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Via Electronic Submission

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Re: FRB Docket No. R-1769 and RIN 7100-AG29; FDIC RIN 3064-AF81; OCC Docket ID OCC-2022-0002

To Whom It May Concern:

The members of the Community Development Bankers Association (CDBA) respectfully submit the enclosed comments in response to the Notice of Proposed Rulemaking (NPR) published in the Federal Register on May 5, 2022 on reform of the Community Reinvestment Act (CRA).

A. WHO WE ARE & WHOM WE SERVE

CDBA is the national trade association for the Community Development Financial Institutions (CDFI) bank sector. Our members are banks and thrifts with a primary mission of promoting community development, and many of our members are also minority depository institutions (MDIs). To be certified as a CDFI, a bank must demonstrate to the U.S. Treasury CDFI Fund[1] that

[1] The CDFI Fund is an agency of the United States Department of the Treasury. It was established through the Riegle Community Development and Regulatory Improvement Act of 1994.

at least 60% of the bank's total activities (lending, investment, and services) are focused on serving low- and moderate-income communities, low-income people, or otherwise underserved populations. Our members are on the front lines serving communities that are too often by-passed by traditional banks and financial service providers, and are often the only bank serving our community.

This places our members in a unique position: As FDIC insured depositories, the Agencies examine CDFI banks for the purposes of CRA compliance, *and* recognize our members as "key in helping to meet the credit needs of low-or moderate-income individuals and communities."[2]

A broader recognition of our banks' effectiveness since the onset of the COVID-19 health and economic crisis has resulted in rapid growth. Since the release of the OCC's first CRA modernization ANPR in 2018, the number of CDFI-certified banks has grown from 134 to 175, an increase of 31%.[3] Over that period the assets of these banks have grown from $51.9 billion to $95.1 billion, an increase of 83%.[4] We know that the coming decade will see further – and exceptional – transformation as CDFI and MDI banks leverage the capital from approximately $6.2 billion in equity investments via the U.S. Treasury's Emergency Capital Investment Program (ECIP). Investments have also been made and are anticipated from private sources, such as the FDIC's Mission Driven Bank Fund, the recently announced Economic Opportunity Coalition, and investments and partnerships encouraged by provisions included in this NPR.

Our banks' uniquely CRA-aligned missions and recent growth mean that CRA modernization is especially consequential to the communities CDFI banks serve. We urge the Agencies to keep among their foremost thoughts that CRA reform ought to have two policy goals in respect to CDFI banks: 1) The final rule must facilitate the growth and promote the stability of CDFI banks, and 2) It must not undermine or otherwise disfavor these banks in their pursuit of their community development missions.

B. CDBA SUPPORTS A STRONG CRA

CDBA members fully support the purposes and objectives of CRA. In enacting CRA, Congress stated that the purpose of CRA was to ensure that regulated financial institutions demonstrate that they "serve the convenience and needs of the communities in which they are chartered to do business." As such, all banking institutions have a "continuing and affirmative obligation to help meet the credit needs of the local communities in which they are chartered." Enacted over 40 years ago, CRA has been instrumental in ensuring low- and moderate-income (LMI) communities have access to credit and financial services. CDFI banks are exemplars of how banks can make this "affirmative obligation" an outright priority.

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[2] 2022 CRA Joint Notice of Proposed Rulemaking; Request for Comment, P. 89
[3] The CDFI Fund's List of Certified CDFIs as of August 31, 2018 had 137 banks, but included 3 institutions that had each merged and become part of another bank prior to August 31, 2018, which CDBA subsequently removed for this analysis. As of July 14, 2022 there are 175 CDFI certified banks, according to the current CDFI Fund's List of Certified CDFIs here: https://www.cdfifund.gov/sites/cdfi/files/2022-07/CDFI_Cert_List_07_14-2022_Final.xlsx.
[4] Total Assets from the FFIEC Call Report data as of September 30, 2018 and as of March 31, 2022 were accessed August 4, 2022 from the FFIEC Central Data Repository: https://cdr.ffiec.gov/public/ManageFacsimiles.aspx.

The NPR makes significant strides towards its stated goal. We are grateful for the opportunity to provide comments on the subjects outlined within it. We applaud the Federal Reserve Board, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency for their efforts, especially for returning to the task once again in pursuit of a consensus final rule. We are especially grateful for the care and consideration that the employees and leadership of the Agencies have dedicated to the task.

C. SUFFICIENCY OF COMMENT PERIOD AND SUPPORTING ANALYSIS

Complex regulatory reforms require significant time to develop to ensure that they do not require extensive amendments and/or interpretations. We do not believe the three months comment period for this NPR has allowed for thorough consideration. While stakeholders have engaged in two independent Agency proposals regarding CRA reform since 2018, this is the first proposal that all three Agencies have issued jointly. This NPR is different enough from the prior proposals to make it effectively new.

We also ask the Agencies to consider that some provisions were presented with insufficient information to develop informed opinions. However, these provisions included enough information to prompt further questions.

We sincerely hope the Agencies will re-open comments again after there has been time for Agency staff to digest comments, clarify certain sections, and make adjustments.

D. CRA MODERNIZATION OBJECTIVES

We share the goals articulated in the eight key objectives of the NPR[5] to improve clarity, transparency and consistency in implementation of CRA. Most of all, we support the broader goal of ensuring that CRA is effective in serving communities with the greatest needs. In order for CRA to achieve this broader goal, we urge the Agencies to maintain balance between the quantitative and qualitative aspects of the tests. The Agencies can approach this balance by more closely aligning the twin tracks of CRA compliance and CDFI certification.

Community development banks are excellent examples for considering the balance between quantitative and qualitative review. First, CDFI banks undergo an annual, *quantitative* reporting process with the U.S. Department of the Treasury's CDFI Fund. All CDFIs must submit an Annual Certification and Data Collection Report that "allows the CDFI Fund to annually assess CDFIs' compliance with Certification guidelines and collect data that provides insights into the CDFI

[5] 1. Strengthen the achievement of the core purpose of the statute; 2. Adapt to changes in the banking industry, including mobile and online banking; 3. Provide greater clarity and consistency in the application of the regulations; 4. Tailor performance standards to account for differences in bank size, business model, and local conditions; 5. Tailor data collection and reporting requirements and use existing data whenever possible; 6. Promote transparency and public engagement; 7. Ensure that CRA and fair lending responsibilities are mutually reinforcing; 8. Create a consistent regulatory approach among all three banking agencies.

industry."[6] This certification process ensures for CDFI banks what the CRA attempts to ensure for the broader industry – that the bank serves its entire community – but with the particular focus on LMI communities. With most banks on a three-year CRA examination cycle, this means that CDFI banks undergo a *quantitative* review of their services in LMI communities at approximately three times the frequency of conventional banks. Yet CDFI banks are still held to the parallel (yet distinct) CRA compliance standard.

This existing annual, *quantitative* CDFI certification review should be explicitly recognized as a *qualitative* consideration in the CRA performance context for CDFI banks. Empowering CDFI banks to serve the needs of underserved communities requires greater recognition of the increasingly important role of the CDFI bank sector *within the banking industry*. The Agencies should extend this explicit recognition throughout the performance context procedures to ensure that CDFI banks – the sector of the banking industry that is working most effectively to advance the goals of CRA – can continue to do so effectively, safely, and with confidence.

E. CDFI BANK PRIORITIES IN THE FINAL RULE

Specific Recognition of CDFIs as Conduits for Positive CRA Consideration

CDBA strongly supports the revision to the community development definitions that explicitly recognizes and confers automatic CRA community development credit for activities in support of, and undertaken with, CDFIs. *We thoroughly agree with stakeholders quoted in the NPR that "CDFIs are key in helping to meet the credit needs of low-or moderate-income individuals and communities."*

Federal policymakers first formally recognized CDFIs 28 years ago with the creation of the CDFI Fund. Yet banking regulators do not currently recognize CDFIs under CRA in the same manner as MDIs and Low-Income Credit Unions (LICUs). Currently, any bank can get CRA consideration for providing financial or other support to an MDI or LICU – regardless of whether or not the entity is located within or serves a bank's assessment area (AA). By contrast, a bank providing similar support to a CDFI can only be assured of getting CRA credit if the recipient CDFI is located in or substantially serving the bank's designated AA. However, the CDFI certification standard for *targeting* services to low-income communities is more rigorous than the requirements for MDIs and LICUs that currently receive de factor CRA credit, regardless of their location. It is very important to correct this inconsistency.

The final rule must absolutely retain the provision in the NPR that confers equal CRA consideration for activities conducted with *all* CDFIs as the regulation currently does for activities undertaken with MDIs and LICUs. Specifically, we strongly urge the Agencies to retain and even emphasize the language on page 93 that states:

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[6] *CDFI Certification, Step 2: Reporting*, Community Development Financial Institutions Fund, www.cdfifund.gov/programs-training/certification/cdfi

> *"All activities with Treasury Department-certified CDFIs would be eligible CRA activities.* Specifically, lending, investment, and service activities by any bank undertaken in connection with a Treasury Department-certified CDFI, at the time of the activity, would be presumed to qualify for CRA credit given these organizations would need to meet specific criteria to prove that they have a mission of promoting community development and provide financial products and services to low-or moderate-income individuals and communities." (Emphasis CDBA).

At the same time, two CDFI-related provisions in this section still require clarification to ensure that CDFIs receive this equal treatment. Specifically: clarifying language is needed in the Community Development Definitions section. While this section clearly covers mission-focused depositories as a group, it inexplicably drops "CDFI" from the details. Specifically, in the section entitled "Activities Related to MDIs, WDIs, LICUs, *and Treasury Department-certified CDFIs,*" the language leaves out "CDFI" in two provisions on page 92 where it ought to be included:

- <u>NPR Language</u>: "The Agencies propose two other changes to the regulation involving MDIs, WDIs, LICUs, and CDFIs. First, investments, loan participations, and other ventures undertaken by any bank, including by MDIs and WDIs, in cooperation with other MDIs, other WDIs, or LICUs, would be considered."
    - <u>Discussion</u>: *The term "CDFI" is dropped from the second sentence.* While the other categories (MDIs, WDIs, and LICUs) are also mission-driven depositories, CDFI banks are the only mission-driven depositories that are annually certified as primarily serving LMI communities. Given the language on page 93 specifically confers positive consideration on "all activities with" CDFIs, we request explicit language clarifying that CDFI depositories (including both CDFI banks and CDFI credit unions[7]) are included in this provision.

- <u>NPR Language</u>: "The Agencies also seek feedback on whether activities undertaken by an MDI or WDI to promote its own sustainability and profitability should qualify for consideration. Under this approach, eligibility could be limited to activities that demonstrate meaningful investment in the MDI or WDI's business, such as improving internal technology and systems, hiring new staff, opening a new branch, or expanding product offerings."
    - <u>Discussion</u>: *CDFI banks are not included in the first sentence.* Given (as above) the other categories here are mission-driven, CRA regulated depositories, there must be clear language explicitly including CDFI banks within this group, to reinforce the provision on page 93.

We respectfully ask the Agencies to review these recommendations carefully. Clarification is essential to ensure the consistent application of the stated Agencies' stated intention on page 93.

<u>*Increased Thresholds for Bank Size Standards*</u>

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[7] CDFI credit unions do not overlap perfectly with LICUs and must be included for consideration as well.

CDBA strongly supports increasing the asset size thresholds to determine the tests under which a bank will be examined. Even with recent growth, CDFI banks are among the smallest regulated banks in the United States. The average asset size of a CDFI bank is $543.6 million, with the largest at $6.5 billion and the smallest at $26.6 million. It is crucial to avoid placing unnecessary, new regulatory burden on small, mission-driven institutions.

The proposed asset thresholds are a step in the right direction, but we suggest additional adjustment to align more closely with existing standards. Specifically, the small bank upper limit should be set at $750 million – this would conform to the Small Business Administration (SBA) size standard. To approach the Federal Reserve's threshold between a small bank holding company and a Large Bank holding company ($3 billion) more closely, we ask the Agencies to consider raising the intermediate bank upper limit to at least $2.5 billion. This was the level proposed by the ICC in the 2020 rule. A bank under $2.5 billion is much closer to its community and more likely to reinvest in the communities in which it raised deposits than a larger bank. The upper boundary for large bank data collection may be retained at $10 billion.

F. SPECIFIC PROPOSALS TO ENSURE CONSISTENCY AND FAIRNESS IN MODERNIZATION FOR CDFI BANKS

CDFI banks' experience shows that inconsistent implementation of the CRA by examiners has been a persistent problem. For example, CDFI banks have historically noted significant discrepancies in interpretation and application of the rules from one exam to the next, and a particular lack of understanding and appreciation of mission and performance context for a bank that is CDFI certified.

In order to ensure consistency and fairness in CRA modernization for CDFI banks, we respectfully urge the Agencies to consider the follow recommendations, summarized here and expanded on below.

1. *Consider CDFI Status In Performance Context*
    - The Agencies should explicitly document that CDFI certification must be considered as a fundamental and essential element of *CRA performance context* for a CDFI bank being examined for CRA compliance. This context should be considered at the beginning of a CDFI bank's CRA exam, and include provisions for how it may influence the outcome of any individual "test" before the test is conducted.
2. *Enshrine an Institutional Presumption of "Satisfactory" for CDI Banks*
    - Under the final rule, CDFI banks of any size should begin an exam with an institution-level presumption of "Satisfactory," with opportunities for an upgrade based on the bank's demonstration of responsiveness under the relevant tests appropriate to the institution's size.
3. *Examine CDFI Banks on their Service in CDFI Target Markets*
    - In lieu of evaluating CDFI banks based on their record of service in more narrowly defined AAs, the Agencies should allow CDFI banks the opportunity to

receive consideration for their record of providing products and services within their CDFI Fund approved Target Markets, or their record of providing service to CDFI Fund approved low income target populations and "Other Target Populations" (if so selected).[8]

4. *Streamline and Share Data Submitted by CDFI Banks*
    - The examining authority should gather any data required for the CRA exam from already available government sources. In the case of CDFI banks, the two primary sources will be bank call reports and the annual transaction level data submitted to the CDFI Fund for the purposes of maintaining certification in the ACR process.
5. *Enhance and Formalize Examiner Training Regarding CDFIs*
    - Examiner training must be formalized to ensure that in the case of CDFI banks, CDFI status is the first and primary filter through which a CDFI bank's CRA exam is conducted. CDFI banks should not be in the position of "training" new examiners on the CRA-related consequences of their CDFI certification, whether it is as an examined institution, or as a conduit for another institution to receive positive consideration.

