



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

Chief Counsel's Office  
Office of the Comptroller of the Currency  
400 7th Street SW  
Suite 3E–218  
Washington, DC 20219  
Attention: Comment Processing, Docket ID OCC—2022-0002

Ann E. Misback, Secretary  
Board of Governors of the Federal Reserve System  
20th Street and Constitution Avenue NW  
Washington, DC 20551  
Attention: Comments Docket R-1769; RIN 7100-AG29

Re: Public Comment on Proposed Rulemaking for Regulations Under the Community Reinvestment Act; RIN 3064-AF81

Dear Madam or Sir:

Bradesco BAC Florida Bank appreciates the opportunity to comment on the proposal by the above referenced Joint Notice of Proposed Rulemaking (Community Reinvestment Act (CRA) Proposal) in which the Federal Deposit Insurance Corporation ("FDIC), Office of the Comptroller of the Currency ("OCC) and the Board of Governors of the Federal Reserve System ("Federal Reserve") seek comments relative to the reform of the Community Reinvestment Act of 1977 ("CRA") Regulatory Framework.

Bradesco BAC Florida Bank ("BBAC") is a state-chartered, full-service bank headquartered in Coral Gables, Florida and as of June 30, 2022, our assets were \$3 billion. Bradesco BAC Florida Bank and is not a typical mainstream domestic, retail bank, and generates much of its residential real estate lending activities through wholesale channels. BBAC's primary revenues are a function of its business strategy, which is to serve the needs of foreign customers in the Americas. The bank has one branch which is located in its headquarters and does not operate any loan production offices or limited-service facilities.

We agree that the current CRA regulations and guidance do not recognize the wide diversity in business practices of banks or the changes in the financial services industry that have occurred since the CRA was enacted in 1977. We would like to comment and make suggestions on some parts of the proposed new regulation. These comments are set forth to follow the order of the joint notice of proposed rulemaking questions posed by the agencies and not according to importance.

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

1. *Yes, if an investment, grant, sponsorship, or loan have a set aside for a community development purpose then the pro-rata share of that should be emphasized versus deleted.*

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

2. *Yes, there should be a minimum percentage of the activity that serves low- or moderate-income individuals or geographies or small businesses and small farms. If partial consideration is provided for certain types of activities considered to have a primary purpose of community development, the agencies should require a minimum percentage standard of 20%. Partial consideration between 20% to 49%. For 50% and greater activity that serves low- or moderate-income individuals or geographies or small businesses and small farms should receive full consideration.*

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

4. *Yes middle-income affordability should be considered in high-opportunity and high-cost areas, as well.*

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

5. *The approach needs to be flexible to specific markets. In South Florida, residential rents have increased by 35% plus in the last couple of years. Utilizing fair market rents and HUD qualifying ratios disqualifies a majority of the naturally occurring affordable housing properties. Rent to income levels should be the bank's market and units which fall within an affordable level regardless of location should qualify for the quantitative portion.*

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

7. *Yes, the proposed approach should include single-family rental housing. It is typical for investors to purchase groups of single-family rental housing in low-moderate income census*

*tracts for the purpose of renting the properties to low-moderate income individuals. Single-family rental housing should NOT be limited to rural geographies. These types of transactions are just as prevalent in urban and suburban geographies. **This should be eligible in all geographies.***

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

*8. The current method is sufficient to ensure that qualifying activities are affordable, sustainable, and beneficial for low-or moderate-income individuals and communities*

**Question 9.** For example, should the agencies consider only the value of affordable loans in a qualifying mortgage-backed security, rather than the full value of the security? Should only the initial purchase of a mortgage-backed security be considered for affordable housing?

*9. Agencies **should consider only the value of affordable loans** in a qualifying mortgage-backed security, rather than the full value of the security. Any mortgage-backed security for affordable housing should be **considered eligible any time, not just at acquisition.***

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

*12. Refer to response to Question 178.*

**Question 13.** Should the agencies retain a separate component for job creation, retention, and improvement for low- and moderate-income individuals under the economic development definition? If so, should activities conducted with businesses or farms of any size and that create or retain jobs for low-or moderate-income individuals be considered? Are there criteria that can be included to demonstrate that the primary purpose of an activity is job creation, retention, or

*13. The economic development definition **should include workforce development and job training activities.** This type of questioning is not built into the lending process or conversation. Agencies should allow CRA practitioners to make a case for the likelihood that an activity would create, or retain jobs based on the whole of the credit profile.*

**Question 14.** Should any or all place-based definition activities be required to be conducted in conjunction with a government plan, program, or initiative and include an explicit focus of benefitting the targeted census tract(s)?

