changes to delineating assessment areas. Therefore, we have no information on which banks would need to delineate new assessment areas and how many new assessment areas would be created. Without complete and comprehensive deposit data, it is difficult to know whether this revised approach to establishing assessment areas would alleviate or exacerbate the problem of CRA "hotspots" and "deserts". In addition, it is not clear how the necessary deposit data would be collected, what burden this might place on banks (particularly those serving customers in rural areas), whether such data would be available to the public for review and comment, and how bank assessment areas overall would be affected.

The OCC/FDIC proposal creates two types of assessment areas: (1) facilities-based assessment areas based on the current method for delineating assessment areas where a bank has a physical presence such as its main office, a branch, an automated teller machine as well as the surrounding census tracts where it has originated or purchased a substantial portion of its loans; and (2) deposit-based assessment areas for non-traditional and internet-based banks that collect a significant portion of their retail deposits from outside their facilities-based assessment areas online or through brokers or other channels. Banks gathering 50 percent or more of their deposits outside areas where they have a physical presence would be required to designate new assessment areas for geographies representing 5 percent or more of their deposits. Note, banks would be mandated to use the smallest geographical unit possible for these new assessment areas (county, metropolitan area, or state).

The proposed approach raises several issues. First, banks do not currently collect data on deposits collected online or through non-branch channels in the format required. Specifically, banks do not collect the addresses of depositors using online channels and thus could not geocode these addresses in order to establish assessment areas. Proper data collection would need to be conducted using appropriate rulemaking procedures before the agencies' approach could be implemented. Requesting the necessary deposit data will take time and should be followed by a thorough analysis of the data to ensure that the proposed approach to determining assessment areas is sound and will not have unintended consequences. In addition, any data collected should be available to the public for review and comment. We are concerned that the agencies would be hard pressed to accomplish these tasks in the proposed timeframe. Yet, having information on the impact of this new assessment procedure is critical to understanding how many banks would have to establish new assessment areas and where these new assessment areas would be located. This data could also provide insights as to whether the proposed method for delineating assessment areas would alleviate or exacerbate CRA "hotspots" and "credit deserts".

We also wish to highlight an additional concern related to banks serving rural customers. These banks face a unique data challenge as many of their customers have addresses consisting of a post office box or rural route number rather than a street address which makes it virtually impossible to geocode these addresses. Data issues related to the proposed

changes to assessment areas need to be resolved and the impact of these new procedures must be fully understood before these procedures are finalized and implemented.

Some observers have suggested an alternative approach to delineating assessment areas and determining if a bank is serving all its communities. Rather than using deposit data, the agencies could rely on publicly available HMDA and CRA data for home mortgage and small business lending to identify areas outside a bank's existing assessment areas where it is conducting a significant amount of lending. Using lending volume as the measure of bank activity instead of deposit taking might also help to identify CRA "hotspots" or "credit deserts," and enable banks to target their activities more effectively. This approach is predicated on wholesale, limited-purpose and internet banks disclosing the location of their lending activities in order to determine their assessment areas and ensure they are accountable to and properly serving the credit needs of *all* their communities, including LMI neighborhoods. **Recommendation: Solicit public input and request data in the format necessary for under the proposed changes to delineating assessment areas. It should be noted that on January 10th of this year, the OCC published a Request for Public Input seeking bank-specific data and information to supplement currently-available data and to inform potential revisions to modernize and strengthen the CRA regulatory framework.[42] The data gathered in response to this Request may shed light on the issues we identified above. Conduct a thorough and comprehensive analysis of the data received, taking into consideration public comments provided, to ensure a full understanding of the impact of the proposed procedures before implementation. The agencies should consider alternative approaches to delineating assessment areas for branchless and internet-based banks using lending volume in place of deposit taking as the primary indicator of bank activity.**

12. The proposal would allow banks to choose how broadly to delineate their facility-based assessment areas, but it would require banks with a significant portion, such as 50 percent or more, of their retail domestic deposits outside of their facility-based assessment areas to delineate their deposit-based assessment areas at the smallest geographic area where they receive five percent or more of their retail domestic deposits. The requirement to designate deposit-based assessment areas would impact Internet banks that do not rely on branches or ATM facilities to collect deposits as well as traditional banks that, in addition to their branches and ATM facilities, collect a significant portion of their deposits online outside of their branch and ATM footprint. Do these approaches strike the right balance between allowing flexibility and ensuring that banks serve their communities? If not 50 percent, what threshold should be used to determine if a bank has a significant portion of its deposits outside of its facility-based assessment areas and why? In addition, is receiving at least five percent of domestic retail deposits from a given area the appropriate threshold for requiring a bank to delineate a deposit-based assessment in that area, or should some other threshold be implemented? If so, why?

[42] Office of the Comptroller of the Currency, "Community Reinvestment Act Regulations: Request for Public Input," January 10, 2020, pg. 1285. https://www.occ.treas.Governor /news-issuances/federal-register/2020/85fr1285.pdf

Response:
Without a rigorous data analysis to determine how a 50 percent or more threshold requirement would affect banks, it is difficult to say what the most appropriate level would be for requiring banks to delineate deposit-based assessment areas. Some have argued that 50 percent is too high a threshold for both traditional and Internet banks collecting deposits online or outside of their facilities-based assessment areas. They recommend lowering the bar to 30 percent or more of deposits coming from online channels rather than from bank branches or ATM facilities as the threshold for establishing deposit-based assessment areas. In addition, we should note that bank size could play an important role in determining where to set this threshold. For large banks, a much lower threshold may be appropriate given the size of their deposit base while a higher level would be better suited to a smaller bank with fewer deposits. This "one size fits all" approach raises questions and underscores the need for a careful analysis as to how this proposed threshold would impact banks. It is not clear which banks or how many institutions would be affected, nor do we know the number of new deposit-based assessment areas that would be created using a 50 percent threshold. As part of this analysis, the agencies should also consider calibrating (or adjusting) the threshold to the size of a bank's deposit base as a better way to set the threshold level for banks to delineate deposit-based assessment areas.