Recommendations on Performance Context for CDFI Banks

CDBA recommends that regulators explicitly recognize CDFI banking as a particular bank business model within CRA. A bank's business model has a strong bearing on how it reaches and serves customers. *Within CRA, banking regulators already recognize some non-traditional bank business models – for example, limited purpose and wholesale banks undergo tailored CRA exams. We note especially that at least one prominent limited purpose bank manages to conduct nearly the entirety of its national lending via credit cards, but is able, under the exam for limited purpose banks, to avoid being examined on its credit card lending.*

Further, any bank (including a wholesale or limited purpose bank) may, in theory, write a CRA strategic plan that tailors its CRA obligations in ways it deems important. Examples include a savings bank with a highly dispersed and mobile (military) customer base, a "branchless" private bank serving high net worth customers via a nationwide network of brokerage offices, a bank with a customer base consisting almost entirely of law firms and individual attorneys, and a branchless bank focused on serving small businesses and their owners. Each of these banks undoubtedly relied heavily on a discussion of performance context in justifying its (successful) application for a CRA strategic plan.

As the number of CDFI banks continues to grow, and the assets represented by these institutions grow alongside, the particular business model of the CDFI banking sector increasingly demands an equitable recognition of performance context to that applied by the Agencies to wholesale,

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[8] Per 12 CFR § 1805.201 - Certification as a Community Development Financial Institution, the CDFI Fund considers "whether the activities of the (financing) entity are *purposefully directed toward improving the social and/or economic conditions of underserved people (which may include Low-Income persons or persons who lack adequate access to capital and/or Financial Services) and/or residents of economically distressed communities (which may include Investment Areas)."*

limited purpose, and strategic plan banks. It is entirely appropriate given the complementary goals of CRA and the CDFI program that the Agencies put a more tailored approach for CDFI banks in place.

Performance context is an essential part of the current examination process, and the NPR retains performance context in each of the proposed tests. Performance context is incorporated in § __.21 *Performance tests, standards, and ratings, in general*, under subpart (e)(1) (page 499) and clearly defines how performance context will be considered.

CDFI certification is perhaps the most important CRA performance context consideration for CDFI banks. Participation in CDFI fund programs, such as the Bank Enterprise Award (BEA) and Small Dollar Lending Program (SDLP) are important as well. We are pleased the Agencies recognize this early in the NPR, noting that the overall CRA goal of promoting financial inclusion requires:

> "strengthen(ing) provisions to support investments, loans, and other activities undertaken in cooperation with minority depository institutions, women's depository institutions, low-income credit unions, *and Treasury Department-certified community development financial institutions, all of which have a history of meeting the credit needs of LMI and minority communities*."

From this, it follows inevitably that *where the NPR recognizes CDFI status as a conduit for conventional banks to receive positive CRA consideration, the NPR should recognize CDFI banks for their CDFI certification in the course of reviewing their own CRA compliance.*

Further, CDFI certification is clearly aligned with the Agencies' definition of what *must* be considered when reviewing for performance context:

1) NPR section .21(e)(1) - CDFI status directly influences a bank's "capacity or constraints" as CDFI certification limits the amount of activity a CDFI bank can pursue outside of CDFI target markets areas while maintaining its certification;
2) NPR section .21(e)(2) - A CDFI bank's "past performance" will reflect the bank's mission-focus by demonstrating that a historic 60% + of its activity has already been certified for being directed to LMI communities;
3) NPR section .21(e)(3) - Demographic data on customer income levels and income distribution, economic climate etc., that are central to the bank's maintenance of its CDFI status, are "relevant data pertaining to the geographic areas in which the bank is evaluated"; and
4) NPR section .21(e)(5) - "Data and information provided by the bank regarding the bank's business strategy and product offerings" will reflect that the CDFI bank successfully pursues a business strategy specifically focused on meeting the needs of underserved, LMI communities.

Therefore, we strongly urge the Agencies to recognize the logic of explicitly acknowledging CDFI certification as a fundamental element and a preliminary consideration of a CDFI bank's CRA performance context – first at the intuition level, and then wherever performance context is considered in the final rule.

<u>Recommendation on Presumption of CDFI Bank CRA "Satisfactory" Rating</u>

We respectfully ask the Agencies to consider the reciprocal necessity that CDFI banks should themselves receive "automatic" consideration for their own activities if conventional banks receive "automatic CRA community development consideration" for community development activities conducted in conjunction with CDFI banks.

In other words, if a CDFI bank's certification is sufficient on its face for CRA credit to be conferred to a partner bank, that <u>must</u> be sufficient for the CDFI bank itself to receive the same consideration for its own activities. It further follows then, that *CDFI banks should be assigned a minimum institutional level presumption of "Satisfactory" in recognition of their demonstrated commitment to serving LMI communities.*

In this scenario, a CRA exam would still be conducted on a CDFI bank in accordance with the appropriate test for the bank's asset size, with the understanding that the presumptive rating could be raised (or lowered) based on activity revealed during the exam. We recognize that the complementary structures for CRA compliance and CDFI certification do not overlap perfectly, so we recommend that the presumed rating for CDFI banks also be set as "Satisfactory" in any relevant test, with the option for the CDFI bank to submit additional evidence that an "Outstanding" rating is warranted (as we expect it often will be). CDFI banks would then receive additional positive consideration for activities in the same manner as conventional banks. A rating downgrade could be considered in the unlikely event the examination revealed outlying behavior, such as fair lending violations.

While we believe that logical support for this proposal is overwhelming, we acknowledge "the devil is in the details," and welcome further discussion with the Agencies on how to apply it in practice.

<u>Recommendation on Consideration of CDFI Bank CRA Performance within CDFI Fund-Approved Target Markets</u>

We strongly urge the Agencies to ensure that the CDFI bank business model is explicitly recognized in the geographic component of the CRA evaluation procedures. CDFI banks should have the opportunity to receive CRA credit for their record of service to LMI communities within their CDFI Fund approved Target Markets, or their record of providing service to CDFI Fund approved "Low Income Target Populations" or "Other Target Populations."

To become a certified CDFI, a bank must demonstrate that at least 60% of its total activities meet the CDFI Fund's Target Market test. A Target Market can be a geography-based Investment Area or people-focused Target Population – or a combination of the two. The majority of CDFI banks meet the Target Market test using the geographic Investment Area designation, but not all. However, CDFI bank Target Markets are often larger geographically than the banks' CRA AAs. If a CDFI bank goes above-and-beyond to meet LMI community needs both within *and outside* their CRA AA (e.g. their CDFI Investment Area), *the banks take on the* *risk of not receiving adequate CRA consideration for the outside AA CDFI activities that are nevertheless within their CDFI Target Markets. The opposite should be true. CDFI Bank Target Market activity should receive positive consideration, and CDFI banks should not be penalized for serving their CDFI Target Markets outside of their CRA AAs.*

Therefore, in addition to codifying CDFI status in performance context, CDBA strongly recommends that the Agencies recognize that the CDFI bank business models requires extensive efforts to reach LMI communities that may be proximate to, but not within, the banks' CRA AAs. The Agencies should also give CRA consideration to CDFI banks for collecting social impact data and actively participating in CDFI Fund Programs or other Federal, state, or local programs that offer tools to enhance services to their CDFI Target Markets or to reach deeper to serve low-income people and communities.

As above, we welcome further discussion with the Agencies on how to ensure this is applied in practice.

Recommendation on Examiner Training

Examiner training must be formalized to ensure that in the case of CDFI banks, CDFI status is the first and primary performance context consideration for a CDFI bank's CRA exam. CDBA strongly recommends enhanced interagency CRA training for examiners on the rigorous, qualitative process for initial CDFI certification and certification maintenance. To address discrepancies in implementation of CRA between bank regulatory Agencies, we recommend that all CRA examiner trainings be conducted on an interagency basis. To facilitate common understanding of how CRA exams are conducted, we recommend that bank CRA officers also be permitted to attend such trainings.

Recommendation on Data Collection

Much data collection is redundant. We strongly recommend that the Agencies also work to maximize alignment of definitions used for CRA and CDFI certification, geographic service areas, program application, service tests, and reporting. The Agencies can reduce reporting burden by streamlining and sharing data submitted by CDFI banks for CDFI fund annual reporting, CDFI award compliance, Call Reports, HMDA, participation in the Treasury's Emergency Capital Investment Program (ECIP) and the CFPB's Dodd-Frank Section 1071 rule (when finalized).

G. HIGH PRIORITY COMMENTS IN RESPSONSE TO SPECIFIC QUESTIONS

Recommendation on Encouraging Action to Mitigate the Racial Wealth Gap

CDBA and its members work to be catalysts for change. We applaud the Agencies for considering provisions that address racial disparities in lending by conferring positive CRA consideration to institutions that target constructive, responsible products and services to historically underserved populations.

CDBA's members are committed to expanding access to capital and financial services and promoting opportunity in America's most distressed urban, rural, and Native American communities that face the barriers of systemic racism. The places and people we serve are often African American communities and other communities of color historically starved of access to capital or the ability to earn living wages, much less accumulate wealth.

We commend the Agencies proposal to "continue to consider discrimination and certain other illegal practices as inconsistent with a bank's affirmative obligation to meet the credit needs of its entire community, and counter to the CRA's core purpose of encouraging banks to help meet the needs of low-and moderate-income communities and addressing inequities in credit access." However, we also urge the Agencies to "aim higher." The traditional focus on meeting the needs of entire communities with an emphasis on the needs of LMI populations can only be advanced by pursuing the entwined goal of mitigating the effects of the racial wealth gap.

While we know that targeted lending to LMI borrowers and neighborhoods will not in- and of-itself achieve racial equity, we believe some of the most promising tools to mitigate the racial wealth gap are the fair lending protections provided to banks under the Special Purpose Credit Program (SPCP). We strongly urge the Agencies to provide positive CRA consideration to banks that implement SPCPs.

We also urge the Agencies to consider expanding the proposed impact reviews to include other activities that can contribute to closing the racial wealth gap. Here are some examples the Agencies should consider:

- Small business technical assistance directed to minority entrepreneurs;
- Financing for long-term/permanent affordable housing;
- Support for minority and mission-driven nonprofit developers;
- Support for activities that explicitly connect financing to local needs generated with the assistance of community input;
- Internal reviews and revisions to underwriting criteria to ensure that products are responsive to the needs of historically excluded minority communities (Please see the Underwriting for Racial Justice working group led by CDBA member bank Beneficial State Bank).

These are all activities undertaken to some extent by CDFIs and MDIs of all types and sizes across the country, and they can serve as examples to the broader banking industry.

Recommendation on Metrics

CDBA members support the goals of increasing clarity, transparency and consistency, and we appreciate that implementing metrics and thresholds as baseline considerations help advance those goals. However, we note that banking and lending needs across the country cannot be captured easily in equations. We believe that performance context should not be considered only on "the back end" of a metrics-based test or threshold – it should be considered at the beginning. One prominent example is the revenue threshold for distinguishing whether a business or farm may be particularly likely to have "unmet credit needs". This statistic will vary widely from market to market, and may or may not be relevant on an individual basis to determining this status. We suggest the Agencies consider setting an initial threshold, while leaving the final threshold to examiner discretion based on performance context.

We also urge the Agencies to clarify, and potentially reconsider, the design of a number of metrics used as screens in the individual tests. We are especially concerned about the configuration of the “retail lending volume screen” (page 186) and its relationship to the broader “retail lending test,” the “bank volume metric” and the “market volume metric.” We agree that a baseline metric for comparing bank performance to peers can be useful. Unfortunately, the description of the screen is confusing[9] and because neither banks nor other stakeholders have access to the “market volume metrics,” the description is also incomplete. We believe that banks most importantly must be given the opportunity to calculate their own “retail lending volume screens” in order to comment, and they cannot do so without access to their “market volume metrics.”

In the absence of “market volume metrics,” many banks have resorted to calculating just their “bank volume metrics.” Based on these (necessarily) incomplete calculations, we are concerned that the retail lending volume screen may disadvantage banks (particularly CDFI banks) that maintain branches in economically distressed areas (particularly rural areas) where there is less demand for large loans due to lower property values and lack of economic activity. It would be a terribly counterproductive consequence if banks providing facility-based deposit services in disinvested communities were discouraged from maintaining those facilitates.

We recommend that the Agencies provide templates for individual banks to conduct full “retail lending volume screen” calculations based on historic performance. We strongly believe that the “retail lending volume screen,” which may well be appropriate and useful, should not be implemented until banks have the opportunity to calculate and provide comments on their own results as derived using the complete set of data.

We also reiterate our recommendation that the Agencies apply a performance context review *at the beginning* of any test including to ensure recognition of banks operating in these circumstances. We believe this is essential to conducting a CRA exam that fairly considers, and avoids inadvertently damaging, CDFI banks. If performance context is only considered after a screen is conducted, the bank risks being unjustly placed in a defensive position. Applying performance context correctly from the beginning is essential.

We also urge the Agencies to reconsider the proposal to move certain credit activities to the Retail Services and Products test for *qualitative review only*. Making a small loan or working closely with a mission-driven institution can take just as must time, effort and expense as making a larger, conventional loan. To the extent any metric is developed that incorporates consideration of retail loans, the number of small loans must be considered in the retail lending test, or be given substantially more weight in the products and services test. These loans serve

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[9] Specifically, we note confusion about whether the “retail lending volume screen” is equivalent to a more narrow AA loan-to-deposit ratio with a 30% threshold for “passing.”

as alternatives to high-cost, potentially predatory loans, such as payday loans that are targeted to LMI borrowers. In fact, the CDFI Fund recognizes the dire need for access to small dollar credit for LMI individuals in its new Small Dollar Loan Program (SDLP) for the very purpose of encouraging certified CDFIs to "provide alternatives to high cost small dollar loans".[10] (The fiscal year 2021 round of the SDLP in September 2021, awarded over $10.8 million in technical assistance and loan loss reserve grant to 52 CDFIs. Of 12 CDFI bank applicants, 11 received awards, and all were CDBA members.) We believe the Agencies should incentivize all banks to make responsible, small dollar consumer loans, and should consider the amount of technical assistance that CDFI banks invest in to ensure borrowers successfully re-pay their loans. *We strongly recommend that consumer and small dollar loans delivered to customers through branches receive quantitative (number and dollar) consideration in the Retail Lending Screen, as well as qualitative consideration in the Retail Services Test.*

<u>Recommendation on Deposits</u>

We are very encouraged that the Agencies are considering that for the purposes of measuring performance, "a non-brokered reciprocal deposit . . . for the institution *receiving* the non-brokered reciprocal deposit *would not* qualify under the deposits definition." This touches on the broader issue of ensuring that CRA does not penalize CDFI banks for accepting CRA and impact-motivated deposits. CDBA strongly urges the Agencies to allow CDFI banks to exclude deposits placed by CRA and impact-focused depositors, including government deposits and grants made to affiliated nonprofits, from the calculations for the Retail Lending and Community Development Finance metrics. These could include direct relationship deposits, non-brokered reciprocal deposits and "one way" deposits placed through private networks. CDFI banks should be given the option to segregate these deposits prior to such calculations.