*14. Place-based definition activities **should not be required** to be conducted in conjunction with a government plan, program, or initiative and include an explicit focus of benefitting the targeted census tract(s).*

**Question 15.** How should the proposals for place-based definitions focus on benefitting residents in targeted census tracts and also ensure that the activities benefit low-or moderate-income residents? How

should considerations about whether an activity would displace or exclude low-or moderate-income residents be reflected in the proposed definitions?

*15. Place-based definitions should focus on low-or moderate-income census tracts) where the activities occur; standardized eligibility criteria that require the activity to benefit local residents, including low-or moderate-income residents of the targeted geographies; and has the eligibility requirement that the activity must not displace or exclude low- or moderate-income residents in the targeted geography*

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

*17. Ensure that the activities have a clear objective of meeting needs in targeted communities. Activities that should qualify as essential community infrastructure are broadband, telecommunications, mass transit, water supply and distribution, and sewage treatment and collection systems. As well as financing activities to support the development of schools, libraries, childcare facilities, parks, hospitals, healthcare facilities, and community centers.*

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

*18. Agencies should rely on the expertise of the CRA professional to create a case for the activity, and as before requiring specific language that demonstrates the activity is in direct response to a natural disaster.*

**Question 19.** Does the disaster preparedness and climate resiliency definition appropriately define qualifying activities as those that assist individuals and communities to prepare for, adapt to, and withstand natural disasters, weather-related disasters, or climate-related risks?

*19. The proposed definition should focus on activities that assist individuals and communities to **prepare for, adapt to, and withstand** natural disasters, weather-related disasters, or climate-related risks.*

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

*20. Agencies **should include** activities that promote energy efficiency as **a component of the disaster preparedness and climate resiliency definition.***

**Question 21.** Should the agencies include other energy-related activities that are distinct from energy-efficiency improvements in the disaster preparedness and climate resiliency definition?

*21. There is growing evidence that highlights the ways in which lower-income households and communities are especially vulnerable to the impact of natural disasters and weather-related disasters, as well as climate-related risks. Eligible activities could include, but would not be limited to, developing financial products and services that help residents, small businesses, and small farms in targeted geographies prepare for and withstand the impact of future disasters; supporting the establishment of flood control systems in a flood prone low-or moderate-income*

*or underserved or distressed nonmetropolitan middle-income census tract; and retrofitting affordable housing to withstand future disasters or climate-related events. Additional qualifying activities should include promoting the financing of solar panels for homes in low-moderate income census tracts; green space in low-or moderate-income census tracts in order to mitigate the effects of extreme heat, particularly in urban areas; energy efficiency improvements to community facilities that lower energy costs; financing community centers that serve as cooling or warming centers in low-or moderate-income census tracts that are more vulnerable to extreme temperatures; infrastructure to protect targeted geographies from the impact of rising sea levels; and assistance to small farms to adapt to drought challenges.*

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

**22. See response to Question 21.**

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

*27. Consideration of financial literacy activities **should be expanded** to include activities that benefit individuals and families of all income levels, including low-and moderate-income. In assessment areas like Miami-Dade and Broward Counties, individuals of low-moderate-middle income are rent burdened, priced out of the housing markets, and are struggling to cover basic living cost. As an example, 19.6 percent of all children in Miami-Dade County were deemed to be living in poverty in 2019. The United Way ALICE report shows nearly 43 percent, (more than twice as many) live in households that are defined as Asset Limited, Income Constrained, but Employed (ALICE). ALICE families work yet have little or no saving and are one emergency away from falling into poverty. Many of these families fall into the moderate-income level. The need for financial education also exists for seniors, veterans, rural communities, and other groups of people of **all income levels**.*

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

*31. Yes, the agencies should provide hard and fast list of activities that do not qualify. This would be helpful extremely helpful.*

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

*32. A “Hotline” email system should be established for banking institutions to submit questions regarding what qualifies for CRA consideration as a community development activity. For example, an “in writing” response would be returned in 14 working days so the institution could make a comprehensive, practical decision on whether to move forward a community development activity. Non-qualifying community development activities could then be added to a published non-exhaustive list on a quarterly basis.*

**Question 41.** How should the agencies treat bank business models where staff assist customers to make deposits on their phone or mobile device while the customer is onsite.