Similarly, the 5 percent threshold may also be too high. Consider a large bank with a significant deposit base that serves rural areas or smaller cities with fewer depositors. A 5 percent threshold might not capture these communities as new assessment areas even though that bank's deposits represent a meaningful share of the total deposits in the market. Some have suggested that a bank's market share of deposits would be a better measure for determining if new or additional deposit-based assessment areas should be established. This approach would take into account a bank's deposits in proportion to the overall deposit market which could be significant in less densely populated communities. Using a market share threshold would create additional assessment areas for banks, especially large institutions, but could prove highly effective in reducing the number of "credit deserts" in sparsely populated areas. The agencies should conduct a thorough data analysis before establishing a market share threshold for requiring banks to delineate deposit-based assessment areas. **Recommendation: The agencies should conduct research and a thorough analysis to determine what the appropriate threshold should be for requiring Internet banks as well as traditional banks that are collecting deposits outside of branches or ATM facilities through online or other alternative channels to delineate deposit-based assessment areas. As part of this analysis, the OCC and the FDIC should consider calibrating the threshold to the size of a bank's deposit base rather than establishing a "one size fits all" threshold. The agencies should replace the proposed 5 percent deposit threshold with a (lower) market share threshold for establishing deposit-based assessment areas. Again, setting this market share threshold should be based on sound research and analysis of data revealing where banks are engaged in deposit gathering activities.**

13. The deposit-based assessment area delineation requirements are intended to ensure that banks serve the communities in which they operate. However, under the proposed regulation, it is possible that few banks would be required to delineate a deposit-based assessment area in less populous areas or states, despite having a significant market share in those areas (although banks with branches in those areas would be required to delineate facility-based assessment areas and banks may receive credit for qualifying activities outside of their

assessment areas conducted in these areas or states). Does this framework provide enough incentives for banks to conduct qualifying activities in these less populous areas? Alternatively, should banks be required to delineate separate, non-overlapping assessment areas in each state, MSA, MD, or county or county equivalent in which they have at least a certain percentage of the deposit market share—regardless of what percentage of the bank's retail domestic deposits are derived from a given area—and, if so, what should the percentage of the deposit market share be?

Response:
As stated in Question 12, it would be more effective to require banks to delineate deposit-based assessment areas based on their market share of deposits rather as a percentage of the bank's total deposits. Using a market share threshold would provide a better means of holding banks accountable to communities where they operate, especially those less populous areas or states, even when considering the activities of banks with branches and those engaged in qualifying activities outside of their assessment area. To properly establish a marketplace threshold, the agencies must conduct research and analysis to inform their understanding of the impact this methodology will have on banks, including which institutions would be most affected, how many deposit-based assessment areas would be created, and where these assessment areas would be located.

While we think a market share framework would provide increased incentives for banks to conduct qualifying activities in less densely populated areas, we would also urge the agencies to strengthen the incentives for banks to engage in these activities by providing additional guidance as to when and how banks can engage in CD financing outside their assessment area(s) and receive CRA credit. In past comment letters, we have specifically requested that the agencies provide more detailed clarification of existing guidance included in the *Interagency Questions and Answers Regarding Community* Reinvestment.[43] This guidance plainly states that banks may receive CRA credit for qualifying activities outside their existing assessment areas, *if they have been responsive to and have adequately addressed the community development needs of their assessment area(s).* (emphasis added) Often it is difficult for a bank to know if they have been responsive and whether they have adequately addressed the assessment area's credit needs. This proposal could offer detailed procedures by which examiners could confirm a bank has adequately met the needs of its assessment area(s) and thus, its qualifying activities outside its assessment area(s) would receive CRA consideration. Offering clear direction as to when CD activities outside of assessment areas are eligible for CRA credit would strengthen the proposal and provide significant incentives for banks to conduct qualifying activities in less populous areas as well as "credit deserts" suffering from a lack of investment. **Recommendation: Banks should be required to delineate separate, non-overlapping assessment areas in each state, MSA, MD, or county or county equivalent in which they have at least a certain percentage of the deposit share market. The exact percentage should be established through research and analysis of data to determine the appropriate level for this market share threshold. The agencies should**

[43] Community Reinvestment Fund, USA comment letter on Community Reinvestment Act: Interagency Questions and Answers Regarding Community Reinvestment, May 14, 2013, pg. 2-3.

develop clarifying guidance and procedures to inform banks when they have met the credit needs of their assessment area(s) and may receive CRA credit for qualifying activities outside of their assessment area(s).

HOW THE AGENCIES PROPOSE TO MEASURE CRA PERFORMANCE

Before responding to the specific questions posed in this section of the NPR, we wish to offer comments on the proposed evaluation framework. As described in the agencies' proposal, the evaluation measure, also referred to as the "one ratio" or "single metric," is the primary factor used to determine a bank's overall CRA rating. The evaluation measure, which is calculated at both the bank and assessment area level, is presented as a ratio representing the sum of the dollar value of all CRA qualifying activities divided by the dollar value of retail deposits. The proposed rule sets out benchmarks or thresholds for this ratio that correspond to each of the CRA rating categories. Banks would also be required to achieve a satisfactory or outstanding rating in a "significant portion, such as more than 50 percent" of its assessment area(s) to receive an overall rating of outstanding or satisfactory.[44] The evaluation measure has been characterized as the "dominant determinant" by Marten Gruenberg, FDIC Board Member because this ratio carries the greatest weight in determining the so called "presumptive rating" that a bank will receive for its CRA activities.[45] This measure is ill-conceived and misguided. **We strongly oppose the implementation of the evaluation measure as presented in the NPR.**

Our key objections related to the evaluation measure are as follows:

1. ***The single metric will distort or skew CRA qualifying activities in favor of large financial transactions that enable banks to more easily meet their CRA goals.***

   Governor Brainard echoed this concern in her recent speech stating that "… an approach that combines all activity together runs the risk of encouraging some institutions to meet expectations primarily through a few large community development loans or investments rather than meeting local needs."[46] Under the proposed approach, banks will seek to do the largest, least complex, and most lucrative transactions to achieve a given CRA rating. This incentive is further encouraged by expanding, or diluting, the definition of qualifying activities to include "essential infrastructure" and athletic stadiums on the illustrative list of *What Qualifies for CRA Credit*, many of which are activities banks should be financing in the normal course of business.

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[44] Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation, "Joint notice of proposed rulemaking: Community Reinvestment Act Regulations," January 9, 2020, pg. 1217. https://www.Governor info.Governor /content/pkg/FR-2020-01-09/pdf/2019-27940.pdf

[45] Statement by Marten J. Gruenberg, Member, FDIC Board of Directors, on the Notice of Proposed Rulemaking: Community Reinvestment Act Regulations, December 12, 2019, pg. 3.

[46] Federal Reserve Governor Lael Brainard, *Strengthening the Community Reinvestment Act by Staying True to Its Core Purpose*, speech at the Urban Institute, January 8, 2020, pg. 2. https://www.federalreserve.Governor /newsevents/speech/brainard20200108a.htm

We are also concerned that the unit of measure used to calculate the inputs for this ratio is dollar value, not the number of loans made by a bank. Using the dollar value rather than the number of loans provides less incentive for banks to engage in smaller dollar, high-impact activities that meet critical needs in LMI neighborhoods. These small transactions are generally less profitable and may entail more collaboration and effort at the local level but bring far greater positive impact for the community.

Similarly, implementing a single metric approach will result in banks gravitating to high cost cities where their financing activities will net larger CRA dollar volume while moving away from smaller towns and rural areas whose economies are less vibrant and do not offer larger dollar transactions. In her piece, "*Quantitative Performance Metrics for CRA: How Much "Reinvestment" is Enough?"*, Carolina Reid highlights the point that this [evaluation measure] will heighten inequities among and between geographical areas by failing to respond to local needs which is fundamental to the CRA.[47]

2. Significantly downsizes the central role of the retail lending test and inappropriately applies a uniform metric across all banks and all communities.