CDFI banks often raise a significant portion of their deposits from CRA motivated banks, local government entities, civic-minded corporations and foundations, and individual "impact investors" who are drawn to support the banks' missions and impact. Some of these depositors are located within the banks' local AAs, but many are not. Often these "investors" wish to place deposits that are larger than would qualify for deposit insurance, but would still be useful for the CDFI bank. In those circumstances, the two parties may use a system to facilitate "non-brokered reciprocal deposits" that converts large deposits into smaller amounts and circulates the deposits through a broader network of institutions. An analysis by the firm that pioneered such a system, Intrafi (f.k.a. Promontory Interfinancial Network), has found that CDFI banks are four times more likely to use non-brokered reciprocal deposits than their similar asset size peers; likewise, MDI banks are three times more likely to raise reciprocal deposits than their similar asset size peers.

We note that the process for placing and receiving non-brokered reciprocal deposits is complex. To avoid uncertainty we urge the Agencies to refer to terminology used in 12 CFR 337.6 when finalizing this rule. *It appears to us that Agencies are asking for comments on whether to*

[10] CDFI Fund, CDFI Fund Small Dollar Loan Program, www.cdfifund.gov/programs-training/programs/sdlp

exclude "covered" deposits from the metrics – if so, the answer is "yes," and we urge the Agencies to include language that makes this distinction.

Failing to exclude mission deposits, or inadvertently misidentifying "covered" deposits, could also inadvertently discourage mission-driven institutions from utilizing a historically important funding and liquidity source. Inclusion of deposits placed through these networks or gathered through relationships in the calculation of retail domestic deposits could have the unintended consequence of forcing CDFI and MDI banks to limit the amount of such deposits they raise based on the appeal of their mission to out of market depositors. This will hurt their LMI communities because the banks will have less capital to lend. We strongly urge the Agencies to allow CDFI and MDI banks to segregate mission-deposits (however gathered) from the deposits definition in the final rule.

Recommendations on the Community Development Financing Test

We support many of the provisions in the new Community Development Financing Test. However, we are concerned about the composition and weighting of the test. The NPR combines lending and investing into one community development financing test, and then underweights that test vs the Retail Lending test in the final assignment of ratings. We believe this risks de-emphasizing certain products that are useful to LMI communities and the CDFI banks that serve them

As proposed, community development finance performance would not affect most large banks' overall CRA rating because Retail Lending Test performance weighs heavier (60%) than Community Development Financing Test performance (40%). First, we do not believe that the proposed weight of 40% given to community development finance reflects its overall importance to community reinvestment. Second, it appears unlikely that more than a few banks would be able to achieve an overall Outstanding rating, as an Outstanding rating on the Retail Lending Test is a requirement for an overall Outstanding. This effectively nullifies any incentive for large bank to strive for an Outstanding on the Community Development Finance test.

We are also concerned that by blending community development loans and investment into one metric, the proposal risks discounting certain community development finance tools that have proven popular and effective. For example, we share concerns that the proposal would cause a shift in banks' CRA activities away from impactful activities like making equity investments (which are long term and complex), placing CDFI deposits (flexible due to variable terms, and providing considerable impact from leverage), or smaller "one time" activities such as grants (easily accomplished, and vital to general operations in their "unrestricted" form, but often small and providing no return.)

We fear that if the Community Development Finance Test is left intact, large banks might revert to a narrower selection of already popular products, such as making and annually renewing short-term CDFI loans, or concentrating on big-dollar, high return new markets tax credit and low income housing tax credits. These products are valuable and useful to communities, but only part of the constellation of useful tools. We urge the Agencies to consider alternative configurations of the Community Development Finance Test that do not risk narrowing the scope of products that banks deploy to achieve their CRA goals.

Recommendations on Needs of Rural Communities in the NPR

Large Banks' CRA community development activities and branch networks underserve rural communities. Banks that remain to serve them are frequently CDFIs, with several qualifying for the "large" bank test, though they are under $ 10 billion in assets. These important community institutions should be encouraged to remain in their rural markets. We urge the Agencies to exercise extreme caution before instituting any policies that risk discouraging bank activity in small and rural communities. Unfortunately, we do not believe the needs of rural communities and the concerns of rural CDFI banks receive sufficient consideration in the NPR.

We note that the Agencies have attempted to encourage activity in rural areas (among others) through such efforts as including rural areas in the term "high opportunity area" and identifying U.S.D.A Rural Business Investment Companies as qualifying for economic development. Further, the new procedure for assigning conclusions and ratings eliminates "limited scope" standards for AA lending tests, and substitutes thresholds for performance in state, multistate MSA and institution-level AAs for large banks with ten or more AAs in a state, a multistate MSA, or overall. In rural areas, this can be a double-edged sword as we discussed in some detail in the section Recommendation on Metrics.

We recommend that the Agencies counter the prevailing trend of disinvestment in rural communities by considering a *rural* community development financing rubric that runs parallel to that proposed for qualifying activities in Native Land Areas and more strongly encourages, rather than merely permits, community development activity in nonmetropolitan communities. Specifically, the Agencies could use impact factors to incentivize community development activities targeted to and conducted in broadly Non-MSA counties. Consistent with language in the NPR regarding Native communities, the Agencies could incentivize the following activities in nonmetropolitan high opportunity areas as well as distressed or underserved nonmetropolitan middle-income census tracts:

- Revitalization activities;
- Essential community facilities;
- Essential community infrastructure;
- Disaster preparedness and climate resiliency activities

Within rural communities, census tracts that qualify as "middle distressed" or "underserved", have significant low-income populations. Rural census tracts cover large geographic areas and may include areas of concentrated poverty that can be recognized only at census block group level, or even only in smaller areas. Further, some census tract income designations change frequently (nearly annually). If a large employer closes or opens, or a business sector falters or strengthens, tracts shift between moderate, middle-distressed and middle. This can (and has) unjustly hurt the CRA ratings of rural CDFI banks at exam time. The Agencies should consider including middle-distressed tracts as if they were LMI tracts to help alleviate some of the difficulty many CDFI banks have with revolving income designations.

Another area of particular concern occurs under the community development definitions section "Covering Small Business and Small Farm Loans Under the Evaluation of a Bank's Retail Lending Performance" (Page 58). Under this part, the proposed economic development definition would only qualify a bank's loans to small businesses or small farms under the "economic development" definition if the activities were undertaken "consistent with Federal, state, local, or tribal government plans, programs, or initiatives that support small businesses or small farms as those entities are defined in the plans, programs, or initiatives." Loans not covered under the "government plans, programs or initiative" definitions would only receive consideration under the Retail Lending Test. We strongly urge the Agencies to eliminate this requirement from the final rule and restore the option for banks to classify these loans as either a retail loan or a community development loan.

While government programs may be helpful in a number of ways, and should certainly be included in these definitions, they should never be the exclusive qualifier for a community development purpose, whether that is economic development, affordable housing, or otherwise. Government planning is neither consistently, nor predictably conducted in many American communities, especially in rural states and counties, and even small cities, where funding is limited. Perhaps most importantly, both for-profit and non-profit entities are generally able to implement an innovative response to a community problem more quickly than a government entity can adopt the idea and memorialize it in a planning document. The proposed reliance on community plans risks stifling innovation and timely response to possibly urgent problems, such as a lack of affordable housing or the loss of a grocery store resulting in a food desert. A much better threshold for rural, economically distressed communities across the country would be to include well intentioned government programs in the definition of what might qualify, while allowing individual banks the opportunity to "make the case" to regulators on specific products and programs that should qualify.

Recommendations on Needs of Native and Tribal Communities

The proposal is largely responsive to the needs of Tribal and Native communities, and respectful of the circumstances of the CDFI and MDI banks that currently serve them. However, as above, we strongly urge the Agencies to strike the *requirement* that a community development activity to be "conducted in conjunction with a Federal, state, local, or tribal government plan, program, or initiative that benefits or serves residents of Native Land Areas." This is unnecessarily restrictive, and could actually lead to a contraction, rather than an expansion, of community development activities in these areas.

We strongly support the proposal on pages 115-116 that would "designate activities benefitting or serving Native communities, including but not limited to those qualifying activities in Native Land Areas under proposed § __.13(l) as an impact review factor." We agree with the Agencies that this factor would "recognize the unique status and credit and community development needs of Native and tribal communities as discussed above, which make bank activities that do serve these communities especially responsive." We especially applaud the Agencies for recognizing that many Tribal members do reside outside of what is the proposed definition of Native Lands and that activities supporting those individuals should be taken into account for CRA purposes, especially in the increasingly digital environment where there is more opportunity for remote activities.

H. RESPONSES TO SPECIFIC QUESTIONS POSED IN THE NPR

III. Community Development Definitions

As noted above, CDBA strongly supports revisions to the community development definitions in the NPR, particularly the explicit recognition and automatic conferral of CRA CD credit for support of CDFIs, and the proposal to recognize naturally occurring affordable housing for positive consideration.

However we must strongly reiterative our request that the Agencies adopt the recommendations made above on page 5 of this letter regarding the two community development definitions provisions on page 93 of the NPR that are in urgent need of clarification.

Questions and Answers

- *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?*

  Partial, pro-rata consideration should be available for any project where activity has the "express, bona fide intent of community development" to benefit LMI people or communities and the benefit to LMI communities of individuals is discernable and measurable. This would particularly incentive activities that benefit populations spread over large distances, such a rural nonmetropolitan areas and counties.

- *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?*

  A minimum is not necessary, so long as the intent is clear and the portion directed to a community development purpose is discernable and measurable.

- *Question 3. Is the proposed standard of government programs having a "stated purpose or bona fide intent" of providing affordable housing for low-or moderate-income (or, under the alternative discussed above, for low-, moderate-or middle-income) individuals appropriate, or is a different standard more appropriate for considering government programs that provide affordable housing? Should these activities be required to meet a specific affordability standard, such as rents not exceeding 30 percent of 80 percent of median income? Should these activities be required to include verification that at least a majority of occupants of affordable units are low-or moderate-income individuals?*

  The proposed standard of "stated purpose or bona fide intent" is appropriate. Activities should be required to meet an affordability standard. Activities focused on the rental market should *not* be required to include verification of income, as this would unnaturally limit the investments in the space to government-sponsored programs.

- *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?*

  Yes. This meets the CRA's affirmative obligation to serve entire communities, and recognizes that the need for affordable housing is acute in high-cost areas for middle-income families as well, which exacerbates pressure across the market. We support the Agencies' careful consideration of a suggestion by the National Association of Affordable Housing Lenders (NAAHL) that the Agencies allow consideration for housing at rents up to HUD's Fair Market Rent (FMR) standard in particularly unaffordable markets where the FMR exceeds 30 percent of 80 percent of the area median income (AMI).

- *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?*

  We strongly support the proposal to recognize naturally occurring affordable housing for positive consideration. There are alternative ways to ensure financing targets such housing. In one example, for properties being renovated, banks can request rent rolls for the years the loan is claimed as a CD loan. If the renovation causes the rents to exceed fair market rents, the loan could be dropped from the CD category for that (and subsequent) years. We suggest the agencies especially encourage financing that focuses on long-term access. The preservation of existing affordable housing, such as low income housing tax credit (LIHTC) financed housing that is nearing the expiration of its affordability compliance period, is especially impactful, and should remain a priority for policymakers.[11]

[11] *Preserving Affordable Housing: Innovative Partnerships*, "Community Development Investments", March 2017, Office of the Comptroller of the Currency

- *Question 6. What approach would appropriately consider activities that support naturally occurring affordable housing that is most beneficial for low-or moderate-income individuals and communities? Should the proposed geographic criterion be expanded to include census tracts in which the median renter is low-or moderate-income, or in distressed and underserved census tracts, in order to encourage affordable housing in a wider range of communities, or would this expanded option risk crediting activities that do not benefit low-or moderate-income renters?*

  Ideally, in order to help LMI people find rentals in any neighborhood (not just LMI neighborhoods), naturally occurring affordable rental housing should count in all census tracts. If closer targeting is strongly preferred, the proposed geographic criterion could be expanded to include tracts in which the median renter is low-or moderate-income, or in distressed and underserved census tracts. CDFI banks' experience suggests this would encourage affordable housing in a wider range of communities.

  We strongly urge the Agencies to carefully avoid any position that limits qualification to pre-existing LMI neighborhoods – this would perpetuate practices of limiting low-income individuals and families to geographic concentrations of low-income communities. Affordable housing is needed everywhere.

- *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?*

  Yes, this approach should be expanded to include single-family rental housing that meets the other eligibility criteria. However, as affordable housing is needed everywhere, the category should under no circumstances be limited to rural communities.

- *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?*

  The Agencies should consider the stated intent of the activity or program. Where a bank makes an assertion about a projects affordability, the bank should be able to demonstrate support in the form of underwriting criteria, geo-location, and development partners, among others.

  We strongly urge the Agencies to grant banks discretion in how to pursue these activities and with whom to partner. We believe this can be done without compromising on the requirement that banks provide substantive support for their determination that projects are affordable. As noted elsewhere, under no circumstances should there be a requirement that these financing activities be undertaken in conjunction with government programs. It would be appropriate to consider affordable housing options supported by mission-focused nonprofit organizations as especially responsive.

In addition, we urge the Agencies to continue to count donations and service hours dedicated to support affordable homeownership as CD activities.

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

  We support considering only the pro-rata value of affordable loans in a qualifying mortgage-backed security, rather than the value of the full security. Further, we suggest that the Agencies consider limiting CRA credit to only the initial purchase of a mortgage-backed security, which is where liquidity is generated to the greatest value. We also suggest that that a minimum hold period be required for these securities to receive CRA consideration.

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

  We believe it is appropriate to include community land trusts and other shared equity homeownership as well as affordable manufactured housing – rentals, shared ownership, and owner-occupied – in the affordable housing definition.