*41. Agencies should recognize this a directed innovation of banking, and branch automation. When ATMs were first invented, they were meant to automate the branch, and reduce staff time engaged in transactions and engaged in more customer relationship development. The industrial era is extinct and has transitioned into a customer centric era. Reducing branch transaction frees employees to provide more financial education, consulting, investment services, or other relevant financial services.*

**Question 42.** Should the proposed “accepts deposits” language be included in the definition of a branch?

*42. Yes, CRA was based on the premises that if a bank is absorbing deposits from a community that it should have a responsibility to invest, lend to, and service its community; especially low-to moderate-income persons.*

**Question 43.** If a bank’s retail lending assessment area is located in the same MSA (or state non-MSA area) where a smaller facility-based assessment area is located, should the bank be required to expand its facility-based assessment area to the whole MSA (or non-MSA area) or should it have the option to designate the portion of the MSA that excludes the facility-based assessment area as a new retail lending assessment area?

*43. See response to Question 45.*

**Question 44.** Should a bank be evaluated for all of its major product lines in each retail lending assessment area? In the alternative, should the agencies evaluate home mortgage product lines only when the number of home mortgage loans exceeds the proposed threshold of 100 loans, and evaluate small business loans only when the number of small business loans exceeds the proposed threshold of 250 loans?

*44. See response to Question 45. In addition, a related problem is that the proposal would scope in all of a bank’s major product lines in each RLAA once the bank meets the trigger for only one product line. For example, if a bank makes 125 mortgage loans (thereby triggering an RLAA) and 75 small business loans, both products would be subject to the Retail Lending Test (provided the 75 small business loans are a major product line), even though the bank’s small business lending volume is insufficient to trigger an RLAA on its own. In the spirit of focusing on lending that is material to the bank and to the community, we recommend that the Retail Lending Test not apply to a product that, by itself would not trigger a RLAA designation. In this same vein, we recommend that any final rule carefully calibrate what constitutes a major product line.*

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

*45. We have significant concerns with the RLAA as proposed. While it appears workable in theory, the 100/250 loan triggers pose several practical problems. The loan volumes that would trigger a RLAA are not sufficiently material. As proposed, many banks would be required to create dozens—and in some cases well over one hundred—new assessment areas in geographies where the bank does not have a meaningful market presence or that are not central to the bank’s broader business strategy. We recommend that the agencies re-calibrate the proposal to create a regulatory framework that incentivizes banks to focus on locations where they can make a meaningful impact toward closing the wealth gap. Allowing banks to concentrate their efforts in areas where they have more substantial activity than the 100/250 loan thresholds is more likely to achieve the goals of CRA than requiring them to spread their efforts across numerous new assessment areas. If the proposed RLAA is sanctioned we are recommending an increase of loan triggers to 250 home mortgage loans in each of the two preceding calendar years and at least 350 small business loans in each of the two preceding calendar years, outside of the bank’s FBAs. Once a bank meets one or both of these triggers and must delineate a RLAA.*

**Question 46.** The proposed approach for delineating retail lending assessment areas would apply to all large banks with the goal of providing an equitable framework for banks with different business models. Should a large bank with a significant majority of its retail loans inside of its facility-based assessment areas be exempted from delineating retail lending assessment areas?

*46. See response to Question 45.*

**Question 47.** The agencies propose to give CRA consideration for community development financing activities that are outside of facility-based assessment areas. For example, should banks be required to delineate specific geographies where they will focus their outside facility-based assessment area community development financing activity?

*47. NO, banks **should NOT be required** to delineate specific geographies where they will focus their outside facility-based assessment area community development financing activity. The regulation should give leniency and encourage Community Development wherever LMI Persons are regardless of their physical position.*

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

*48. Yes. The regulation should give leniency and encourage Community Development wherever LMI Persons are regardless of their physical position.*

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

*49. Items that should be considered: The bank’s approved business plan / strategy; the number of bank branches; the location of the bank’s branch offices, if the bank actually has peer banks in their assessment area and marketplace.*