Under the existing regulations, retail lending is at the very core of the CRA evaluation framework and accounts for 50 percent of the overall rating. The proposed general performance standards for CRA put forward by the OCC and the FDIC, does not include a separate and distinct retail test. Instead, a bank's retail loans would be measured based on the dollar value of those loans on its balance sheet with a small credit given for loans sold at specified points in time. This dollar value would be included in the bank's overall qualifying activities which are aggregated in the numerator of the evaluation measure. This methodology makes it virtually impossible to evaluate a bank's retail lending activities and assess how well it is meeting the credit needs of the communities it serves.

The proposal also creates two retail lending distribution tests – one for LMI borrowers and one for LMI census tracts – that will be applied to banks' assessment areas.[48] The agencies have proposed minimum thresholds - known as the demographic and the peer comparator - for each test. Banks will be required to meet or exceed these thresholds for one of the distribution tests for all major retail lending product lines in an assessment area in order to achieve a presumptive rating of satisfactory or outstanding.

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[47] Carolina Reid, *Quantitative Performance Metrics for CRA: How Much "Reinvestment" is Enough?*, in Penn Institute for Urban Research, September 2019, pg. 11-13, https://penniur.upenn.edu/uploads/media/Quantitative_Performance.pdf

[48] Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation, "Joint notice of proposed rulemaking: Community Reinvestment Act Regulations," January 9, 2020, pg. 1219. https://www.Governor info.Governor /content/pkg/FR-2020-01-09/pdf/2019-27940.pdf

In our opinion, this approach raises two key issues. First, it is unclear how these benchmarks were set at 55 percent for the demographic comparator for both distribution tests and 65 percent for the peer comparator for both distribution tests.[49] The NPR contains no mention of the data or methodology the agencies used to establish these thresholds.

Second, the comparator thresholds for the two lending distribution tests are applied across the board to banks of different sizes and serving vastly different communities, creating an "apples to oranges" comparison. A more customized approach, such as that described by the Federal Reserve (see discussion below) would be more useful. Without data or an analysis that considers the different types of communities (urban, rural, small towns, etc.) with different cost structures, it is impossible to determine if these levels are too low or too high.

3. ***Allows banks to fail in up to 50 percent of their Assessment Areas and still receive a passing CRA grade.***

Under the proposal a bank can fail in up to one half of its assessment areas on its evaluation measure and still receive an overall CRA rating of Satisfactory or Outstanding.[50] As will be discussed in Question 17, a bank should not be permitted to fail in such a large percentage of its assessment areas. This percentage is much too high and should be reduced after further rigorous and comprehensive analysis of bank data. Otherwise banks will simply not be complying with the requirements of the CRA to serve the credit needs of their entire community. We are also concerned this low level of compliance could lead to more "credit deserts" as banks will likely concentrate their qualifying activities in areas offering greater opportunities for lending and investing.

4. ***Quantifying or monetizing retail and community development services as part of the evaluation measure fails to capture the true value of these activities (see Question 9) and may lead to significant distortions such as the use of inflated hourly wage rates to calculate the value of volunteer services on a community project.***

5. ***The crucial role of bank branches is significantly reduced in the single metric approach though they remain vital in many communities even with the tremendous growth of mobile and online banking services.***

The proposal offers a complex calculation of how branches would be considered in the evaluation measure.[51] Specifically, the number of the bank's branches located in LMI census tracts, Indian country, underserved areas, and distressed areas during the same annual period used to calculate the value of qualifying activities would be *divided by* the bank's total number of branches in that annual period and *multiplied by* .01.[52]

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[49] Ibid, pg. 1219.

[50] Ibid, pg. 1218.

[51] Ibid, pg. 1220.

[52] Ibid. pg. 1220.

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In its report, *Perspectives from Main Street: Bank Branch Access in Rural Communities*, the Federal Reserve Board of Governors presents insightful findings about the importance of branches in rural areas and for certain types of borrowers. This research reveals that a group of "deeply affected rural counties"[53] have experienced significant declines in bank branches between 2012 and 2017.[54] Yet despite the share of consumers adopting online and mobile banking, branches continue to be an important banking channel for many customers, especially for deposit and withdrawal transactions and for resolving problems. Older, lower income consumers as well as those with fewer years of education or living in rural areas continue to rely on branches.[55] Interestingly, the "…majority of small businesses prefer to utilize local banks to access financial services and may garner tangible benefits from doing so in terms of credit availability and the terms of that credit."[56] Branch closings can negatively affect access to credit for local businesses due to the loss of a local lender willing to fulfill their loan request, forcing them to hold larger amounts of cash, and travel long distances to the nearest branch facility.[57] Though improvements in technology and remote access has helped offset the effects of branch closures, there is still a strong need for a branch or physical bank presence particularly in areas lacking broadband and reliable cellular phone service.[58]

In our view, it is not an either-or situation. For CRA reform to be effective, it must embrace new technology channels that provide access and convenience for all bank customers, including LMI individuals and families, while preserving a role for bricks and mortar branches in LMI neighborhoods and rural areas where these facilities and their personnel often support and strengthen the vitality of the community through leadership, engagement and personal commitment.

We see opportunities to diversify the options available to banks and how they might view their branches beyond basic profitability criteria. For example, if a bank were inclined to keep a marginally performing branch open perhaps that bank could receive CRA consideration in the form of a multiplier or additional credit. Alternatively, could we create an incentive for a bank to donate a branch they are planning to close to a nonprofit lender or another financial institution, such as a credit union, when closure would leave a community without a local credit presence? A third option might be to evaluate or assess the impact of a branch closure in an LMI community as part of the CRA evaluation process. Under the current regulations, banks must demonstrate how the credit needs of a community will be met if a branch is closed. The FDIC tracks branch closures but does not report on the effect closures have on the local community and

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[53] Federal Reserve Board of Governors, *Perspectives from Main Street: Bank Branch Access in Rural Communities,* November 2019, pg. 4. This report identifies 44 counties considered "deeply affected," defined as a county that had 10 or fewer branches in 2012 and lost at least 50 percent of those branches by 2017. Thirty-nine of these counties, or 89 percent, were rural counties.

[54] Ibid, pg. 2.

[55] Ibid, pg. 2.

[56] Ibid, pg. 2.

[57] Ibid, pg. 15.

[58] Ibid, pg. 12.

its residents. Could the NPR require the FDIC to monitor the impact of branch closures on credit availability in the local community and surrounding areas as well as other factors? This might paint a more complete picture of what a branch means to a community when closure is being considered.

6. The current proposal would diminish the importance and consideration given to the performance context, as well as qualitative factors more generally, in the CRA regulatory framework.

Consideration of qualitative factors have been central in the current CRA framework. While the performance context (widely supported among ANPR commenters) has been retained, it carries far less weight in the proposed CRA evaluation framework. In an effort to simplify, clarify, and increase transparency of the CRA evaluation of a bank's performance, the agencies are proposing a quantitatively-driven approach that oversimplifies the evaluation process by relying heavily on a single ratio and reduces the importance of qualitative factors. CRA must continue to take qualitative factors into consideration to provide insight into how a bank is responding to and meeting the credit needs of the local community. This is precisely what makes the performance context so valuable.