- *Question 11. Would lending to small businesses and small farms that may also support job creation, retention, and improvement for low- or moderate-income individuals and communities be sufficiently recognized through the analysis of small business and small farm loans and the qualitative review in the Retail Lending Test?*

  This lending is not sufficiently recognized through the proposed analysis. Moving *some* small farm and small business loans, but not those undertaken consistent with Federal, state, local, or tribal government plans, programs, or initiatives, from the economic development test lacks nuance. It is true that conventional small business and small farm lending undertaken outside of government programs often is a basic retail-lending product. However, participation in government programs should not be the only criteria to determine whether a small business or farm loan has an economic development purpose.

For example, some CDFI banks have nonprofit affiliates, some that are certified as CDFIs and some that are not certified as CDFIs. These affiliates serve diverse purposes, but one common purpose is to help the bank "de-risk" some of its activity to fulfill an economic development/community development goal without the expense and complication of participating in a government program.

Performance context and examiner autonomy will potentially be important: If examiners are permitted sufficient latitude to adjust ratings for loans that are reported as small business loans but that have a CD purpose, it might be sufficient. We are aware of a bank that keeps a list of these "small business and community development" loans for CRA examiners. Perhaps that process could be recommended as an option for all large banks.

We note that in "Section XVII", the Agencies are proposing that intermediate banks retain flexibility to have certain retail loans – small business, small farm, and home mortgage loans – be considered as community development loans. We recommend that the Agencies consider extending this option to Large Banks under $10 billion.

- *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?*

  Yes, this is reasonable. In the transition period, the Agencies should continue to consider "bank loans to small businesses and small farms that currently qualify under the economic development criteria as community development activities during the transition period before solely considering these loans under the Retail Lending Test."

- *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 improvement for low-or moderate-income individuals and that ensure activities are not qualified simply because they offer low wage jobs?*

  The Agencies should retain a separate component for job creation, retention, and improvement for low- and moderate-income individuals under the economic development definition. However, we suggest that the Agencies consider the latter part of the question with more nuance. It is true that a middle or high wage job is preferable to a low wage job. However, in a great many of the communities that CDFI banks serve, low wage jobs are vastly preferable to no job at all, and the trends of disinvestment have left an increasing number of people with no work and no opportunities. Also, low wage jobs do not exist in a vacuum – in order for an individual to hold a moderate wage job, a low wage job is often the first and essential step. Low wage jobs are not always an end in themselves, and to the extent they satisfy the needs of an individual, these jobs should be respected.

We strongly believe the Agencies should avoid definitions that define jobs in relation to LMI definitions of AMI. This approach seems to us to fail to recognize the value of loans to employers who provide opportunities for better pay.

For these purposes, we recommend that the Agencies consider extending positive CRA consideration for loans to businesses or farms of *any* size *and* that create entry *or* mid-level jobs, *regardless of what workers are being paid.*

Additional consideration could be given to small businesses, but large businesses can also often represent substantial, reliable and sustainable investments in small and rural communities, and to the extent the benefits to LMI individuals and communities can be verified, these loans and investments should receive credit. Further, the Agencies should explicitly recognize support for economic development initiatives including those intended to support activities such as New Markets Tax Credit investments and leverage loans, as well as activities that support the economic development initiatives of universities and colleges and local chambers of commerce, without specific regard to business size.

- *Question 14. Should any or all place-based definition activities be required to be conducted in conjunction with a government plan, program, or initiative and include an explicit focus of benefitting the targeted census tract(s)? If so, are there appropriate standards for plans, programs, or initiatives? Are there alternative options for determining whether place-based definition activities meet identified community needs?*

  Under no circumstances should place–based activities be *required* to be "undertaken consistent with Federal, state, local, or tribal government plans, programs, or initiatives that support small businesses or small farms as defined by these plans, programs, or initiatives." This proposal risks severely limiting the ability of lenders serving rural and other small communities to conduct community development activities. For example, few if any of the small communities served by rural CDFIs in particular have official plans. While such programs provide helpful frameworks and incentives for this work to be undertaken, they cannot possibly cover all the circumstances in which a bank may wish to support to an otherwise qualifying activity. Alignment with such program may certainly be considered for setting a threshold.

  Documenting a project's satisfaction of stand-alone criteria for community development should be left to the lending institutions. If there is an activity undertaken in conjunction with a government program, that should be considered. In its absence, a lender should be prepared to document and demonstrate to examiners why a community development purpose is otherwise being met. In the event that an "official" response it desirable, emails, PowerPoints or other documentation of local approval or support from elected officials, local chambers or university-based planners, local or state FEMA disaster response coordinators might be considered.

Lenders may use the proposed new process for pre-qualifying activities for these purposes. This will help preserve flexibility and responsiveness to local conditions, while not limiting private sector resources to the narrower scope of what the government can imagine and put into motion.

- *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?*

  Measuring displacement is a complicated academic question. We do not know how banks can definitively demonstrate that activities would not cause displacement. In order to counter the risks of displacement while limiting the risk of unintended consequences, we ask the Agencies to consider scenarios where they can strongly encourage banks to finance projects with quantifiable benefits to LMI individuals, without excluding those projects where the benefits are *less* quantifiable, but still demonstrable.

  Realistically, we believe most new or rehabbed CD projects in LMI or distressed census tracts will serve residents of that tract, as well as nearby tracts. We urge the Agencies to consider that means testing will make financing such projects more complicated and cause the loss of CD loans and other investments because a bank might be unable to "collect incomes at the door." As an alternative, impact factors could be configured to give credit to home ownership lending if an LMI applicant is already a resident of an LMI census tract. Business lending could receive a similar treatment. Coupling financing with support for activities that contribute to an area's overall affordability should also receive credit. Examples include affordable options for childcare, senior services, and health care such as federally qualified health centers. Supporting the co-location and accessibility of such facilities should be especially encouraged.

  Further, we urge the Agencies to avoid any requirement for activities to be conducted in conjunction with government plan, programs etc. Instead, all activities that encourage people to stay in place could be prioritized.

  In addition, CDBA applauds the addition of the new categories (v – "disaster preparedness", and vi – "qualifying activities in Native Land Areas") to the list of categories for place-based activities that benefit residents of targeted geographies. These are important and appropriate additions.

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

Housing should be included as an eligible revitalization activity and should be counted in all geographies. For example, energy efficiency and disaster preparedness investments in homes in LMI/distressed communities should be counted. This could be limited to LMI-income households.

- *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?*

  We urge the Agencies to provide positive consideration for essential community infrastructure and community facilitates serving LMI or distressed communities, whether or not the infrastructure itself is located in LMI or distressed census tracts. As an example, an upgraded water treatment plant, located in a middle-income tract, might serve an entire small city with 1/3 LMI tracts. This should count, at least on a pro-rata basis for the portion of the community that is LMI. As another example, a community facility located in an upper income area of a large, dense city may have numerous programs targeting disadvantaged communities, some of which are adjacent to the upper income community. The location of their main facility should not disqualify financing from CRA consideration.

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

  The Agencies should consider a broad definition of the criteria for CRA eligibility related to the economic recovery of disaster areas. In order to ensure Disaster Recovery efforts are effective, any members of any community (LMI or otherwise) who have experienced economic dislocation due to a disaster, must continue to be able benefit from the community development activities undertaken by the financial institution.

  This would be in line with the current policy outlined in the interagency FAQs where activities undertaken in "disaster areas" are de facto qualifying for community development without an income qualifier. This is an essential preventative measure to ensure that entire communities recover, including those individuals or census tracts that were consider middle or upper income prior to the onset of the disaster. LMI communities do not exist independently of other communities – their recovery is interwoven with those nearby. Further, individuals, households or higher income census tracts in disaster areas that were well off before the disaster my necessarily lose income during the period of the disaster and during the recovery. Without support, these communities are at risk. While they may return post-recovery to their higher income levels, they will by definition be lower income, and at risk, during the disaster and immediately afterwards, and therefore certainly meet the CRA mandate for banks to serve their entire communities.

- *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? How should these activities be tailored to directly benefit low-or moderate-income communities and distressed or underserved nonmetropolitan middle-income areas? Are other criteria needed to ensure these activities benefit low-or moderate-income individuals and communities?*

  It is appropriate to have activities related to disaster preparedness and climate resiliency in the place based definitions, especially as they relate to revitalization and stabilization. As economic first responders within their own communities, CDFI banks can confirm "LMI communities are particularly vulnerable to extreme weather and other natural disasters because they are more likely to be sited in floodplains and fire zones and in areas that have not benefitted from investment in hazard mitigation. Because the members of these communities typically have relatively fewer resources, they are also the slowest to recover."[12] CDBA supports impact factors attached to these activities to encourage activity that is particularly responsive to the needs of LMI, minority and Native communities.

  Activity can be tailored to benefit communities by focusing on the ownership, control or stated mission of organizations or projects that receive support, as well as the relative benefit to individuals or households. For example, the Agencies could encourage climate change mitigation efforts undertaken with mission-focused entities, and encourage long-term, improvements relative to short term.

  The final rule should not include language that requires that activities be "conducted in conjunction with a federal, state, local, or tribal government disaster plan that includes an explicit focus on benefitting the designated disaster area." The definition is too narrowly tailored. However, impact factors could encourage activity undertaken in line with community-based plans, particularly those that are developed under leadership and with participation representative of the community. While it is appropriate that a federal disaster area must be designated, many potentially helpful activities may be conducted outside of an government "plan" that will serve a community development purpose. For example, donations of supplies essential to recovery from a disaster should count no matter the type of disaster, or if the activity is in a "plan".

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

[12] Laurie Schoeman, "Pre- and Post-Disaster Investments in Housing and Community Development Under the CRA," *Community Development Innovation Review*, Federal Reserve Bank of San Francisco, October 17, 2019

these activities be considered under other definitions, such as affordable housing and community facilities?

Energy efficiency activities should be considered as components of all of the definitions above. Not only does these activities contribute long-term to climate resiliency, but they are also an essential consideration of the long-term cost-effectiveness, and therefore impact, of affordable housing and community facilities. For example, one CDBA member offers a program that provides loans to electricity co-op members for installing solar and/or energy efficient enhancements at their home or business. Loan payments are repaid through customers' monthly electric bill. The program was created to promote equity, affordability, and accessibility to solar and energy efficiency.

- *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? If so, what would this category of activities include and what criteria is needed to ensure a direct benefit to the targeted geographies?*

  CDBA recommends that the Agencies confer with authoritative bodies and other federal, state and local government entities (such as EPA) on this topic.

- *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?*

  Yes, we would support consideration of utility-scale projects such as these, although consideration should not be limited to census tracts, but allow consideration for other location indicators such as counties (especially for rural areas) or distinct block groups.

- *Question 23. Should the Agencies include a prong of the disaster preparedness and climate resiliency definition for activities that benefit low-or moderate-income individuals, regardless of whether they reside in one of the targeted geographies? If so, what types of activities should be included under this prong?*

  Yes, these activities that benefit LMI individuals regardless of residence should be included, to be consistent with the logic of Questions 20 and 22. Energy efficiency promoting activities, improvements and recovery assistance for homes owner or rented by LMI households, regardless of tract geography, as well as community facilitates serving these communities, are good examples.

- *Question 24. Should the Agencies qualify activities related to disaster preparedness and climate resiliency in designated disaster areas? If so, are there additional criteria needed to ensure that these activities benefit communities with the fewest resources to address the impacts of future disasters and climate-related risks?*

The definition of "qualifying activities related to disaster preparedness and climate resiliency in designated disaster areas" is too narrow. The final rule should not include language that requires that activities be "conducted in conjunction with a federal, state, local, or tribal government plan, program, or initiative focused on disaster preparedness or climate resiliency." While it is appropriate that a focus on disaster preparedness or climate resiliency must be demonstrated, many potentially helpful activities may be conducted outside of these plans, programs or initiatives. Any institution may avail itself of the option to gain prior confirmation that a non-government initiative is eligible for consideration from the appropriate CRA regulator.

- *Question 25. Should the Agencies also include in the MDI definition insured credit unions considered to be MDIs by the National Credit Union Administration?*

  Yes. The Agencies should update the definition of MDIs to include both insured credit unions considered to be MDIs by the National Credit Union Administration as well as state-insured MDI credit unions and Puerto Rico's cooperativas, which are cooperative financial institutions insured by a territory government agency, the Corporation for the Supervision and Insurance of Cooperatives.

- *Question 26. Should the Agencies consider activities undertaken by an MDI or WDI to promote its own sustainability and profitability? If so, should additional eligibility criteria be considered to ensure investments will more directly benefit low-and moderate-income and other underserved communities?*

  As discussed in our introduction to this proposal, and the question that follows, this section urgently requires require clarification. The section's title includes the term "CDFI," and cites "CDFIs" as one of the partnerships for banks that are "key in helping to meet the credit needs of low-or moderate-income individuals and communities." The section must be revised to "activities undertaken by an MDI, WDI *or CDFI bank* to promote its own sustainability and profitability?"

  The answer is therefore, twofold: yes, MDIs, WDIs *and CDFI banks* should receive CRA consideration for activities undertake to promote their own sustainability and profitably. No subset of these three should receive credit unless the whole of the mission-driven banking industry (MDIs + WDIs + *CDFI banks*) is given equal consideration.

- *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?*

  Yes, people of all income levels should be included as long as it can be demonstrated that the programming is accessible, marketed to and useful for people of all income levels, *including* LMI individuals and families.

- *Question 28. To what extent is the proposed definition of Native Land Areas inclusive of geographic areas with Native and tribal community development needs?*

  Both the general definitions and further delineation and definitions of reservations, tribal villages, statistical areas, joint-use areas, etc. are adequate.

- *Question 29. In addition to the proposed criteria, should the Agencies consider additional eligibility requirements for activities in Native Land Areas to ensure a community development activity benefits low-or moderate-income residents who reside in Native Land Areas?*

  The areas of revitalization, essential community facilities, community infrastructure and disaster preparedness/climate resiliency cover a wide range of potential activities that would qualify.

- *Question 30. Should the Agencies also consider activities in Native Land Areas undertaken in conjunction with tribal association or tribal designee plans, programs, or initiatives, in addition to the proposed criteria to consider activities in conjunction with Federal, state, local, or tribal government plans, programs, or initiatives?*

  Absolutely. This would encourage tribal associations and programs to build their capacity and independence. It is appropriately inclusive.

IV. Qualifying Activities Confirmation and Illustrative List of Activities

CDBA strongly supports the proposal to create a robust, public non-exhaustive list of activities eligible for CRA consideration. The database would be enhanced by including case studies that would describe the project or activity and include an explanation of why specific activities are deemed CRA "eligible" or "ineligible." Further, a formal line of communication between a CRA regulator and a bank's CRA team will contribute to the success of a database of opinions and case studies that can serve as a training tool and source of information for both examiners and bankers.

Questions and Answers

- *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?*

  Yes, this would be a valuable complement to the other list.