*As previously mentioned, Bradesco BAC Florida Bank is a large bank based on our asset size which is \$3B, we have one branch located in our headquarters in an upper income census. The bank does not operate any loan production offices or limited-service facilities. We have operated as a one branch institution since 1972 and at the present time, we have no plans to open any additional branch offices. The bank does not routinely advertise to the retail markets, it has little to no domestic walk-in traffic, and generates much of its residential real estate lending activities through wholesale channels. Bradesco BAC's primary revenues are a function of its business strategy, which is to serve the needs of foreign customers in the Americas using its extensive network of affiliates and correspondents. The Bradesco BAC Florida Bank is considered a leader in providing CD services to LMI communities through our assessment area and outstanding in our CRA investment portfolio. All of these items need to be considered when evaluating the bank.*

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

*55. Banks should be encouraged to better their communities and providing flexibility around a qualitative evaluation model would allow for this.*

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

*56. For CRA purposes an aggregated number is more than adequate.*

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

*57. The agencies **should exclude** home improvement and other purpose closed-end home mortgage loans from the closed-end home mortgage loan product category to emphasize home purchase and refinance lending.*

**Question 60.** Should multifamily lending be evaluated under the Retail Lending Test and the Community Development Financing Test (or the Community Development Test for Wholesale or Limited Purpose Banks)? Or should multifamily lending be instead evaluated only under the Community Development Financing Test?

*60. Multifamily lending **should be** evaluated under the Retail Lending Test and the Community Development Financing Test. The Community Development Financing test should be the same as the current model system.*



**Question 61.** Should banks that are primarily multifamily lenders be designated as limited purpose banks and have their multifamily lending evaluated only under the Community Development Financing Test?

*61. Yes, banks who are engaged in 60% or more of a certain activity should be measured against other banks with a limited purpose as not to dilute the peer group data.*

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

*64. Yes, **loan purchases should be treated as an equivalent to a loan origination.** A bank's approved business plan / strategy; the number of bank branches; the location of the bank's branch offices all dictate how assessable CRA retail lending is. Some banking institutions have little option then to purchase loans. In addition, retail market competition in many areas of the country for CRA qualified loans is fierce due high cost of living and real estate that is beyond the means of low-moderate-middle income individuals. The regulators would be forcing banks to alter their safe and sound business plans and strategies.*

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

*65. **No, purchase loans should not be removed.** See reply to Question 64.*

**Question 67.** Should credit cards be included in CRA evaluations? If so, when credit card loans constitute a major project line, should they be evaluated quantitatively under the proposed Retail Lending Test or qualitatively under the proposed Retail Services and Products Test?

*67. No, credit cards **should not be included** in the CRA evaluation.*

**Question 68.** What data collection and reporting challenges, if any, for credit card loans could adversely affect the accuracy of metrics?

*68. **Please refer to question 67 response.***

**Question 69.** Should the agencies adopt a qualitative approach to evaluate consumer loans? Should qualitative evaluation be limited to certain consumer loan categories or types?

*69. No, the agencies **should not adopt a qualitative approach to evaluate consumer loans.** There are many regulations a bank is subject to for compliance-controlled accountability regarding consumer lending. In addition, duplication may cause inefficiencies for a bank and the agency's examination staff.*

**Question 71.** Should the agencies use a different standard for determining when to evaluate multifamily loans under the Retail Lending Test? If so, should the standard be dependent on whether the lender is a monoline multifamily lender or is predominantly a multifamily lender within the geographic area? Relatedly, what should a "predominantly" standard be for determining whether multifamily loans constitute a major product line entail?

71. We believe it's important for examiners to separate mega banks out from large bank institutions. Most banks vie for the multifamily housing loans in all areas of the country and in many instances are not able to compete against mega banks who have an advantage. A qualitative approach should be used and tied to the banks performance context not to lose insight into the bank's capacity.

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

74. All lending **should be considered** for qualitative elements as low- to moderate-income person's still live in middle- to upper-income geographies. The current regulation does a poor job of recognizing gentrification, burying low-moderate income individuals in the data.

**Question 78.** Are the proposed community benchmarks appropriate, including the use of low-income and moderate-income family counts for the borrower distribution of home mortgage lending? Would alternative benchmarks be preferable? If so, which ones?

78. The proposal would raise the bar for the performance on the Retail Lending Test. As a result, a bank would have to exceed past performance in order to attain the same CRA rating that it received on a prior exam. Regulators believe that these heightened performance standards would incentivize banks to increase lending to underserved communities. This is an important goal. However, as explained below, the proposed benchmarks and ratings methodology may actually create a disincentive for certain types of lending and investment. For this reason, regulators must ensure that new benchmarks and ratings methodologies are calibrated appropriately.