Proposing that banks subject to the general performance standards submit performance context information in a standardized format using a form on the agency's website raises concerns that this approach will limit the ability to capture the qualitative aspects of bank performance. This concern is reinforced by the language in the NPR regarding bank performance factors which reads like a laundry list of criteria with little detail or discussion.

According to the NPR, regulators will only use performance context to adjust a bank's CRA rating up or down, greatly diminishing this critical element of the current evaluation framework. Nor is it clear how the performance context would affect ratings. We encourage the agencies to develop and share exam procedures to help ensure that examiners apply performance context consistently. Without reviewing these procedures, it is unclear if or how they will weigh qualitative aspects of a bank's CRA performance. We should note that many of the performance context factors cited in the NPR, are specifically addressed in the Federal Reserve's "blueprint" for strengthening CRA. Governor Brainard explains in detail how they propose to "tailor" individual metrics for the both retail and CD tests for banks of different sizes, business models, serving a variety of markets, and through changes in the business cycle. Reducing the importance of performance context and qualitative factors will result in the loss of rich detail about the credit needs of LMI communities and how those needs have been met through unique partnerships, collaborations, and innovations often captured through this aspect of CRA exams.

7. Proposed approach reduces the ability for community stakeholders to provide input on CRA exams.

The NPR preserves a very limited opportunity for community stakeholders to provide their comments on bank CRA exams. Public comments will be considered as part of the performance context component, however, there is little discussion in the NPR about the process for gathering this input from stakeholders. Community input has been at the very heart of the CRA evaluation process and is critical to the existing framework. Limiting the opportunity or the weight accorded to public comment raises serious concerns given there is no indication that agencies would consider public comments on bank performance on any of the proposed metrics. This lack of detail on what the agencies would

consider is disconcerting. According to the NPR, banks will be able to provide their comments through a form available on agency websites but there is no similar form available to collect input from community stakeholders.

8. CD minimum test severely devalues the importance of community development lending and investing by setting a very low bar for these activities.

The two percent minimum for community development lending and investment is much too low in our opinion. Has there been any analysis on the number of banks that would already meet this minimum level and thus discourage the growth of CD loans and investments? We can find no evidence of any research or analysis by the agencies demonstrating whether this threshold would stimulate higher levels of CD lending and investing or whether banks would be more likely to reduce new originations until their existing loans and investments begin to come due.

9. *Eliminating the service test and lumping all CD services into the evaluation measure (single metric) devalues these services*.

As discussed in Question 9, we oppose the elimination of the service test and rolling CD services into the evaluation measure. Through the bank referral partnerships we have built, we have funded many businesses that would not have been able to access the credit they need to sustain an grow their operations. We support an approach that preserves recognition for CD services, such as the bank/CDFI loan referral relationships which are essential to addressing the significant access to credit challenges facing low- and moderate-income small business owners (especially women and people of color) as well as those located in LMI neighborhoods and rural areas.

10. *Lack of data and analysis to support the evaluation measure empirical benchmarks for CRA ratings.*

The NPR establishes empirical benchmarks for the evaluation measure that correspond to individual rating categories as follows: 11 percent for outstanding; 6 percent for satisfactory; 3 percent for needs to improve; and less than 3% for substantial noncompliance. Unfortunately, the agencies did not explain how these empirical benchmarks were determined. Nor has the data used to set these benchmarks been shared or released to the public. Moreover, the agencies admit that the data used to calculate these benchmarks was incomplete and based on several assumptions.[59] The lack of a clear methodology and complete data severely limits the credibility of these benchmarks.

Any reform to the CRA evaluation process must be grounded in reliable data and rigorous analysis. On January 10, 2020, the agencies issued a Request for Information to collect bank-specific data and information to supplement

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[59] Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation, “Joint notice of proposed rulemaking: Community Reinvestment Act Regulations,” January 9, 2020, pg. 1221. https://www.Governor info.Governor /content/pkg/FR-2020-01-09/pdf/2019-27940.pdf

currently available data and to inform potential revisions to the NRP.[60] It appears the OCC and the FDIC are trying to engage in the policy making process while simultaneously soliciting the data required to make such policy. The public is unable to comment on the proposed benchmarks until there is enough evidence to determine what the effect will be on the distribution of bank CRA ratings and whether these institutions will increase, decrease, or otherwise modify their qualifying activities. We urge the agencies to wait for the data they have requested and then conduct a robust analysis to determine if the proposed benchmarks are appropriate. Both the data and the agencies' analysis should be made available to the public for comment before the benchmarks are finalized. We also suggest that adjustments to these empirical benchmarks may need to be made more frequently than every 3 years to account for changes in the business cycle.

11. The proposal needs more robust evaluation of discriminatory and illegal lending practices as part of any reform effort.

The NPR states that adjustments could be made to a bank's presumptive CRA rating if evidence of discriminatory or illegal credit practices are found consistent with the relevant agency's policies and procedures.[61] Any reforms to the CRA regulations should include consideration of a bank's fair lending review. The agencies should look for ways to improve these reviews which tend to be cursory in nature. One recent development that could make it easier to identify of discriminatory lending practices is the recent settlement agreement filed with the U.S. District Court for the Northern District of California under which the Consumer Financial Protection Bureau will agree to concrete court-ordered deadlines for implementing Section 1071 of the Dodd-Frank Act. Section 1071 requires the agency to collect and disclose data on discriminatory lending to small businesses in this country and was designed by Congress to strengthen enforcement of fair lending laws to curb discriminatory practices and to address the issue of "credit deserts" where businesses are unable to obtain the credit they need to grow and serve their communities.[62] This settlement represents an important step forward in collecting the kind of data to help identify illegal practices as well as areas where credit is simply not available to support small businesses.

In conclusion, the proposal does not provide sufficient evidence that the proposed evaluation framework, as detailed in the general performance standards, would result in increased CRA qualifying activities. In fact, we are concerned it will have the opposite effect.

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[60] Office of the Comptroller of the Currency, "Community Reinvestment Act Regulations: Request for Public Input," January 10, 2020, pg. 1285. https://www.occ.treas.Governor /news-issuances/federal-register/2020/85fr1285.pdf

[61] Ibid, pg. 1223.

[62] Democracy Forward, press release, "*Breaking: Lawsuit Compels Trump Administration to Commit to Finalizing Protections Against Lending Discrimination*," February 26, 2020.

To address the concerns noted above, we wish to provide concrete suggestions as to how the OCC/FDIC proposal could be improved. The Federal Reserve has offered a "blueprint" of their approach for strengthening the CRA framework. As Governor Brainard noted in her speech at the Urban Institute, "Any successful reform must be grounded in the origins of the CRA and its ongoing importance to low- and moderate-income (LMI) neighborhoods."[63] Thus, the agencies' goals of making the CRA regulations more objective, transparent, consistent and easy to understand must be tightly aligned to the original purpose of the law which was to reverse disinvestment in LMI communities by eradicating the practice of redlining and conferring an affirmative obligation on banks to meet the credit needs of the communities where they are chartered to operate, including LMI neighborhoods. We know CRA is working because banks have become, as Governor Brainard describes "….important participants in multisector efforts to revitalize communities across the country."[64] She also points out, "The recognition of this mutually beneficial relationship between banks and their local communities is one of the core strengths of the CRA and the reason our effort to revise the CRA regulations must focus on local needs and stakeholder input."[65]

CRF strongly supports the Federal Reserves' view that CRA modernization must be done thoughtfully as these regulations have been updated only once in several decades and changes will profoundly affect LMI neighborhoods and their residents. Reforms must be based on sound analysis, comprehensive data and extensive input from a wide range of stakeholders. Revisions to the CRA regulations cannot and should not be done hastily.