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

An online portal and email address, common to all Agencies, should be maintained whereby banks may submit requests. A confirmation "ticket" should be immediately returned with two dates – one, a 30-day date, on which the Agencies will report on the status of the request. The second date would be a 60-day date, on which a response is guaranteed. In the presence of a need for final deliberation, the Agencies may proceed for another 15 days thereafter, after which, no final answer being given, the activity will be presumed to be approved.

- *Question 33. Various processes and actions under the proposed rule, such as the process for confirming qualifying community development activities in § __.14, the designation of census tracts in § __.12, and, with respect to recovery activities in designated disaster areas, the determination of temporary exception or an extension of the period of eligibility of activities under § __.13(h)(1), would involve joint action by the Agencies. The Agencies invite comment on these proposed joint processes and actions, as well as alternative processes and actions, such as consultation among the Agencies, that would be consistent with the purposes of the Community Reinvestment Act.*

  The Agencies should ensure their internal, interagency review processes are sufficiently streamlined to respond within 60 days. Only a swift process will be useful.

V. Impact Review of Community Development Activities

CDBA strongly supports the inclusion of impact reviews in the consideration of community development activities. We agree that certain activities should be considered more responsive than others if those activities effectively meet an identified community development need. We especially appreciate the explicit mention of credit for "Activities Serving Persistent Poverty Counties and Geographies with Low Levels of Community Development Financing," "Persistent Poverty Counties," and "Activities Supporting MDIs, WDIs, LICUs, and Treasury Department-Certified CDFIs," and "Activities Serving Low-Income Individuals." However, as noted below, we urge the Agencies to be careful around definitions of certain activities. Further, impact should emphasize certain smaller transactions to ensure that their importance is recognized, including community development grants. Grants, especially those that are unrestricted, provide an outside benefit to communities relative to their size. Even a very small grant (e.g. $5,000) can make the difference between a valuable program's success or discontinuance. We urge the Agencies to consider applying a multiplier value to CD grants to ensure their dollar value is not lost in calculations.

Questions and Answers

- *Question 34. For the proposed impact review factors for activities serving geographic areas with high community development needs, should the Agencies include persistent poverty counties, high poverty census tracts, or areas with low levels of community development financing? Should all geographic designations be included or some combination? What considerations should the Agencies take in defining these categories and updating a list of geographies for these categories?*

Yes, the Agencies should include persistent poverty counties, high poverty census tracts, or areas with low levels of community development financing. The census tract approach alone (focusing on CTs where the rate of poverty is at 40 percent) is a high bar – especially in less dense rural areas where poverty is diluted in census tracts, it may not succeed in encouraging activity.

- *Question 35. For the proposed factor focused on activities supporting MDIs, WDIs, LICUs, and Treasury Department-certified CDFIs, should the factor exclude placements of short-term deposits, and should any other activities be excluded? Should the criterion specifically emphasize equity investments, long-term debt financing, donations, and services, and should other activities be emphasized?*

  CRA should encourage long-term investments, including deposits, in these institutions. *Importantly, CDFI depositories (banks and CUs) as a category must be explicitly included.* Experience shows that when CDFI depositories (as opposed to loan funds) are not explicitly noted in the term "CDFI", examiners fail to recognize them.

  In order to encourage long-term commitments, the Agencies may consider setting a floor of one year for any such activity to qualify, with an escalating level of credit for activities that are three years, five years and ten years, with anything over five years receiving three times the credit of a one year. In the case of shorter term deposits, if both the bank placing the deposit and the institutions receiving it agree and then document that the deposit advances the receiving institutions community development mission, the deposit should still receive credit, although perhaps not qualify for an impact factor.

  The Agencies should also consider the number of years the placing bank has held the deposit. For example, institutions may place one-year deposits but renew them annually (e.g. a one-year term deposit held renewed every year for three years.) This activity should not be entirely discounted, as long as it meets the minimum term for consideration.

  We also urge the Agencies to ensure that activities conducted with non-profit affiliates as well as wholly owned subsidiaries of CDFIs (including depositories) and MDIs, as well as LLPs and other funds managed by these entities, should be eligible for consideration. CDFIs are increasingly engaged in complex financing instruments that necessitate the formation of subsidiary or affiliate entities that advance the CDFIs mission, but don't independently justify the costs of applying for and maintaining CDFI certification – it is critical that these are included in this definition.

- *Question 36. Which of the thresholds discussed would be appropriate to classify smaller businesses and farms for the impact review factor relating to community development activities that support smaller businesses and farms: the proposed standard of gross* *annual revenue of $250,000 or less, or an alternative gross annual revenue threshold of $100,000 or less, or $500,000 or less?*

Reporting should be aligned across Agencies and rules. For the purposes of implementing Dodd Frank Rule 1071, the CFPB has proposed to define small business lending as business with gross annual income of $5 million or less. This should be the threshold size standard for CRA consideration. To the extent the Agencies wish to incentivize lending to small institutions, additional impact consideration should be given starting at the pre-existing FRB CRA threshold of $1 million, and increasing gradually from there downwards as the business grows smaller, with increases in the impact factor at $500 thousand and $250 thousand.

In line with the "Deep Impact Lending" incentive set by the U.S. treasury for banks participating in the Emergency Capital Investment program (ECIP), loans under $100 thousand could receive a higher impact factor for consideration.

- *Question 37. For the proposed factor of activities that support affordable housing in high opportunity areas, is the proposed approach to use the FHFA definition of high opportunity areas appropriate? Are there other options for defining high opportunity areas?*

  The FHFA definition of high opportunity areas is appropriate to consider, as the high cost of housing in these otherwise "low poverty" areas absorbs enormous resources from large portions of the population. CBDA members note that most affordable housing in rural areas is difficult to develop, maintain, and finance. All should receive *some* additional consideration. The rural-development factor adds a layer of complexity that, if needed, could be used for "extra" credit.

- *Question 38. For the proposed factor to designate activities benefitting or serving Native communities, should the factor be defined to include activities benefitting Native and tribal communities that are not located in Native Land Areas? If so, how should the Agencies consider defining activities that benefit Native and tribal communities outside of Native Land Areas?*

  Yes, activities benefitting Native and tribal communities that are not located in Native Land Areas should absolutely be included. A "community" should be broadly defined to include one or more individual(s) who currently maintain membership in a government recognized native or tribal community and/or that would otherwise qualify for access to government resource as a member of such community, regardless of whether the resources are or are not tied to a particular residence.

<u>VI. AAs and Areas for Eligible Community Development Activity</u>

CDBA strongly supports retaining the emphasis on facility-based AAs, particularly continuing to allow small and intermediate banks to delineate facility-based AAs that include a partial county.

We also support the proposal to evaluate large banks on lending conducted outside of facility-based AAs. However, we believe that Agencies should consider whether the loan number thresholds might risk delineating more AAs than is material.

We join colleagues in recommending 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. We agree with the substance of the American bankers Association comments submitted before the U.S. House Financial Services Committee on July 13, 2022:[13]

> "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 AAs."

We further agree that "The proposed thresholds could unintentionally incentivize banks to curtail retail lending in locations that are incidental to the bank's business strategy and where the bank does not actively market its loan products . . . some banks may choose to take a hard look at the costs and benefits of accepting loan applications from and managing a CRA program in a geography that is incidental to the bank's business strategy."

We urge the Agencies to consider alternatives that build upon the loan number thresholds. We are aware of scenarios examined by the Urban Institute in partnership with the National Association of Affordable Housing Lenders that filter on both a bank's loan count and its market share. We believe they deserve careful consideration.

Questions and Answers

- *Question 39. Should both small and intermediate banks continue to have the option of delineating partial counties, or should they be required to delineate whole counties as facility-based AAs to increase consistency across banks?*

  Yes, both small and intermediate banks should continue to have the option to delineate partial counties.

- *Question 40. Do the proposed definitions of "remote service facility" and "branch" include sufficient specificity for the types of facilities and circumstances under which banks would be required to delineate facility-based AAs, or are other changes to the CRA regulations necessary to better clarify when the delineation of facility-based AAs would be required?*

  The definitions are sufficiently specific. However, a deposit-taking ATM should not alone automatically trigger the full lending, service, and community development obligations

[13] Statement for the Record On Behalf of the American Bankers Association Before the Subcommittee on Consumer Protection and Financial Institutions of the U.S. House Financial Services Committee, July 13, 2022

of a facility-based AA. For example, placing a single deposit taking ATM in a non-AA county adjacent to a facility-based AA, should not in-and-of itself require the delineation of a new AA. However, in order to guard against deposit-stripping, the Agencies could consider requiring delineation of a an AA for a deposit-taking ATM in a non-adjacent county, subject to review for performance context.

- *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?*

  It seems appropriate to delineate a facility-based AA around a site where this activity is undertaken, as long as the activity is undertaken consistently and predictably. However, we caution against strictly construing the requirement in way that would discourage community development service activities (such as mobile branches on wheels) that focus on providing access to deposit services in remote or otherwise underserved areas with low levels of economic activity. As always, performance context will be important.

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

  Yes, "accepts deposits" should be included in the definition of a branch.

- *Question 43. If a bank's retail lending AA is located in the same MSA (or state non-MSA area) where a smaller facility-based AA is located, should the bank be required to expand its facility-based AA 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 AA as a new retail lending AA?*

  In these circumstances, the bank should have the option to designate the portion of the MSA that excludes the facility-based AA as a new retail lending AA.

- *Question 45. The Agencies' proposals for delineating retail lending AAs 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?*

  While we support the concept of evaluating lending outside of facility based AAs, we urge the Agencies to consider whether the current formulation risks setting thresholds too low for the establishment of retail lending AAs, potentially leading to the delineation of a larger number of retail lending AAs than may be material. We urge the Agencies to consider alternatives that serve the intention of evaluating a bank's performance where there is a concentration of loans, while including consideration for a bank's presence relative to the overall market.

We are aware of scenarios examined by the Urban Institute in partnership with the National Association of Affordable Housing Lenders (NAAHL) that filter on both a bank's loan count and its market share. We are also aware of the American Bankers Association (ABA) proposal that the Agencies evaluate lending outside of facility based AAs at the institutions level. We believe both the Urban/NAAHL analysis and the ABA proposal, deserve careful consideration.

- *Question 47. The Agencies propose to give CRA consideration for community development financing activities that are outside of facility-based AAs. What alternative approaches would encourage banks that choose to do so to conduct effective community development activities outside of their facility-based AAs? For example, should banks be required to delineate specific geographies where they will focus their outside facility-based AA community development financing activity?*

  The Agencies should absolutely encourage community development financing activities that are outside of facility-based AAs. Banks should be given wide flexibility to respond to national needs and markets. This will ensure that banks can be responsive to price distortions (e.g. those that have occurred with LIHTC pricing in certain markets where competition has pressed the economic return so low as to be infeasible while leaving other communities entirely un-served). Needs in communities will vary from year to year and exam cycle to exam cycle.

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

  Absolutely, all banks of any size should be given this option. It will encourage a dynamic, productive market among banks.

VII. Performance Tests, Standards, and Ratings in General

CDBA is pleased that the Agencies recognize the importance of an evaluation framework that reflects differences in bank capacities, business models, and strategies. We strongly urge the Agencies to include specific reference to the CDFI status of a CDFI bank in the performance context of all CRA performance tests.

Questions and Answers

- *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?*

Tracking and reporting community development service should be required for all large banks, not just those in the $10 billion plus asset category. Further, more guidance should include how community development service could be incorporated into the evaluations of small and intermediate banks (at the bank's option), as community banks are often active in making these contributions in these communities, and are justifiably proud of their contributions.

We also note that tailored approaches exist for the relatively few (by number) wholesale banks, limited purpose banks, and banks that are approved to be evaluated under a strategic plan. We note especially that at least one prominent limited purposes bank manages to conduct nearly the entirety of its lending via credit card, but is able, under the proposal, to avoid being examined on its credit card lending.

As the number of CDFI banks continues to grow, and the assets represented by these institutions with it, the particular business model of the CDFI sector increasingly demand an equivalent recognition. It is entirely appropriate given the complementary goals of CRA and the CDFI program that a more tailored approach for CDFI banks be considered.

- *Question 50. The proposed asset thresholds consider the associated burden related to new regulatory changes and their larger impact on smaller banks, and it balances this with their obligations to meet community credit needs. Are there other asset thresholds that should be considered that strike the appropriate balance of these objectives?*

  The proposed asset thresholds are a step in the right direction but require adjustment. We urge the Agencies to consider the following small adjustment: The small bank upper limit should be set at $750 million *to confirm to the SBA's size standard*. The intermediate bank threshold should be set at $2.5 billion. The large bank threshold may be retained at $10 billion.

- *Question 51. Should the Agencies adopt an asset threshold for small banks that differs from the SBA's size standards of $750 million for purposes of CRA regulations? Is the proposed asset threshold of $600 million appropriate?*

  The Agencies should adopt a consistent threshold to conform to other Agencies and departments. $750 million, tied to inflation, is the correct threshold.

- *Question 52. The Agencies propose to require that the activities of a bank's operations and operating subsidiaries be included as part of its CRA evaluation, as banks exercise a high level of ownership, control, and management of their subsidiaries, such that the activities of these subsidiaries could reasonably be attributable directly to the bank. What, if any, other factors should be taken into account with regard to this requirement?*

  In this area especially, we caution the Agencies against making expansive assumptions or defining terms too broadly. For example, it is not correct that banks universally exercise "a high level of ownership, control, and management" of all of their affiliates, which in some circumstances may be considered as “subsidiaries”. For example, numerous CDFI banks have non-profit affiliates that provide substantial mission-support, but these nonprofits are likely to have their own boards of directors and have been capitalized in a wide variety of ways, with control being exercised in just as wide a number of ways.

We strongly recommend that the Agencies leave *reporting* for affiliates to the discretion of the banks.

- *Question 54. When a bank chooses to have the Agencies consider retail loans within a retail loan category that are made or purchased by one or more of the bank’s affiliates in a particular AA, should the Agencies consider all of the retail loans within that retail loan category made by all of the bank’s affiliates only in that particular AA, or should the Agencies then consider all of the retail loans made by all of the bank’s affiliates within that retail loan category in all of the bank’s AAs?*

  The current flexibility that allows a bank to choose to include or exclude the activities of other bank affiliates that are not considered “bank subsidiaries” should be maintained.

  Related, the NPR is unclear on how community development financing will be considered in the context of affiliates and subsidiaries. We recommend that any community development financing activity made by an affiliate or subsidiary be included at the bank’s request.