**First**, in an attempt to standardize CRA evaluations, the proposal would apply the same performance metrics to all banks operating in an assessment area, regardless of whether the bank has a digital or a physical presence. Regulators should take great care to ensure any final rule does not competitively advantage or disadvantage certain business models

**Second**, the proposal is weighted too heavily on the Retail Lending Test, which would constitute 45% of a "large" bank's CRA rating.<sup>5</sup> Under this approach, a bank could not achieve an overall rating of Outstanding unless it receives an Outstanding rating on the Retail Lending Test, regardless of how well the bank performs on the Community Development Test. The agencies believe that a weighting of 45% appropriately emphasizes retail lending to LMI individuals and communities. However, over-emphasizing the Retail Lending Test could have unintended consequences. For instance, if a bank believes an Outstanding on the Retail Lending Test is unattainable, that bank may choose not to pursue an Outstanding on the Community Development Financing Test since the bank would not be capable of achieving an overall rating of Outstanding. In other words, the proposed benchmarks could create a disincentive for banks to stretch and do more community development lending and investing. This would be a highly undesirable outcome, particularly for communities that desperately need revitalization and are located outside of the assessment areas of most banks.

*Third, the proposed Retail Lending benchmarks may be unachievable and could incentivize unsafe and unsound risk taking. To obtain a High Satisfactory rating, a bank must meet 110% of the market benchmark or 90% of the community benchmark. For an Outstanding rating, a bank must meet 125% of the market benchmark or 100% of the community benchmark. Importantly, the proposal would evaluate banks on a relative basis rather than an absolute basis. While we are still analyzing the proposal, we are concerned that the proposed performance standards could create an unrealistic target, whereby it will be mathematically impossible for all banks in an assessment area to meet the proposed thresholds. In other words, the proposed performance standards would create an automatic bell curve of ratings distributions within the Retail Lending Test. In fact, according to the preamble to the proposed rule, 34% of banks would fail the Retail Lending Test in their RLAs and 39% would only receive a Low Satisfactory rating.*

***We strongly disagree with this approach.** CRA performance benchmarks should be vigorous, yet achievable, and the expectation should be that all banks can meet or exceed the established standard—as is the case with all other consumer protection and safety and soundness regulations. Artificially high benchmarks could incentivize banks to engage in undue risk taking in order to comply with the regulation’s performance standards. This would be disastrous for consumers, communities, and could increase risk in the financial system.*

**Question 79.** Should automobile lending for all banks be evaluated using benchmarks developed only from the lending of banks with assets of over \$10 billion?

**79. Refer to response to Question 78**

**Question 80.** Are the proposed market and community multipliers for each conclusion category set at appropriate levels? If not, what other set of multipliers would be preferable? In general, are the resulting thresholds set at an appropriate level for each conclusion category?

**80. Refer to response to Question 78**

**Question 81.** How should the agencies use the calibrated market benchmark and calibrated community benchmark to set performance thresholds? Should the agencies set thresholds based on the lower of the calibrated market benchmark or calibrated community benchmark?

**81. Refer to response to Question 78**

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

**82. Refer to response to Question 78**

**Question 83.** Should the agencies weight the two distribution results equally? Should the borrower distribution conclusion be weighted more heavily than the geographic distribution conclusion to provide an additional incentive for lending to low- and moderate-income borrowers in certain areas? Are there circumstances under which the geographic distribution conclusion should be weighed less heavily, such

as in rural areas with few low- and moderate-income census tracts or where the number of investor loans is increasing rapidly?

*83. The agencies **should** weight the two distribution results **equally**.*

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

*84. Agencies **should identify the volume, by number**, of each type of loan being evaluated that the institution has made or purchased within its assessment area. Because property values vary vastly from MSA across the county, number of loans must be reviewed.*

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

*86. The agencies already consider written comments about a bank's CRA performance which are accounted for in the Public File. Retail lending performance on its own are covered by other regulations, i.e., Truth-In-Lending, Fair Lending, etc.*

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

*87. Yes there should be an exemption for large banks that make 50 percent of their retail loans by number within their facility-based and retail lending assessment areas.*

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

*90. No.*

**Question 92.** How should geographies be divided to appropriately identify different distance thresholds? Should they be divided according to those in the proposed approach of urban, suburban, and rural areas; those in the alternative approach of central counties, outlying counties, and nonmetropolitan counties; or some other delineation?