After careful review, we believe key elements of the Federal Reserve's approach to strengthening CRA will address many of the fundamental challenges facing the current framework and achieve the intent of the law by encouraging banks to truly meet credit needs of *all* the communities they serve, *including LMI neighborhoods*.

We subscribe to principles informing the Fed's approach that the CRA regulations need to reflect the credit needs of the local communities and work consistently through the business cycle; that they should be tailored to banks of different sizes and business strategies; provide greater clarity in advance about how activities will be evaluated for CRA purposes; and encourage banks to see opportunities in distressed and underserved areas.[66]

Here are the key aspects of the Federal Reserve's "blueprint" we encourage the OCC/FDIC to adopt or integrate into their proposal:

A. Establish separate tests for retail lending and community development (CD).

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[63] Federal Reserve Governor Lael Brainard, *Strengthening the Community Reinvestment Act by Staying True to Its Core Purpose*, speech at the Urban Institute, January 8, 2020, pg. 1. https://www.federalreserve.Governor /newsevents/speech/brainard20200108a.htm

[64] Ibid, pg. 1.

[65] Ibid, pg.1.

[66] Ibid, pg. 2.

Under the retail lending test, all banks would be evaluated or assessed on their ability to provide retail loans and banking services in their assessment areas. This preserves a strong role for a stand-alone retail lending test which currently accounts for 50 percent of a bank's CRA rating and is fundamental to the core focus of the CRA. This test measures the number of loans a bank makes, not the dollar amount, as is used in the agencies' evaluation measure or single metric, to avoid creating an incentive for banks to favor higher-dollar value loans or those located in high-cost areas.

Wholesale and limited purpose banks would also be evaluated under a CD test on their record of providing community development loans, qualified investments and services. Having a separate CD test recognizes the unique nature of these activities in revitalizing LMI neighborhoods and providing economic opportunity to LMI individuals and families.

Separate test also allows for a broader area to be taken into account for the purposes of community development which is distinct and not directly comparable to retail activity.[67] This approach would allow banks to expand their CD activities outside of their assessment areas once they have adequately addressed the credit needs of their assessment area(s) creating an incentive for banks to lend and invest in CRA deserts and/or underserved areas.

B. ***Adopt the Federal Reserve's approach to evaluating CRA performance by developing tailored thresholds for a set of metrics for the retail lending and CD tests respectively at both the bank and the assessment area level.***

Retail Lending Test

For the retail lending test, each bank would receive a dashboard indicating how its activities compare to the threshold for a presumptive satisfactory performance rating based on peer comparisons and demand in the local market. While this approach echoes elements of the OCC/FDIC proposal, there are several significant differences.

First, metrics for the retail lending test would be developed using a robust database the Fed created based on 6,000 public CRA evaluations from a sample of 3,700 banks of different sizes, business models, geographies, etc., going back to 2005. On March 6, 2020, the Federal Reserve made this data available to the public for review and comment.[68]

Second, thresholds for these retail lending metrics would be tailored to account for differences in bank size, business model, the local conditions in communities' banks serve, and would automatically adjust to changes in

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[67] Ibid, pg. 4.

[68] The CRA Analytics Data Tables are curated and published by the Federal Reserve Board in support of the Board's CRA modernization analysis. https://www.federalreserve.gov/consumerscommunities/data_tables.htm

the business cycles. Calibrating the retail lending metrics to contemporaneous changes in market conditions reduces the risk of providing unsound incentives.[69]

Third, thresholds for these metrics for a presumptive rating of satisfactory could be informed by current evaluation procedures but don't need to be set at the same level and could take public input into consideration.[70] As Governor Brainard explained, "The retail lending metrics would be tailored to the needs of the local community. This tailoring is not possible with a uniform benchmark that applies to all banks and all communities."[71] She further adds, "CRA lending must be evaluated in the context of the characteristics of the bank and its community."[72]

Finally, the Fed's approach to evaluating bank CRA activities preserves a meaningful role for performance context considerations and qualitative factors at the assessment area level, such as a bank's responsiveness to community's needs. Banks could receive an outstanding rating based on a full examination that considered performance context information and other qualitative criteria.

In our view, the Fed's approach *balances the use of appropriate metrics accompanied by tailored thresholds with qualitative factors* that consider the local context of the market a bank is serving. This approach gives banks greater certainty regarding their CRA rating while preserving discretion and flexibility.

CD Test

Similarly, the Federal Reserve would develop a set of metrics for the CD test that would allow a bank to compare its performance to appropriately tailored thresholds to provide greater certainty regarding its community development lending and investment activities. The Fed's proposed approach would look at aggregate loan and investment dollars of newly originated or purchased loans along with the value of CD loans and investments on a bank's balance sheet relative to its deposits in its assessment area and compare that to a national average or comparator (set differently for rural and urban areas) and a local average or comparator in the bank's assessment area.[73] There are two benefits to this approach. Like the OCC/FDIC proposal, by giving credit for CD loans and investments on banks' balance sheets, it discourages short-term CD financing tied to the CRA exam cycle which the current framework incentivizes but which is often ill-suited to the funding needs of borrowers and

[69] Ibid, pg. 4.

[70] Ibid, pg. 3.

[71] Ibid, pg. 3.

[72] Ibid, pg. 4.

[73] Ibid, pg. 4-5.

projects. Second, as Governor Brainard so aptly noted, "The use of a national rural/metro comparator in addition to an assessment area comparator is intended to avoid skewing incentives toward financially dense areas that are already hotly competitive and to reflect the value of community development in underserved areas. The use of these comparators would help provide consistency across evaluations and clarity regarding community development expectations for both banks and communities."[74]

Two other important elements of the Federal Reserve's "blueprint" should be adopted. First, to facilitate greater community development financing in underserved areas and recognizing these opportunities may not fit easily into a bank's assessment area and/or may require complex, collaborative financing structures, the Federal Reserve recommends giving CRA consideration to all of a bank's CD activities in a state or territory where it has an assessment area.[75] Second, CD metrics would be "supplemented with clear, qualitative standards to ensure that small-scale, high-impact community development activities are rewarded, along with a bank's responsiveness to local needs and priorities."[76]

C. Treatment and evaluation of retail and community development services.

The Federal Reserve's "blueprint" takes a different approach to the treatment and evaluation of retail and community development services. In both cases these services are considered as part of the two individual tests and would be measured using qualitative criteria that better reflects the nature and value of these activities. For example, qualitative criteria for retail services might consider the responsiveness of a bank's products and services and its delivery systems in LMI neighborhoods.[77] The Fed's approach also "recognizes the unique and important role branches play in providing essential financial services to customers, particularly in underserved areas."[78] Their 'blueprint" gives greater weight and consideration to this delivery system than the OCC/FDIC proposal.