- *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?*

  We respectfully request that the Agencies refer to our recommendation in this letter to include a specific reference to the CDFI status of a bank in consideration of the performance context. Performance context is an essential part of the current examination process, and we are pleased that the NPR retains performance in each proposed performance context.

  We strongly urge the Agencies to explicitly document that CDFI certification must be considered as a fundamental and primary element of CRA performance context wherever performance context is considered in the final rule.

VIII. Retail Lending Test Product Categories and Major Product Lines

Questions and Answers

- *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?*

The Agencies are correct to note that that the factors driving demand vary over time and meet different credit needs. Therefore, the purposes and uses of these loans should not be aggregated, and instead evaluated separately.

- *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?*

  Closed end 2nd lien loans should certainly receive qualitative consideration. Home improvement and other purpose closed-end home mortgage loans can serve important uses in helping all communities. For example, affordable and appropriately marketed home improvement loans can assist LMI communities and communities of color maintain the value of their properties, ensuring that assets are not simply accumulated, but also retain or grow in value over time.

  However, past performance is no guarantee of future results. In the event demand for these sort of loans increased (e.g. as they might in a rising interest rate environment), the Agencies should consider how to ensure they are not excluded from receiving *quantitative* consideration.

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

  Yes, closed-end non-owner-occupied housing lending should be included in the closed-end home mortgage loan product category. Rental housing consists of more than apartments, and is increasingly in short supply. Home purchases supported by this form of capital have historically played an important role ensuring access to naturally occurring affordable housing as well as asset building, and should be evaluated for the purposes of CRA on the extent to which they serve these needs.

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

  Due to lower volumes, these loans should receive qualitative consideration under the retail services and products test, but should not be excluded from quantitative consideration under the retail lending screen. As we note in our answer to question 57, in the event demand for these sort of loans increased, the Agencies should consider how to ensure they are not excluded from receiving quantitative consideration.

- *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?*

  Multifamily lending should be considered under both the Retail lending and the CD Financing Tests. This product category engages two CRA-related considerations. Access to capital for purchasing and maintaining multifamily housing in underserved communities is historically important to maintaining and growing quality-housing stock in LMI communities, *and* it constitutes an important, and frequently accessed, portfolio product in many communities.

  Evaluating this product under both tests ensures an additional level of oversight for a product line that is essential to many LMI communities.

- *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?*

  This proposal is logical in the context of the existence of limited purpose banks with other focuses (e.g. credit card lending). We recommend that the Agencies continue to study this.

- *Question 62. Should the Agencies adopt a size standard for small business loans and small farm loans that differs from the SBA's size standards for purposes of the CRA? Is the proposed size standard of gross annual revenues of $5 million or less, which is consistent with the size standard proposed by the CFPB in its Section 1071 Rulemaking, appropriate? Should the CRA compliance date for updated "small business," "small business loan," "small farm," and "small farm loan" definitions be directly aligned with a future compliance date in the CFPB's Section 1071 Rulemaking, or should the Agencies provide an additional year after the proposed updated CRA definitions become effective?*

  This is a reasonable proposal to the extent that standards should be aligned. The Agencies should adopt the size standard that is consistent with the SBA standard and the CFPB's Section 1071 rulemaking. Regarding the compliance date, we note that Section 1071 has not yet been finalized, and the timeline is uncertain. Further, the proposed compliance period for Section 1071 was far too short, and the uncertainty around its implementation injects considerable uncertainty into this scenario.

- *Question 63. Should the Agencies' current small business loan and small farm loan definitions sunset on the compliance date of the definitions proposed by the Agencies?*

  Yes.

- *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?*

  We support the proposal to count an examined bank's purchased retail loans as equivalent to its retail loan originations, with limitations – Specifically, we propose limiting the number of times a purchased loan may receive credit. We suggest the Agencies consider conferring CRA credit only for loan purchases made from the originating lender – in this scenario, an individual loan would only provide CRA twice (Once at origination, and once as an initial purchase).

  We agree that "purchased loans can provide liquidity to banks and other lenders, such as CDFIs, and extend their capability to originate loans to low-and moderate-income individuals and in low-and moderate-income areas." If the Agencies limit the number of times that a loan can receive credit, we believe that will ensure a level of liquidity that is useful to communities without promoting "churn." In addition, purchased loans receiving credit for CRA consideration should be subject to a hold period of one (1) year.

- *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?*

  We do not believe that it is possible to discern a bank's motive (primary purpose) in this case, and therefore it is not appropriate to attempt to. The act of purchasing a loan creates liquidity, which is of value. As long as the count of purchases eligible for credit is limited, and a hold period is required (as above), the intentions of this question will be satisfied.

- *Question 66. Do the benefits of evaluating automobile lending under the metrics-based Retail Lending Test outweigh the potential downsides, particularly related to data collection and reporting burden? In the alternative, should the Agencies adopt a qualitative approach to evaluate automobile lending for all banks under the proposed Retail Lending Test?*

  For many CDFI banks to be examined fairly, it is preferable that all consumer lending, with consideration for loan number as well as dollar amount, be considered under the metrics-based test.

  Restricting the consideration of consumer loans to autos fails to incentivize small consumer loans and pay day loan alternative. Many CDFI banks offer these products and they do not add up to a large dollar volume, but some banks report that they occasionally approach 40% of loans by number. Banks need to be encouraged to provide these options to people who do not qualify for more traditional short-term loans (like credit cards).

- *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?*

  Yes, credit cards should be included in CRA evaluations for non-limited purpose banks if they constitute a major product line. For these banks that are not limited purpose banks, it is appropriate to evaluate credit cards quantitatively under the proposed Retail Lending Test. For banks that offer credit cards but for which it is not a major product line, they could be considered qualitatively under the proposed Retail Services and Products Test.

- *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?*

  We strongly urge the Agencies not to adopt a qualitative-only approach to consumer lending. The number volume of these loans is considerable for many CDFI banks, rural and urban, and the importance of well-designed consumer loans to LMI communities cannot be overstated. However, qualitative consideration is certainly important. CDBA recommends that the Agencies especially consider impact factors for small (under $10,000), low cost consumer loans to LMI people and places. These serve as alternatives to high cost, potential predatory loans form non-bank lenders.

- *Question 70. Should the Agencies use a different standard for determining when to evaluate closed-end home mortgage, open-end home mortgage, multifamily, small business, and small farm lending? If so, what methodology should the Agencies use and why? Should the Agencies use a different standard for determining when to evaluate automobile loans?*

  CDBA members suggest that overall, it is unnecessarily complicated to have different standards. We recommend the Agencies consider all consumer loans, or alternatively, *add* a category for smaller dollar consumer loans.

  For the Agencies' consideration, for rural community lenders in particular, multifamily lending can be significant for communities, but a small percentage relative to overall lending in AAs. The "predominantly" standard means that some banks won't have any multi-family loans considered unless they qualify as CD loans. The Agencies should consider that these relatively lower volumes of larger loans are still consequential for communities when determining the standards.

- *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?*

  It appears that under the proposed standard, very few multi-family loans will be captured by CRA data, particularly in communities where the loans do not meet the "predominantly" standard. We urge the Agencies to consider this in context of the ongoing crises in affordable housing.

IX. Retail Lending Test Evaluation Framework for Facility-Based AAs and Retail Lending AAs

We join bank industry colleagues in concern that the proposed Retail Lending benchmarks may be unachievable. If the retail lending benchmarks are unachievable, it could discourage banks from "aiming high" on the community development financing benchmarks. In this scenario, communities served by CDFIs as well as the CDFIs themselves could suffer. As the American Bankers Association noted in remarks to congress:

> "The proposed Retail Lending benchmarks may be unachievable . . . 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 . . . In fact, according to the preamble to the proposed rule, 34% of banks would fail the Retail Lending Test in their RLAAs and 39% would only receive a Low Satisfactory rating."

Given the unequal weighting of the retail lending test and the community development financing test in the assignment of conclusions and ratings, a large bank could very plausibly 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. Large CDFI banks that are exemplars of community development, both for providing a responsive mix of financing and deposit services, could be unjustly wrong-footed.

We strongly urge the Agencies to recalibrate the tests so that community development financing receives a greater incentive based on its own intended purpose and contribution to the community.

Questions and Answers

- *Question 72. For calculating the bank volume metric, what alternatives should the Agencies consider to the proposed approach of using collected deposits data for large banks with assets of over $10 billion and for other banks that elect to collect this data, and using the FDIC's Summary of Deposits data for other banks that do not collect this data? For calculating the market volume benchmark, what alternatives should the*

Agencies consider to the proposed approach of using reported deposits data for large banks with assets of over $10 billion, and using the FDIC's Summary of Deposits data for large banks with assets of $10 billion or less?

CDBA strongly urges the Agencies to consider alternatives to this iteration of the bank volume metric. Specific to this question, many banks serving predominately rural communities, with a strong correlation with CDFI banks, will probably find that geocoding deposit data is the only way to approach fair consideration of their local activity. However, this expensive and time-consuming exercise is not likely to solve the broader problem that this test poses.

As emphasized in our introduction and expanded on below, these banks maintain branches in areas where economic activity is low, and where the bank may be the only (or primary) local depository institution. We are concerned that in these circumstances will unjustly struggle to pass the test, despite serving as loyal pillars of an otherwise disinvested community – due to having too few loans to put in the numerator in the retail lending screen, but being obligated to put in all of the deposits.

- *Question 73. Should large banks receive a recommended Retail Lending Test conclusion of "Substantial Noncompliance" for performance below a threshold lower than 30 percent (e.g., 15 percent of the market volume benchmark) on the retail lending volume screen?*

  We are concerned that banks serving underserved and rural communities will find this standard is nearly impossible to meet in certain areas such as economically distressed counties with reduced economic activity, very few "small" loans, and low collateral values for commercial and residential real estate limiting the total volume of real-estate-secured loans. These banks, especially CDFI banks, will be unjustly penalized by meeting the demand for deposit services, even though demand for credit is low. We strongly recommend the Agencies consider alternatives.

  Increasingly, market economics force bank consolidation, but that does not mean that the appropriate lending patterns for small markets are equivalent to urban markets. CDBA acknowledges' the Agencies concerns about "deposit stripping" that appear to be driving the retail lending volume screen; however, the Agencies should not implement a pass/fail standard that will punish banks for offering high levels of financial services consistent with their missions, their market economics, and the goals of CRA.

- *Question 74. Should the geographic distribution evaluations of banks with few or no low- and moderate-income census tracts in their AAs 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?*

  Yes, the geographic distribution evaluations of banks with few or no low-and moderate-income census tracts in their AAs should include the distribution of lending to distressed and underserved census tracts. The Agencies should also consider allowing banks in this situation the option of being evaluated on the distribution of lending to Census block groups.

For banks in this situation, the distribution of lending to distressed and underserved census tracts could also be considered qualitatively, and additional weight placed on the community development financing test, which is already currently underweighted in the final calculation relative to the retail lending test.

- *Question 75. Is the choice of $250,000 gross annual revenue an appropriate threshold to distinguish whether a business or farm may be particularly likely to have unmet credit needs, or should the threshold be lower (e.g., $100,000) or higher (e.g., $500,000)?*

  This statistic will vary from market to market. We suggest the Agencies consider leaving the threshold to examiner discretion based on performance context, or using a sliding scale.

- *Question 76. Should the community benchmarks be set using the most recent data available at the time of the examination? Would an alternative method that establishes benchmarks earlier be preferable?*

  Earlier benchmarks are preferable. The benchmarks should be set using data that runs concurrent with the exam period. The benchmark should be set at the beginning of the exam period to set a "bar to clear," and can be adjusted downward to reflect leniency if lending opportunities worsen during their evaluation period.

- *Question 77. Should the bank volume metric and distribution bank metrics use all data from the bank's evaluation period, while the market volume benchmark and distribution market benchmarks use only reported data available at the time of the exam? Would an alternative in which the bank volume metrics and distribution bank metrics were calculated from bank data covering only the same years for which that reported data was available be preferable?*

  It is preferable to use an alternative in which the metrics and benchmarks use data covering the same years. The evaluation should only calculate volume and a distribution metrics from data covering the same years for which that reported data was available.

- *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?*

  We suggest that the Agencies consider that census tracts may not be the appropriate geographic measure for certain areas, especially rural areas. As discussed previously, within rural communities, census tracts that qualify as "middle distressed" or "underserved", have significant low-income populations. Rural census tracts cover large geographic areas and may include areas of concentrated poverty that can be recognized only at census block group level, or even only in smaller areas. We recommend that the Agencies consider how to adjust for these circumstances when evaluating rural banks, and we recommend that they avoid implementing the community benchmarks as proposed, as the census tract designation may be too narrow.

- *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?*

  We suggest that the evaluation consider all consumer loans rather than restricting the standard to auto loans.

- *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?*

  The calculations are too complex, and possibly too finely calibrated and sensitive, for us to provide an informed answer without more time and information. We recommend that the Agencies consider calculations with simpler thresholds that can be modified by examiners as informed by performance context, to ensure that individual institutions are meeting the needs of their widely distinctive communities.

- *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?*

  As above, we recommend that the Agencies consider calculations with simpler thresholds that can be modified by examiners as informed by performance context, to ensure that individual institutions are meeting the needs of their widely distinctive communities.

- *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?*

  As above, it is not clear how the Agencies would determine that "all lenders, or a significant share of lenders, are underserving the market and failing to meet community credit needs." We recommend that the Agencies consider calculations with simpler thresholds that can be modified by examiners as informed by performance context, to ensure that individual institutions are meeting the needs of their widely distinctive communities.

- *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?*

  The Agencies should consider that for many community banks, lenders will be more successful targeting activity to LMI geography rather than individuals, as individuals are not pre-screened by income level.

  In regards to the weights assigned, CDBA notes it seems unreasonable to strictly weight mortgage or consumer auto loans based on the percentage of low income residents. We believe the Agencies will need to carefully consider how performance context will be integrated into these metrics. For example, it appears to us that geographic distributions and borrower distribution should be weighted equally, with an exception for rural areas, or high cost/high density areas.

  Many LMI individuals cannot afford to purchase homes or automobiles particularly in counties in poor states with very low median incomes, and in high cost/high density urban areas where renting is the primary form of housing, and many resident forgo driving altogether due to the availability of public transit.

- *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 AA?*

  Loan count should be used in conjunction with dollar volume. Weighting by dollar volume only would slant the evaluation to larger loans, whereas considering number count only would incorrectly discount the potential contribution of loans made in areas with few opportunities.