*92. FFIEC already has indicators per census tract whether it is rural, urban or an island.*

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

*98. **Yes**, these areas are distressed, or underserved and do not have the same economic opportunities than a regular middle-income tract does.*

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

*99. Yes, low-moderate income individuals still reside in middle- to upper-income areas. Banks can provide services, investments, or loans with proper data.*

**Question 100.** How could the agencies further define ways to evaluate the digital activity by individuals in low-, moderate-, middle-, and upper-income census tracts, as part of a bank's digital and other delivery systems evaluation?

*100. Banks can provide customer location data and their respective information; this information could be anonymized and provided in the performance evaluation in an examiner's opinion.*

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

*101. Are fees disproportionately affecting low- to moderate-income geographies or historically distressed minority census tracts.*

**Question 103.** Should the evaluation of digital and other delivery systems be optional for banks with assets of \$10 billion or less as proposed, or should this component be required for these banks? Alternatively, should the agencies maintain current evaluation standards for alternative delivery systems for banks within this tier?

*103. As proposed. the evaluation of digital and other delivery systems **should be optional** for banks with **assets of \$10 billion or less**.*

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

*106. Yes, Special Purpose Credit Programs are allowable under the Equal Credit Opportunity Act and provide a way for financial institutions to meet the special credit needs of people who have been impacted by lending discrimination, systemic racism, and redlining.*

**Question 109.** Are the proposed usage factors appropriate for an evaluation of responsive deposit products? Should the agencies consider the total number of active responsive deposit products relative to all active consumer deposit accounts offered by the bank?

*109. The Agencies should consider the impact of products and their attainability over profitability of the bank as the free market determines the cost of the accounts. CRA doesn't require a bank to take a loss*

**Question 111.** Should large banks with assets of \$10 billion or less have the option of a responsive deposit products evaluation, as proposed, or should this component be required, as it is for large banks with assets of over \$10 billion?

*111. This component **should not** be required large banks with assets of \$10 billion or less.*

**Question 112.** For all large banks, the agencies propose to evaluate the bank's delivery systems (branches and remote service facilities) at the assessment area level, and the digital and other delivery systems at the institution level. Is this appropriate, or should both subcomponents be evaluated at the same level, and if so, which level?

*112. No, they **should not** be evaluated at the same level. It is not appropriate and seems to encourage the issue of regulatory red lining.*

**Question 113.** The agencies propose weighting the digital and other delivery systems component relative to the physical delivery systems according to the bank's business model, as demonstrated by the share of consumer accounts opened digitally. Is this an appropriate approach, or is there an alternative that could be implemented consistently? Or should the weighting be determined based on performance context?

*113. Performance context is key to understanding the position of a bank.*

**Question 116.** Should each part of the Retail Services and Products Test receive equal weighting to derive the institution conclusion, or should the weighting vary by a bank's business model and other performance context?

*116. Weighting **should vary by a bank's business model and other performance context.** The weighting should be treated much like the Innovative and Flexible Lending test and provide supplement to the bank's rating more than it effects a banks overall score.*

**Question 120.** For large banks with assets of \$10 billion or less, under the proposed Community Development Financing Test, is it appropriate to use the FDIC's Summary of Deposits data instead of deposits data that is required to be collected and maintained by the bank to tailor new data requirements, or would it be preferable to require collected deposits data for all large banks?

*120. For large banks with assets of \$10 billion or less, under the proposed Community Development Financing Test, **is appropriate** to use the FDIC's Summary of Deposits data instead of deposits data.*

*Under the proposal, large banks with assets of over \$10 billion will be required to collect and maintain deposits data. We oppose this change and contends that **brick-and-mortar banks of any size should be exempt from tracking deposits location and delineating deposit-based assessment areas.** As touched upon in the proposal, this approach could potentially result in metrics and weights that do not accurately reflect the geographic location of a bank's deposit base. Banks that wish to voluntarily collect and maintain deposits data for the sake of ensuring accurate metrics and weights may do so on their own accord but **should not be a requirement for the CRA examination.** This proposed change places an undue financial burden on banks who serve their communities through traditional, physical branches. Perhaps*

*requiring this data collection from digital banks without a brick-and-mortar presence would be more appropriate.*

*In addition, banks **with foreign national customers** would be required to track depository which does not impact CRA but **creates a burden of data collection**. Multi-state banks would be negatively impacted, and foreign national depositors would skew metrics. The majority of Bradesco BAC Florida Bank's depositor customer base are foreign nationals with home addresses located outside the United States of America. The United States is viewed as a safe haven to deposit money for foreign persons who are transparent about their identity and source of funds. The deposits do not come from a bank's assessment area, so their inclusion is not required by the goal of the CRA to return community money to the community. Would these types of deposits be excluded from the overall deposit metrics?*