In a similar vein, CD services would be assessed using appropriate qualitative criteria rather than mandating monetizing the value of these services based on industry wage rates that could overstate the value of these services or severely undervalue such services which may bring significant non-monetary benefits to a particular LMI community.

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[74] Ibid, pg. 4.

[75] Ibid, pg. 4.

[76] Ibid, pg. 4.

[77] Ibid, pg. 4.

[78] Ibid, pg. 4.

We strongly endorse the Federal Reserves' argument that these services simply *do not* lend themselves to quantification but must be seen in the context of the value they bring to a local community. Our concerns about subjecting retail and CD services to quantification are more fully discussed in Questions 9 and 10. The agencies should create a set of qualitative standards to evaluate retail and CD services within the two respective tests.

D. Strengthen the role for public comment in revising the CRA regulations.

The Federal Reserve's plan emphasizes the importance of public comment from a wide range of stakeholders to inform revisions to the CRA regulatory framework. They clearly state their intention to solicit public input on a broader set of options to strengthen these critical regulations. We are encouraged by this openness and look forward to working with the Federal Reserve staff in shaping a CRA framework that is relevant to the 21st century while staying true to the core purpose of the CRA.

E. The goal of a unified set of interagency standards for the CRA is the best possible outcome for the banking system in this country.

We urge the agencies to work with the Federal Reserve to integrate the elements discussed above into a new proposal for strengthening the CRA.

Questions:

The agencies invite comment on all aspects of the proposal related to the proposed method and process for objectively measuring bank CRA performance, including with respect to the following questions:

14. The proposed rule would define retail domestic deposits as total domestic deposits of individuals, partnerships, and corporations, as reported on Schedule RC-E, item 1, of the Call Report, excluding brokered deposits. Is there another definition—including the alternatives described above—that would better reflect a bank's capacity to engage in CRA qualifying activities?

Response:

We are unclear as to why the definition of retail domestic deposits included in the proposal specifically excludes municipal deposits (along with deposits from foreign Governments). The agencies claim that these deposits would not reflect the capacity of the bank to engage in CRA-qualifying activities.[79] This reasoning is perplexing since municipal deposits are collected from the community and therefore should be reinvested back into the community. Municipal resources embody the very essence of the CRA in that municipality is the customer representing residents of the community who have paid taxes and fees to support the collective entity. Unless there is some reason why these deposits had to be segregated and

[79] Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation, "Joint notice of proposed rulemaking: Community Reinvestment Act Regulations," January 9, 2020, pg. 1225. https://www.Governor info.Governor /content/pkg/FR-2020-01-09/pdf/2019-27940.pdf

could not be reinvested in qualifying-activities, it seems counter-intuitive to exclude municipal deposits from the definition of retail domestic deposits. **Recommendation: Municipal deposits should be included in the definition of retail domestic deposits and be available for CRA qualifying activities.**

15. The proposal focuses on quantifying qualifying activities that benefit LMI individuals and areas and quantifies a bank's distribution of branches by increasing a bank's quantified value of qualifying activities divided by retail domestic deposits (a bank's CRA evaluation measure), expressed as a percentage, by up to one percentage point based on the percent of a bank's branches that are in specified areas of need. Banks with no branches in these areas will not receive any CRA credit for their branch distribution under this method, even if there are very few specified areas of need in the areas they serve. Does this appropriately incentivize banks to place or retain branches in specified areas of need, including LMI areas? Does it appropriately account for the value of branches in these areas?

Response:
The methodology described in the NPR for quantifying a bank's distribution of branches[80] is convoluted and confusing. The agencies are proposing to quantify the "social and economic impact of bank branches in LMI areas, Indian country, underserved areas, and distressed areas by measuring a bank's proportion of branches in those areas as a percentage of the bank's total branches *multiplied by* .01".[81] We are unclear as to whether the branch calculation is included as part of the numerator of the evaluation measure or if it is added to the overall single ratio. The agencies believe this approach "accounts for the significance of branches to these areas while placing primary emphasis on the qualifying activities that banks conduct in their communities."[82] However, the agencies don't describe why they believe this is the best approach to assess the value of bank branches, why they place more emphasis on qualifying activities, or how they developed this methodology?

Even without a clear understanding of the agencies' methodology for calculating the value of bank branches in LMI and underserved areas, this approach dramatically reduces the weight accorded to branches in the CRA evaluation process. Under the current service test for large banks, branches account for 25 percent of the rating, so allocating up to an additional one percentage point to a bank's evaluation measure for its LMI branch distribution network significantly reduces the level of consideration branches would be given. Clearly, the agencies are providing more weight to qualifying activities at the expense of branches serving LMI neighborhoods and rural communities.

As we discussed above in "How the Agencies Propose to Measure CRA Performance," the Federal Reserve has offered a better approach in their blueprint for strengthening CRA. Like the Fed, we view retail services, including a bank's delivery systems, as being extremely important to helping low- and moderate-income individuals access essential financial services. Branches have evolved from being the primary component of a bank's delivery system to one of several

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[80] Ibid, pg. 1220.

[81] Ibid, pg. 1220.

[82] Ibid, pg. 1220.

components with the dramatic rise of online and mobile banking channels. Yet branches play a unique and powerful role in communities where they are located that goes beyond delivering financial products and services. This is especially true in LMI neighborhoods and underserved areas such as rural communities. For these places and the people who live there, a local bank branch serves as a community anchor, a source of information and leadership that far exceeds the value of its deposits or the services accessed by its customers.

As Governor Brainard explained, retail services may not "easily lend themselves to consistent, comparable metrics. It makes more sense to use qualitative criteria related to the responsiveness of a bank's products and services and its delivery systems."[83] The Fed takes a more holistic approach that would evaluate a bank's branch and ATM locations as well as their online and mobile channels. This approach balances the importance of branches with the need to ensure CRA remains relevant as more banks adopt digital technology.[84] Specifically, the Fed's proposed retail test takes into consideration a bank's distribution of branches, including any openings or closures, in the context of broader patterns of activity within the region. Branches are important "community assets" whose value cannot be adequately captured by adding an additional percentage point to a single ratio. **Recommendation: The agencies' proposal to quantify a bank's distribution of branches does not provide incentives for banks to place or retain branches in specified areas of need, including LMI areas. Nor does it appropriately account for the value of branches in these areas. The OCC/FDIC should adopt the Federal Reserve's approach to valuing a bank's branch distribution network that would use qualitative criteria to provide more accurate and appropriate consideration of this important delivery channel for LMI customers and LMI communities.**

16. Under the retail lending distribution tests, the proposal would consider the borrower distribution of any consumer loan product line that is a major retail lending product line for the bank. The agencies defined a major retail lending product line as a retail lending product line that comprises at least 15 percent of the bank-level dollar volume of total retail loan originations during the evaluation period, but also considered setting the threshold between 10 and 30 percent. Should the agencies consider a different threshold? Additionally, applying the retail lending distribution test to only major retail lending product lines means that not all retail lending product lines will be evaluated for every bank. Are there any circumstances in which applying the retail lending distribution test to a consumer lending product line should be mandatory, even if it is not a major retail lending product line (e.g., if the consumer lending product line constitutes the majority of a bank's retail lending in number of originations)? Additionally, the proposal would only apply the retail lending distribution tests in assessment areas with at least 20 loans from a major product line. Are 20 loans the appropriate threshold, or should a different threshold, such as 50 loans, be used?