- *Question 85. Would identifying underperforming markets appropriately counter the possibility that the market benchmarks might be set too low in some AAs? If so, what data points should be used to set expectations for the market benchmark? How far below this expectation should an observed market benchmark be allowed to fall before the market is designated as underperforming?*

  We believe it will be difficult to identify "underperforming" markets. The Agencies will need to work transparently with the multiple stakeholders to agree to appropriate data points and benchmarks in order to establish appropriate modeling. We urge the

Agencies to consider that there may not be many interested business and home borrowers in "underperforming" markets. In depressed markets, business prospects are uncertain, and it may be difficult to find an affordable home worth purchasing. In these circumstances, many LMI individuals may find that it is safer to rent.

- *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?*

  Yes, the Agencies should consider other factors. However, in issuing draft examination reports, the Agencies should explain what weight or consideration has been given to certain comments as opposed to others, and how those comments influenced the proposed outcome. FIs should be given the opportunity to review and rebut (if desired) any comments considered as contributing to draft results.

X. Retail Lending Test: Evaluation Framework for Retail Lending Test Conclusions at the State, Multistate MSA, and Institution Level

Questions and Answers

- *Question 88. Does the tailored benchmark method proposed above for setting performance ranges for outside retail lending areas achieve a balance between matching expectations to a bank's lending opportunities, limiting complexity, and setting appropriate performance standards? Should the Agencies instead use less tailored benchmarks by setting a uniform outside retail lending areas benchmarks for every bank? Or should the Agencies use a more tailored benchmarks by setting weights on geographies by individual product line?*

  Non-MSA areas within states can vary considerably. Performance context is lost when whole states (outside MSAs) are amalgamated, as is prescribed on page 237. We suggest that the Agencies use something more tailored, perhaps by allowing examiners to apply performance context more freely to achieve the required balance.

- *Question 89. Should AA and outside retail lending area conclusions be weighted by the average of a bank's percentage of loans and deposits there? Is the proposed approach for using FDIC's Summary of Deposits data for banks that do not collect and maintain deposits data appropriate? Should the Agencies use another method for choosing weights?*

  CDBA strongly urges the Agencies to ensure that deposits placed by mission-focused deposits, including government deposits and grants, in CDFI banks be excluded from the calculations for these metrics. CDFI banks should be given the option to segregate these deposits, however they are gathered (direct relationships, non-brokered reciprocal etc.) prior to such calculations.

CDBA members serve our Nation's most distressed, under-banked, and credit starved communities. CDFI banks often raise a portion of the deposits from civic-minded institutions and high net worth individuals. Not all depositors however, utilize the reciprocal deposits system, and come to the banks through other channels such as grant funding or direct purchase of certificates of deposit. This growing "impact investor" group is drawn to our members because of their missions and impact. Some of these depositors are located within the banks' local AAs; but many are not. An analysis by Intrafi (f.k.a. Promontory Interfinancial Network) has found that CDFI banks are four times more likely to use such non-brokered reciprocal deposits than their similar asset size peers; likewise, MDI banks are three times more likely to raise reciprocal deposits than their similar asset size peers.

If included in the retail deposit definition, these and other mission-driven deposits could discourage such mission-focused institutions from utilizing a historically important funding and liquidity source.

XI. Retail Services and Products Test

CDBA believes that CRA should promote financial literacy and inclusion among LMI populations, as well as unbanked, underbanked, and other vulnerable populations. Access to credit and financial services needs are critically important to the economies of physical places as well as individuals. Given the Persistence of payday lenders and other predatory providers in both physical and the online worlds, CRA should continue to ensure LMI communities have robust access to responsibly designed products and services.

A revised CRA that includes a focus on financial inclusion needs to recognize a broader range of alternative financial services and delivery mechanisms and develop proxies for measuring financial inclusion – particularly among vulnerable populations. This might mean expanding the definition of CRA qualified activities to include an enhanced emphasis on consumer credit, credit building products, and financial literacy. A qualitative review will be necessary.

For example, to meet the convenience and needs of customers in the current technology driven era, we recommend that CRA encourage banks to work towards systems that provide CRA qualifying services via digital channels based on customers' geocoded addresses – if a customer resides in an LMI census tract, services delivered to that customer should be CRA eligible. However, geography should not be the sole factor, nor should it be necessary to tailor a service, product, or delivery strategy *exclusively* to LMI customers. If a bank, however, does develop a tailored product or service that is accessible to and can benefit LMI customers, and can demonstrate that the product has penetration within LMI communities, examiners should afford CRA consideration for the product or service. Technology driven products developed to foster financial inclusion, asset building and access to credit in LMI areas or within communities, should contribute to a bank's CRA performance via impact factors regardless of a target customer's location relative to a facility-based AA.

Regarding traditional branches, as reflected in questions 98 and 99, we strongly support the proposal to provide favorable consideration for banks that operate branches *within or nearby* census tracts as having low or very low branch access. It is very important that banks be able request consideration of branches located within middle- and upper-income tracts that are adjacent or demonstrably accessible to LMI tracts. However, in this circumstance, the banks must then demonstrate that services offered at those branches are both accessible and marketed to adjacent LMI communities.

<u>*Questions and Answers*</u>

- *Question 90. Should the Agencies use the percentage of families and total population in an AA 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?*

  Population incomes shift over time, making this census tract-based quantitative approach an unreliable indicator. We urge the Agencies to provide some analysis of population shifts over time, and provide some consideration for how banks are supposed to respond in regards to their branch locations in the face of these changes.

- *Question 91. Are there other alternative approaches or definitions the Agencies should consider in designating places with limited branch access for communities, such as branch distance thresholds determined by census tract population densities, commuting patterns or some other metric? For example, should the Agencies not divide geographies and use the more flexible, second alternative approach?*

  We appreciate the option in the alternative approach which is responsive to local variation in population density and land-use, which more closely provides the opportunity for local areas with varying concentrations of residents to be identified.

- *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?*

  The outline of the "alternative approach" is preferable and more closely reflects the practical situation for the range of situations faced by individuals.

- *Question 93. How narrowly should designations of low branch access and very low branch access be tailored so that banks may target additional retail services appropriately?*

  The designation should be made as broad as possible to accommodate the variety of experiences of individuals and families within low branch access communities.

- *Question 94. Is a fixed distance standard that allows the concentration of low and very low branch access areas to vary across regions, such as that in the proposed approach, or a locally-determined distance threshold that identifies a similar concentration of low and very low branch access areas within each local area, such as that in the alternative approach, most appropriate when identifying areas with limited branch access?*

  Fixed distance is an imperfect standard. A locally determined distance threshold is more responsive and appropriate.

- *Question 95. Should the Agencies take into consideration credit union locations in any of the proposed approaches, or should the analysis be based solely on the distribution of bank branches? For example, in the proposed or local approach, having a credit union within the relevant distance of a census tract population center would mean that the census tract would not be a very low branch access census tract (if there were no bank branch present).*

  Credit union branches should not be considered in any of the proposed approaches. Banks and credit unions are similar, but far from identical. On the lending side specifically they often pursue very different business models. Further, it would be inconsistent to consider credit union (non-bank) branch locations in this manner, and not correct for other non-bank credit activity (e.g. home mortgage and small business lending) in the calculation of community benchmarks under the lending test.

- *Question 96. If the local approach were adopted, how frequently should the local distances be updated?*

  A short time period, certainly under three years. This will be facilitated by selecting simpler approaches, rather than complex ones.

- *Question 97. What other branch-based services could be considered as responsive to low-and moderate-income needs?*

  CDFIs have successfully launched both branch-based and technology-driven consumer products such as credit-builder loans, pre-paid debit cards, small dollar loans, youth and school based savings accounts, one-on-one accounts assistance for those who struggle with technology, matched-savings in the form of individual development accounts (IDAs) offered with nonprofits, and affordable remittances intended to provide unbanked and under-banked customers with access to responsible services. Some banks are successfully working with technology vendors to bring real-life branch staff to customers remotely, via digital vendors, effectively expanding branch services outside of the physical lobby.

  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?

Yes, branches in distressed or underserved middle-income nonmetropolitan census tracts should receive qualitative consideration without having to document that the branch provides services to low-or moderate-income individuals.

- *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?*

  Yes. Many banks might have branches that are across the street from LMI tracts, and that serve the residents of those tracts. We urge the Agencies to acknowledge that census tract lines are arbitrary and few bank customers even know when they cross such boundaries. Proximity to LMI tracts should be considered as part of performance context and left to examiner discretion.

- *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?*

  CDBA suggests the Agencies consider the product design, marketing and product uptake of products via digital channels on a qualitative basis. A digital delivery channel might demonstrate its bank's responsiveness to the needs of its communities by exhibiting certain accessibility, cost and financial inclusion features. Technology driven products developed to foster financial inclusion, asset building and access to credit in LMI areas or within communities should contribute to a bank's CRA performance regardless of a target customer's location relative to a facility-based AA.

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

  Yes, affordability should absolutely be a factor in evaluating digital and other delivery systems. The banks' efforts to make customers aware of new systems should also be considered.

- *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?*

  The evaluation of digital systems should be optional for banks in the intermediate category and above, with impact factors functioning as strong incentives that encourage innovation and responsiveness in the delivery of these products to LMI communities, particularly via partnerships with CDFI depositories and MDIs.

- *Question 104. Are there additional categories of responsive credit products and programs that should be included in the regulation for qualitative consideration?*

  These categories are largely adequate. The Agencies should also consider loans supported by the Federal Home Loan Banks, cities, states, counties (for example, down payment assistance) when available. Loans to LMI land trusts and Coops are also responsive and should receive consideration.

  The Agencies should clarify that since products and programs conducted in cooperation with mission driven institutions, including Treasury-Certified CDFIs, are automatically qualifying, that it will follow that activities conducted by CDFI banks are themselves de-facto deserving of positive consideration. Under no circumstances should a situation develop where a conventional bank receives de facto credit for an activity taken in cooperation with a mission-driven institutions (i.e. a CDFI bank), while the mission-driven institutions does not.

- *Question 105. Should the Agencies provide more specific guidance regarding what credit products and programs may be considered especially responsive, or is it preferable to provide general criteria so as not to discourage a bank from pursuing impactful and responsive activities that may deviate from the specific examples?*

  The guidance should be left general, and institutions should be allowed to self-identify responsive products and then justify their choices.

- *Question 106. Should special purpose credit programs meeting the credit needs of a bank's AAs 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?*

  One of the most promising tools to mitigate the racial wealth gap are the fair lending protections provided to institutions targeting products and services under the auspices of the Special Purpose Credit Program (SPCPs). We strongly urge the Agencies to provide positive CRA consideration to banks that implement SPCPs. We strongly urge the Agencies to adopt provisions that address racial disparities in lending by conferring positive CRA consideration to institutions targeting constructive, responsible products and services to historically underserved populations.

- *Question 107. Are the features of cost, functionality, and inclusion of access appropriate for establishing whether a deposit product is responsive to the needs of low-and moderate-income individuals? What other features or characteristics should be considered? Should a minimum number of features be met in order to be considered 'responsive'?*

The Agencies should consider cards that accept deposits for social benefits (aka conditional cash transfers), "second chance" accounts that do not require ChexSystem approval and feature no- or low-fees, no- or low-minimum balances, as well as flexible, transparent and non-punitive overdraft policies to help customers get caught-up.

The Agencies should avoid setting a minimum threshold for consideration of responsiveness, as product design offsets may be required to ensure a product is viable in a marketplace. A bank should be able to explain in the course of an examination how the product is responsive to the needs of its particular community.

- *Question 108. The Agencies wish to encourage retail banking activities that may increase access to credit. Aside from deposit accounts, are there other products or services that may increase credit access?*

  Credit builder loans, whether card based or otherwise, are promising products. We are aware of numerous variations that should receive positive consideration.

- *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?*

  In the case of CDFI banks, the performance context should state that the gross sum of a CDFI bank's deposit products are by definition adequately responsive. By definition the bank has demonstrated during its certification that a maximum amount of its "Financial Services" is reaching (i.e. being used by) a CDFI Fund Target Market.

  However, we caution that it is likely too complex for most institutions to track the total number of active responsive deposit products relative to all active consumer deposit accounts offered by the bank, and that non-CDFI banks may find this too challenging.

- *Question 110. Should the Agencies take other information into consideration when evaluating the responsiveness of a bank's deposit products, such as the location where the responsive deposit products are made available?*

  Yes, the location of a product's availability is reflective of its responsiveness. A product focused on advancing financial inclusion is unlikely to be adopted if it is only offered in-branch in an upper-income census tract. However, we caution that the same product offered in branch in a low-income census tract is also unlikely to be responsive if the product is not marketer or staff are not trained in its design and purpose.

- *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?*

Large banks with assets of $10 billion or less should have the option of a qualitative review, with the focus on product design, overall option, and demonstration of products being openly available.

- *Question 112. For all large banks, the Agencies propose to evaluate the bank's delivery systems (branches and remote service facilities) at the AA 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?*

  The proposal to evaluate the bank's delivery systems (branches and remote service facilities) at the AA level, and the digital and other delivery systems at the institution level, is appropriate as written.

- *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?*

  The weighting should be appropriate to the business model. The review of CDFI banks' digital and other delivery systems should take into account the requirement for CDFI banks to quantitatively demonstrate their service in CDFI Fund Target Markets, regardless of delivery channel. In this sense, if CDFI certification is the primary lens for this review, the relative balance of digital vs "other" will effectively be neutral, allowing the CDFI bank to respond to the needs of LMI communities as environment conditions require.

- *Question 114. How should the Agencies weight the two subcomponents of the credit and deposit products evaluation? Should the two subcomponents receive equal weighting, or should examiner judgment and performance context determine the relative weighting?*

  Examiner judgment and performance context should determine the relative weighting.

- *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?*

  In order to encourage responsiveness innovation a bank's business model and performance context should determine this weighting.

XII. Community Development Financing Test

CDBA strongly supports the proposal that under the proposed test, banks "would receive consideration for qualifying activities anywhere in a state or multistate MSA in which they maintain a facility-based AA, when determining the conclusion for that state or multistate MSA.

In addition, banks would receive consideration at the institution level for any qualifying activities conducted nationwide." This is an important step forward to ensuring that CD financing activity can be directed appropriately.

We are concerned that the proposed new Community Development Financing Test risks reducing the amount of long term, patient and responsive capital flowing to essential project in the form community development investments. Specifically, combining the community development and lending tests together into a single test risks the likelihood that large banks will undertake fewer of more complicated, or perhaps small, but certainly impactful, transactions. We have heard equally from colleagues concerned about the effects on both CD lending and CD investing. It seems that neither lending nor investments benefits from being blended into a single, static calculation. One possible alternative is to create lending and investment subtests that weight lending and investing equally as a standard, and allows examiners to adjust the weights in response to compelling performance context.