*We also suggest that the definition of "deposit data" be broadened to include deposits by all entities and not just individuals, partnerships and corporations. For example, LLC and trust deposits at a bank should also be included. This is likely the intent, but as written the definition seems to exclude many deposits that, in the spirit of the CRA, should be included.*

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

*121. Agencies should tailor their metrics to the **performance of the individual banks**.*

**Question 124.** Is the proposed use of the FDIC's Summary of Deposits data for banks that do not collect and maintain deposits data appropriate, or should all large banks be required to collect and maintain deposits data, which would enable the metrics and benchmarks to be based on collected deposits data for all large banks?

*124. The FDIC's Summary of Deposits data **is appropriate** for banks that do not collect and maintain deposits data.*

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

*126. The Agencies need to create internal policies to determine if their examiners are examining banks equally. For instance, Bank A regulated by the OCC who is outstanding only because they are better story tellers than Bank B regulated by the FDIC who is adequate but had double the volume, and more innovative practices.*

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

*127. Volunteer Activities **unrelated** to the provision of financial services **should be expanded** to include community development purposed efforts.*

**Question 128.** For large banks with average assets of over \$10 billion, does the benefit of using a metric of community development service hours per full time employee outweigh the burden of collecting and reporting additional data points? Should the agencies consider other quantitative measures? Should the agencies consider using this metric for all large banks, including those with average assets of \$10 billion or less, which would require that all large banks collect and report these data?

*128. The benefit of using a metric of community development service hours per full time employee **does not** outweigh the burden of collecting and reporting additional data points. This **should not** be used for banks of any asset size. The method the agencies are proposing is cumbersome and costly. The record of service itself is the quantitative element and the content of the record will determine if the serve is the qualitative aspects of a service.*

**Question 129.** How should the agencies define a full-time equivalent employee? Should this include bank executives and staff? For banks with average assets of over \$10 billion, should the agencies consider an additional metric of community development service hours per executive to provide greater clarity in the evaluation of community development services?

*129. Refer to response to Question 128.*

**Question 130.** Once community development services data is available, should benchmarks and thresholds for the bank assessment area community development services hours metric be developed? Under such an approach, how should the metric and qualitative components be combined to derive Community Development Services Test conclusions?

*130. Examiners have missed the mark in giving weight to services whose impact is felt greater than other services. Just because an employee provided a significant number of hours doesn't necessarily mean that made a greater impact. For instance, a banker director can sit on a non-profit board for years, making little impact if any. While a bank employee could provide 3 hours of consulting for organizations around community development finance, or helping organizations understand how to unlock CRA funds from all banks near them. Does coaching a nonprofit on how to use CRA to get a large grant have the same weight as a financial education class taught to kindergarteners? **Number of service hours does not dedicate impact of services.***

**Question 140.** What are the advantages and disadvantages of the proposal to limit the state, multistate MSA, and institution-level ratings to at most a "Needs to Improve" for large banks with ten or more assessment areas unless 60 percent or more of the bank's assessment areas at that level have an overall performance of at least "Low Satisfactory"? Should this limitation apply to all assessment areas, or only facility-based assessment areas? Is ten assessment areas the right threshold number to prompt this limitation, and is 60 percent the right threshold number to pass it? If not, what should that number be? Importantly, what impact would this proposal have on branch closures?

*140. The agencies are changing the spirit of the law by implementing punitive or stringent criteria. In the first paragraph of the law, states that the CRA was created to encourage banks to meet the credit needs of their communities, especially low- to moderate-income persons or geographies. The agencies encourage banks who do a good job by providing discounts on fed-funds rates for banks with outstanding or extended exam cycles.*



**Question 146.** Are the agencies' current policies for considering CRA performance on applications sufficient? If not, what changes would make the process more effective?

*146. Yes, current policies for considering CRA performance on applications **is sufficient**.*

**Question 155.** Should the agencies consider an alternative approach of publishing a data set containing county-level deposits data in order to provide greater insight into bank performance?

*155. Yes, county-level deposit would be extremely helpful provide greater insight into a bank's performance.*

**Question 166.** Does the proposed retail services data exist in a format that is feasibly transferrable to data collection, or would a required template provided by the agencies be sufficient in the collection of retail services and products information?