Response:

The OCC/FDIC proposal defines a major retail product line for a bank as a retail lending product line that comprises at

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[83] Federal Reserve Governor Lael Brainard, *Strengthening the Community Reinvestment Act by Staying True to Its Core Purpose*, speech at the Urban Institute, January 8, 2020, pg. 4. https://www.federalreserve.Governor /newsevents/speech/brainard20200108a.htm

[84] Ibid, pg. 4.

least 15 percent of the bank-level dollar volume of total retail loan originations during the evaluation period.[85] Unfortunately, the agencies did not provide any rationale, data, or analysis as to how they arrived at the 15 percent level. Without additional information it is difficult to determine if this level is too high or too low, however, we think this level should be set relative to the size of a bank and its market share in an assessment area. Fifteen percent may be too high for a large bank with a sizeable loan portfolio that could be a major player in an assessment area with only 10 percent of its retail lending in each product line. By setting an arbitrary threshold for what constitutes a "major retail lending product", other high-volume products could be excluded from the CRA evaluation. A preferable approach would be to define major retail product lines based on the bank's lending volume and in the context of its business strategy and the assessment area(s) or communities it serves.

The number of loans in an assessment area, rather than the percent of lending volume, is a more appropriate measure for evaluating a bank under the retail lending distribution test. Setting the threshold at 20 loans seems to be a reasonable level. That said, in highly distressed or disinvested communities, this level may not be suitable. There should be some flexibility to take local market conditions into consideration in particularly challenged assessment areas.
Recommendation: A major retail product line should not be defined by a specific threshold that is applied to banks of all sizes and may prove to be too high for large banks with substantial lending activities. Instead, major retail product lines should be calibrated to a bank's overall lending volume based on the number of loans and its business strategy. Major product lines should be defined in the context of the assessment area to identify banks with a significant market share.

17. Under the proposal, a bank evaluated under the general performance standards could not receive a satisfactory or an outstanding presumptive bank-level rating unless it also received that rating in a significant portion of its assessment areas and in those assessment areas where it holds a significant amount of deposits. Should 50 percent be the threshold used to determine "significant portion of a bank's assessment area" and "significant amount of deposits" for purposes of determining whether a bank has received a rating in a significant portion of its assessment areas? Or should another threshold, such as 80 percent, be used?

Response:
We disagree with the premise of the question. By allowing a bank to fail in a significant portion of its assessment areas where it holds a significant amount of deposits, the agencies are creating a system that violates the purpose and statutory requirements of the CRA. The law requires banks to affirmatively and consistently meet the credit needs of its *entire* community, including LMI neighborhoods. Setting or defining a threshold that would permit banks to receive a satisfactory or an outstanding presumptive rating while failing to meet the credit needs in *any* portion of its assessment areas (where it holds a certain amount of its deposits) would encourage banks to target their qualifying activities to those areas that are easiest to serve while directing fewer dollars to address the needs of more distressed and economically challenged LMI

[85] Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation, "Joint notice of proposed rulemaking: Community Reinvestment Act Regulations," January 9, 2020, pg. 1219. https://www.Governor info.Governor/content/pkg/FR-2020-01-09/pdf/2019-27940.pdf

communities. We oppose the concept of establishing a specific threshold or percentage of assessment areas where banks are actively engaged in collecting deposits that a bank would be permitted to fail to meet (to the best of its abilities) the credit needs of the community. Raising the proposed threshold to 80 percent would still leave 20 percent of a bank's assessment areas without the protections and access to credit resources the CRA was intended to provide. **Recommendation: Banks should be required to meet their CRA obligations to their *entire* community, including LMI neighborhoods as stipulated in the statute. The regulations should enforce the law, not allow banks to ignore their responsibilities in a portion of their assessment areas where they are gathering a meaningful volume of deposits.**

18. Under the proposal, banks that had assets of $500 million or less in each of the previous four calendar quarters would be considered small banks and evaluated under the small bank performance standards, unless these banks opted into being evaluated under the general performance standards. Is $500 million the appropriate threshold for these banks? If not, what is the appropriate threshold? Should the threshold be $1 billion instead?

Response:
The agencies offer what appears to be a contradictory rationale for providing banks with assets of less than $500 million with the option to be evaluated under the small bank performance standards. On the one hand, the agencies justify providing this option so as not to impose burdensome data collection, recordkeeping and reporting requirements associated with the general performance standards on smaller banks. However, in the same breath, they note that the available data indicates that small banks may outperform larger banks if they were subject to the general performance standards. We encourage the agencies to review the data more closely to determine if smaller banks can perform equally or perhaps better than their larger counterparts under the proposed rule and, if so, they should be subject to the new framework. Creating a two-tiered system is more complicated to administer and we believe the same framework should be applied consistently to all banks. Increasing the asset size to $1 billion is a moot issue since we have questions regarding the need for the small bank performance standards altogether. **Recommendation: The agencies should conduct thorough review and analysis of the data on how small banks would perform under the general performance standards and apply the proposed framework to these institutions if they are able to perform at least as well as their larger counterparts. A uniform set of CRA regulations applied across all banks is a better approach to serving LMI communities and people as the law was intended to do.**

19. Under the proposal, small banks (i.e., banks with $500 million or less in assets in each of the previous four calendar quarters) may choose to exercise an opt into and a one-time opt out of the general performance standards. Should small banks that opt into the general performance standards be permitted to opt out and be examined under the small bank performance standards for future evaluations and, if so, how frequently should this be permitted?

Response:
As noted above in Question18, CRF believes there needs to be further review and analysis before allowing small banks with $500 million in assets or less to be examined under the small bank performance standards rather than the general performance standards proposed by the agencies. We are not persuaded this two-tiered system is needed. Therefore, we

don't have a view on whether or how frequently small banks should be permitted to opt into and then out of the general performance standards. **Recommendation: The agencies should first determine how small banks would perform under the general performance standards based on a robust review and analysis of the data. With this analysis, the agencies could determine if small banks should be permitted to be examined under the small bank performance standards or choose to exercise an opt into and a one-time opt out of the general performance standards.**

DATA COLLECTION, RECORDKEEPING AND REPORTING

Questions:

The agencies invite comment on all aspects of the proposal related to the proposed data collection, reporting, and recordkeeping requirements, including with respect to the following question:

20. As discussed above, the proposal would require banks to collect and report additional data to support the proposed rule. Although most of this data is already collected and maintained in some form, some additional data collection may be required. For example, banks may need to gather additional data to determine whether existing on-balance sheet loans and investments are qualifying activities. Are there impediments to acquiring this data? If so, what are they?