*166. A template should be created so that information is consistent and comparable across the board.*

**Question 171.** Should small banks that opt to be evaluated under the metrics-based Retail Lending Test be required to collect, maintain, and report related data or is it appropriate to use data that a small bank maintains in its own format or by sampling the bank's loan files?

*171. A standardized template should be the same regardless of bank size.*

**Question 172.** Would a tool to identify retail lending assessment areas based on reported data be useful?

*172. See response to Question 45.*

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

*177. Yes, public comment should be sought after in specific geographies, ie. CRA Hot-zones and rural communities.*

**Question 178.** The agencies ask for comment on the proposed effective date and the applicability dates for the various provisions of the proposed rule, including on the proposed start date for CRA examinations under the new tests.

*178. The agencies propose to incorporate a transition period comprised of multiple "applicability dates." For the most burdensome aspects of the proposal (including RLAA's, new performance tests, standards, and ratings, and data collection and reporting requirements), the agencies would provide a transition period of one year. **Twelve months is insufficient to implement the proposed changes** for a rulemaking this comprehensive and complex.*

*In addition to parsing the highly technical rule, banks will need to:*

- *Apply new and complicated formulas to their existing CRA programs.*

- *Establish administrative oversight over newly designated RLAA's and ensure that they are properly incorporated into the bank's CRA program.*
- *Ensure that all assessment areas (new and existing) meet the rule's newly established performance benchmarks.*
- *Implement major data collection, recordkeeping, and reporting mechanisms that significantly exceed existing CRA requirements, including the establishment of data integrity procedures and controls.*
- *Evaluate the cost-benefit of certain business lines and geographic markets in light of the burden that the new RLAA's and performance metrics create.*

*CRA implementation will be a very heavy lift on its own. But, the proposed 12-month implementation period is especially unrealistic given that banks will likely be required to implement the new CRA regulation in tandem with the CFPB's anticipated final small business lending data collection rule (Dodd-Frank Act section 1071). For many banks, the same staff will be charged with implementing both of these new regulations, particularly as it pertains to overhauling technology systems and standing up new data collection and reporting mechanisms. This dual implementation will make the time pressures of a 12-month implementation period particularly acute.*

*Banks are not the only entities that must dedicate substantial resources to meet the time pressures of a new CRA rule. Banks are dependent on software vendors and core providers to furnish services that will be necessary to implement a new CRA framework. Regulators should solicit input from these third parties regarding the time that will be necessary to develop the requisite coding, programs, and systems necessary for banks to implement a final rule. In the case of prior rulemakings involving HMDA and TRID, bank implementation and testing of vendor products was delayed because third parties lacked sufficient time to develop systems changes for their clients. We urge the agencies to draw upon these experiences when establishing the implementation period for the final CRA rule.*

*For the foregoing reasons, we request that the agencies **provide an implementation period of at least two years following publication of the final rule** in the Federal Register. We also recommend that the agencies provide extensive interagency training and support to help banks understand and apply a new regulatory framework. Examiner training should also be conducted on an interagency basis.*

**Question 179.** Would it be better to tie the timing of a change to the proposed small business and small farm definitions to when the CFPB finalizes its Section 1071 Rulemaking or to provide an additional 12 months after the CFPB finalizes its proposed rule? What are the advantages and disadvantages of each option?

**179. Refer to response to Question 178.**

### **CRA Elements that warrant additional consideration and thought:**

CRA Requirements should be applied to Credit Unions and Non-Bank Entities:

*Federally chartered credit unions are not covered by the Community Reinvestment Act and have no legal mandate to return funds received from their depositors to the neighborhoods in which they are located. In a marketplace as highly competitive and diverse as Miami, credit*



*unions have become larger and larger financial institutions, and the original "common bond" requirements for credit union membership continue to fade away. The credit union industry continues to expand. Today's credit unions are a \$2 trillion industry. Some credit unions have grown into regional and even national financial institutions that receive significant government benefits to serve LMI individuals, yet they are not required to demonstrate through measurable standards that they are meeting their service obligations. Because of this, it is increasingly important to subject these financial institutions to the requirements of CRA.*

We sincerely thank the FDIC, our primary bank regulator, the OCC, and the Federal Reserve for this opportunity to comment on the CRA Proposal and appreciate the agencies' leadership in soliciting suggestions on modernizing the CRA.

Sincerely,

*Annamarie Lehner-Garcia*

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