Response:

The NPR provides a detailed description of the data banks will be required to collect and report on for CRA purposes. Although it is unclear what data banks already collect in some form and what will involve new data collection efforts, CRF sees significant benefits to gathering data on qualifying activities and strongly encourages the agencies to make this information available to the public. This will enable stakeholders to understand and assess the CRA performance of banks in their community and to provide valuable input to examiners as part of the CRA evaluation process.

Data is vitally important to enforcing the CRA and holding banks accountable for reinvesting in their communities. It is the lifeblood of this statute and the regulations must require banks to collect, report, and share information to demonstrate that they are meeting their CRA obligations. As noted in the agencies' proposal, "industry-wide reporting would enable more effective stakeholder dialogue regarding the distribution and volume of CRA activity."[86]

For data to be useful, there must be a common set of standards for collecting and reporting information that allows all parties to measure how well a bank is meeting its CRA obligations and how its performance compares to that of other institutions. Data will also help both banks and community stakeholders to identify and understand credit gaps that are not being addressed. The *public* must have access to CRA data, and it must be available to them at no cost. Without data,

[86] Ibid, pg. 1209.

CRA cannot be effectively enforced, nor can community stakeholders evaluate and hold banks accountable for meeting the credit needs of LMI communities and people.

On a related note, the agencies should make it abundantly clear that they will accept comments from community groups on the CRA performance of banks. They should notify the public as to when CRA exams will take place and make it easy for interested parties to submit their comments. Public comments are essential to the CRA evaluation process and should be welcomed. **Recommendation: All CRA data should be available to the public and those who cannot afford it should not be charged printing costs to obtain a paper copy of a CRA or related report. CRA data should enable all stakeholders to evaluate and compare the performance of banks. The agencies should make it easy for the public to provide comments to ensure all can participate in this process.**

21. What burdens, if any, would be added by the proposed data collection, recordkeeping, and reporting requirements?
    a. What system changes would be needed to implement these requirements?
    b. What are the estimated costs of implementing these requirements?

No comment

22. The proposal would require small banks to collect and maintain certain deposit-based assessment area data. Are there other ways the agencies can limit the recordkeeping burden associated with the designation of deposit-based assessment areas, including other ways for banks to differentiate between traditional and internet type business models?

No comment

Additional Comments and Recommendations Regarding Data Collection and Dissemination

- It should be noted that the OCC published a request for information on January 10, 2020 seeking information to help the agency determine how the CRA rule jointly proposed with the FDIC could be revised to ensure that the final rule better achieves the statute's purpose of encouraging banks to help serve their communities by making the framework more objective, transparent, consistent and easy to understand.[87] Moreover, on March 6 of this year, the Federal Reserve Board released a series of CRA Analytics Data Tables that were developed to support the agency's CRA modernization blueprint presented by Governor Brainard presented in her January 8th speech.[88] The Tables combine data on banks' retail loans (home mortgages, loans to small businesses and small

[87] Office of the Comptroller of the Currency, "Community Reinvestment Act Regulations: Request for Public Input," January 10, 2020, https://www.occ.treas.Governor /news-issuances/federal-register/2020/85fr1285.pdf

[88] Board of Governors of the Federal Reserve System, press release, *"Federal Reserve Board publishes Community Reinvestment Act Analytics Data Tables,"* March 6, 2020. https://www.federalreserve.Governor /newsevents/pressreleases/bcreg20200306a.htm

farms) as well as information from performance evaluations including data on community development loans.[89] These two recently available data sets could add significant insights as to whether the OCC/FDIC proposal requires subsequent modifications or adjustment. Considering these developments, we urge the agencies to consider *withdrawing* their proposed rule and examine the data requested by the OCC and released by the Federal Reserve Board to evaluate whether revisions to the proposal would be appropriate.

- CRF is encouraged by the fact that retail lending data will be collected at the county level but CD lending and investing data should also be available at this level rather than just at the bank level. Bank level CD data won't allow the public to determine whether banks are adequately serving the credit needs in their assessment areas and especially in underserved areas. Census tract level data would be optimal. Privacy issues should not be a problem with these activities.

- Under the proposal, new data on consumer lending would be disseminated on the county level rather than the census tract level, as is currently the case for HMDA data. The more granular the data the easier it is to hold banks accountable for serving LMI neighborhoods. Home Mortgage Disclosure Act (HMDA) data has been reported for more than 40 years without any privacy issues. We don't believe disseminating consumer data at the census tract level should result in any undue risks.

- Deposit data for banks should be publicly disseminated given that deposits will have a critical role in determining assessment areas in the future. Both the agencies and the public need to know which communities' banks are deemed to be serving and will be evaluated as to how well they are meeting the credit needs of these areas.

- We were not clear as to whether the agencies are proposing to eliminate HMDA reporting as part of the public record for CRA? If so, this is would be counterproductive in our view since HMDA data has been used for more than four decades to evaluate bank CRA performance. This is data source is a mainstay of the current regulatory framework and is invaluable for comparative and longitudinal analysis. If the agencies want to add other data requirements, such as construction data, there is no need to remove HMDA data from the framework. HMDA data should be retained, and other data collection options could be added as needed.

- Banks receiving outstanding ratings should not be examined every 5 years rather than every two or three years as is the current practice. Stretching the examination cycle to 5 years will encourage banks to ignore their ongoing and affirmative CRA responsibilities in the early years and then ramp up their activities just before their exam. We urge the agencies to maintain the current schedule of once every two to three years to keep banks continually engaged in meeting their CRA obligations between examinations.

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[89] Board of Governors of the Federal Reserve System, Community Reinvestment Act: Analytics Data Tables, https://www.federalreserve.Governor /consumerscommunities/data_tables.htm

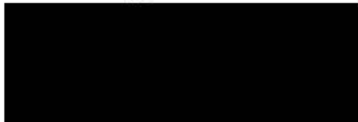
- CRA exams need to be conducted on a timely basis and their results should not be held up due to violations of consumer protection or fair lending laws. If violations are uncovered after an exam rating has been released, examiners should have the ability to retroactively downgrade a bank's CRA performance rating. These reports need to be relevant and timely.

CONCLUSION

In closing, we wish to reiterate our strong desire for a unified set of revisions to the regulatory framework governing the Community Reinvestment Act. We strongly urge the OCC and the FDIC to work with the Federal Reserve Board to agree to and adopt a single set of reforms that will apply to all banks in this country. As a strong and steadfast supporter of the CRA, we firmly believe this is in the best interest of our banking partners as well as the LMI communities we serve. A divided approach to enforcing this law will surely undermine the goal of improving the CRA and create confusion for all stakeholders – banks, communities, CDFIs, and others.

This is an important topic and we look forward to working with the Comptroller and the staff at the OCC, as well as that of the other bank supervisory agencies, to ensure that any revisions to the CRA regulations strengthen the framework and further the underlying intent of the statute. Please do not hesitate to contact me with any questions regarding comments included in this letter.

Sincerely,



Frank Altman
Chief Executive Officer