Most crucially, assigning the test a weight of only 30% in a final rating further diminishes its importance. We propose that the Agencies consider weighting the community development finance test equally to the retail lending test.

Regarding impact factors, we approve of aspects of the impact review that would adjust a rating for activities undertaken that are smaller dollar amounts but are more responsive to local needs. However, in order for commenters to provide substantive, useful commentary, the impact review and its factors must be further developed to be more specific as to the role of examiners, and the relative level that the factors can influence results.

We believe that the qualitative review correctly identifies community development financing as impactful if it is directed to counties with persistent poverty, Native American communities or counties experiencing a dearth of community development finance. However, we believe it should be made clear that deposits and equity investments in CDFI depositories, including banks, qualify for CD consideration, regardless of where the receiving CDFI bank is located relative to the examined bank. Moreover, while deposits are technically debt-like liabilities on the balance sheet of depositories, we note they have traditionally been considered "investments" for the purposes of community development finance, and we urge the Agencies to consider retaining deposits in the "investment portion" of the test for the purposes of the test.

<u>*Questions and Answers*</u>

- *Question 117. Should activities that cannot be allocated to a specific county or state be considered at the highest level (at the state or institution level, as appropriate) instead of allocated to multiple counties or states based upon the distribution of all low-and moderate-income families across the counties or states?*

Yes, these activities should be considered at the highest level if they cannot be allocated to a specific county or state. Allocating the activity across multiple counties of states would be an impossible burden for many of the local, often non-profit, bank partners that help banks serve these communities.

- *Question 118. What methodology should be used to allocate the dollar value of activities to specific counties for activities that serve multiple counties? For example, should the Agencies use the distribution of all low-and moderate-income families across the applicable counties? Or, should the Agencies use an alternative approach, such as the distribution of the total population across the applicable counties? Should the Agencies consider other measures that would reflect economic development activities that benefit small businesses and small farms or use a standardized approach to allocate activities?*

  The Agencies could use the distribution of all LMI families across the applicable counties, or a simpler approach of dividing all families might work as well.

- *Question 119. The agencies are seeking feedback on alternatives to determining the denominator of the bank AA community development financing metric. What are the benefits and drawbacks, including data challenges, of implementing an alternative approach that bases the denominator of the metric on the share of bank depositors residing in the AA (described above) in contrast to the proposed approach of relying on dollar amounts of deposits?*

  It is appropriate to use the dollar amount of deposits in an AA as the denominator of the community development financing metric. As discussed, CDBA strongly urges the Agencies to allow CDFI banks to exclude deposits placed by CRA and impact-focused depositors, including government deposits and grants made to affiliated nonprofits, from the calculations for this metrics. These could include direct relationship deposits, non-brokered reciprocal deposits and "one way" deposits placed through private networks. CDFI banks should be given the option to segregate these deposits prior to such calculations.

- *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?*

  In the absence of requiring the collection and maintenance of deposit data, summary of deposit data is the only way. However, it will be exceptionally difficult for banks in this category to calculate this metric on a quarterly, much less annual basis.

  We recommend that Banks in this category that wish to rely on Summary of Deposits data, knowing the potential risk, should be permitted this option. We expect that many banks will be more accurately represented via geocoding. However, we caution the

Agencies that the compliance burden placed on these banks may be higher than expected or understood. We strongly recommend that the Agencies consider reverting to the existing, simple loan-to-deposit ratio.

- *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?*

  Examiner judgement should be used to weight bank performance. However, the Agencies should encourage (rather than allow), through impact ratings and other methods, community development financing activity outside of a bank's AAs by ensuring it receives equal weight in the upper level considerations.

- *Question 122. What other considerations should the Agencies take to ensure greater clarity and consistency regarding the calculation of benchmarks? Should the benchmarks be calculated from data that is available prior to the end of the evaluation period, or is it preferable to align the benchmark data with the beginning and end of the evaluation period?*

  The benchmark data should align with the beginning of the evaluation period.

- *Question 123. When calculating the weighted average of facility-based AA conclusions and AA community development financing benchmarks, is it appropriate to weight AA metrics and benchmarks by the average share of loans and deposits, as proposed?*

  Yes, is it appropriate to weight AA metrics and benchmarks by the average share of loans and deposits.

  Applying CDFI status to bank performance context will continue to be essential, especially in this area. Although the deposit volume might be higher in an MSA than in a rural community, if a bank is the primary institution in the rural area, its community investment impact is much more significant (it may be the only financial institution supporting the community.) We strongly urge the Agencies to ensure the final rule accounts for that, acknowledging the reality that a given bank may be the last stalwart pillar of the community. The final rule should explicitly encourage other financial institutions to partner from outside the AA, without establishing unrealistic obligations (e.g. inflated lending obligations) for the original bank.

  Performance context will be especially important for non-MSA CDFI bank branches when they are one of only a couple financial institutions in a county. For example, an MSA branch in an otherwise rural community may draw a lot of loans and deposits, but other banks will be making CRA loans and investments and a CDFI bank's impact (for this purposes of this calculation) may be modest. In contrast, the CDFI Bank's loan and deposit volumes in a thinly populated rural area could be lower, but the need is much greater.

- *Question 125. Considering current data limitations, what approaches would further enhance the clarity and consistency of the proposed approach for assigning community development financing conclusions, such as assigning separate conclusions for the metric and benchmarks component and the impact review component? To calculate an average of the conclusions on the two components, what would be the appropriate weighting for the metric and benchmarks component, and for the impact review component? For instance, should both components be weighted equally, or should the metric and benchmarks be weighted more than impact review component?*

  The differences between community development loans, investments and grants are wide enough, and fluctuate enough, that these activities should not be combined in the way proposed to generate these conclusions. Further, a rigid balance is not appropriate. We strongly urge the Agencies to consider performance context to set the relative balance of the components.

- *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?*

  The more transparent the better. However, the Agencies must take care to shield loan data that can easily be identified, and is not already public information. For example, data on census tract, Gross Annual Revenue (if collected) and borrower NAICS codes could easily be used to identify a borrower in a less populated rural or Native American community. CDBA recommends that the Agencies use great caution in releasing even aggregated data. Transparency could refer to the methodologies and considerations used by examiners in forming performance context and assigning, as well as some of the generalized justifications given by individual banks to support the inclusion of transactions in their CD test, along with the examiners' responses.

XIII. Community Development Services Test

As we note in Section XI., CRA should help promote financial literacy and inclusion among LMI populations, as well as unbanked, underbanked, and other vulnerable populations. Access to credit and financial services needs are critically important to the economies of physical places. Thus, CRA should continue to ensure LMI communities have robust access to such services. Given the persistence of payday lenders and other predatory providers who target vulnerable people, CRA needs a complementary prong that focuses on financial literacy and inclusion.

The community development services test also provides an opportunity to recognize efforts to mitigate and begin to reverse the effects of the racial wealth gap, encouraging activities that promote underserved communities economic empowerment.

Questions and Answers

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

  Volunteer activities unrelated to the provision of financial services, but that help individuals meet basic needs such as shelter, education, safety, and food should be considered in all areas, as long as the services can be demonstrated to provide a primary benefit to LMI and otherwise historically underserved populations. This subject also serves as an opportunity for the Agencies to recognize activities that are focused on community economic empowerment and reversing the racial wealth gap. For example, a CDBA member bank leads a national "Underwriting for Racial Justice Working Group." The membership is comprised of banks, non-bank CDFIs, community groups and advocates, and has worked towards the explicit goal of increasing credit access to people rising from longstanding systemic inequities and barriers, particularly minority communities.

- *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?*

  A metric of community development service hours per full time employee is appropriate. The collection and maintenance of these hours appears to be fundamental to considering them on a qualitative scale, otherwise one hour of board service might end up being weighed equally with ten hours of financial literacy. For any bank that is being examined for this test, the quantitative element is important.

- *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?*

  The definition of "employee" should include all bank executives and staff. It is not necessary to provide greater emphasis on service provided by executives, nor is it necessary to discount an hour of service provided by a part-time employee.

- *Question 130. Once community development services data is available, should benchmarks and thresholds for the bank AA 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?*

We urge the Agencies to consider weighting service hours roughly equivalent to dollar donations.

XVI. Assigned Conclusions and Ratings

CDBA supports the five categories of performance test conclusions that splits the category of satisfactory into high satisfactory and low satisfactory for large banks. However, as above, we are concerned that the act of combining the community development and lending tests together into one test, and assigning the resulting test a weight of only 30% in generating a final rating, risks reducing the amount of long term, patient capital flowing to essential project in the form community development investments.

In the current scenario the weighting over-emphasizes the Retail Lending Test and 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 AAs of most banks.

Questions and Answers

- *Question 139. The Agencies request feedback on whether it would be more appropriate to weight retail lending activity 60 percent and community development activity 40 percent in deriving the overall rating at the state, multistate MSA or institution level for an intermediate bank in order to maintain the CRA's focus on meeting community credit needs through small business loans, small farm loans, and home mortgage loans.*

  The retail lending test and the community development finance test should be equally weighted to ensure resources are more effectively directed to underserved communities.

  Within the CD finance test, we recommend the Agencies disaggregate loans and investments, and giving distinct, equal weight to grants and donations. In this scenario, the CD financing test would be presumed to begin at an equal split between loans, investments and donations (after accounting for donations smaller size and high impact/utility). Examiners should have leeway to consider the performance context in any re-weighting.

- *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 AAs unless 60 percent or more of the bank's AAs at that level have an overall performance of at least "Low Satisfactory"? Should this limitation* *apply to all AAs, or only facility-based AAs? Is ten AAs 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?*

We strongly recommend that the Agencies do not implement this rigid cut-off for CRA ratings, and instead we refer the Agencies to our discussion earlier in this letter. While we agree that banks should strive to serve all of their markets, there will always be variation in a banks' ability to serve a given AA. Branch presence, tenure in the community, and economic conditions all impact CRA performance. These thresholds as conceived could cause banks to close branches in their weaker markets, causing the loss of competitive financial services in areas where they are needed but already in decline.

XVII. Performance Standards for Small Banks and Intermediate Banks

CDBA strongly supports allowing small banks the option to be examined under the current evaluation for small banks, and we support evaluating intermediate banks under the retail lending test, with caveats as discussed above. In particular, we believe the proposed increased asset thresholds are a step in the right direction but require adjustment. The small bank upper limit should be set at $750 million to conform to the SBA's size standard. The intermediate bank upper limit should be set at $2.5 billion to more closely track the Federal Reserve's definition of a large bank holding company.

Questions and Answers

- *Question 141. The Agencies propose to continue to evaluate small banks under the current framework in order to tailor the evaluation approach according to a bank's size and business model. What are other ways of tailoring the performance evaluation for small banks?*

  CDBA strongly urges the Agencies to implement recommendations made earlier in this letter: That the Agencies should regard the CDFI status of a bank as a fundamental and preliminary consideration for all iterations of performance context within the tests; presumption of an institutional "satisfactory rating," for all CDFI banks; and inclusion of activity within CDFI Fund- approved Target Markets.

- *Question 142. Should additional consideration be provided to small banks that conduct activities that would be considered under the Retail Services and Products Test, Community Development Financing Test, or Community Development Services Test when determining the bank's overall institution rating?*

  Small banks should absolutely be given the option to receive consideration for activities outside of their formal test that they believe may contribute positively to the CRA exam. In the case of CDFI banks, these activities would be necessarily considered due to the inclusion of CDFI certification in the performance context, as well as the presumption of satisfactory. Data required for all small banks examinations should derived as completely as possible from existing data already submitted by banks for the purposes of regulatory and compliance purposes.

- *Question 143. The Agencies' proposal to require intermediate banks to be evaluated under the proposed Retail Lending Test is intended to provide intermediate banks with increased clarity and transparency of supervisory expectations and standards for evaluating their retail lending products. The Agencies propose tailoring the application of this test by limiting data reporting requirements for intermediate banks. Are there other ways of tailoring the Retail Lending Test for intermediate banks that should be considered?*

  Intermediate banks should absolutely have a tailored test that reduces the data reporting requirements. As with banks of any size, data required for examinations should be derived as completely as possible from existing data already submitted by banks for the purposes of regulatory and compliance purposes. In the case of CDFI banks, these activities would be necessarily considered due to the inclusion of CDFI certification in the performance context, as we all as the presumption of satisfactory.

- *Question 144. The Agencies propose to provide continued flexibility for the consideration of community development activities conducted by intermediate banks both under the status-quo community development test and the proposed Community Development Financing Test. Specifically, intermediate banks' retail loans such as small business, small farm, and home mortgage loans may be considered as community development loans, provided those loans have a primary purpose of community development and the bank is not required to report those loans. Should the Agencies provide consideration for those loans under the Community Development Financing Test?*

  Yes, it is appropriate to provide consideration for intermediate banks' retail transactions under the status quo community development test and the Community Development Financing Test, provided they have a primary purpose of community development. This should be true whether or not the loans are otherwise required to be reported (e.g. for purposes of complying with CDFP Rule 1071.)

- *Question 145. Should intermediate banks be able to choose whether a small business or small farm loan is considered under the Retail Lending Test or, if it has a primary purpose of community development, under the applicable community development evaluation, regardless of the reporting status of these loans? Should the same approach be applied for the intermediate bank community development performance standards in § __.29(b) and for intermediate banks that decide to opt into the Community Development Financing Test in § __.24?*

  Intermediate banks should be able to choose which test a community development-qualifying loan or investment will qualifying under regardless of the reporting status of the loan or investment.

XVIII. Effect of CRA Performance on Applications

Questions and Answers

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

  The policies for considering CRA performance are adequate.

XIX. Data Collection, Reporting, and Disclosure

CDBA recommends that CRA reporting for CDFI banks align with reporting requirement across the bank regulatory and programmatic environment. Agencies implementing CRA share an interest in the same outcomes – improving the economic well-being of LMI communities through access to responsible credit and financial services. Yet the Agencies often very different definitions, regulatory standards, and reporting requirements. This lack of policy coordination results in voluminous double reporting that creates an unnecessary administrative burden and siphons resources away from entities serving underserved communities. We propose that the Agencies work to close the gap by developing common definitions and reporting standards, as well as sharing data. As noted elsewhere:

CDBA strongly recommends that the banking regulatory Agencies provide CDFI banks with the option to select a CRA test tailored to the unique business models of CDFI banks that will:

1. Maximize alignment of definitions used for CRA and CDFI certification, geographic service areas, program application, service tests, and reporting;
2. Reduce reporting burden by streamlining and sharing data submitted by CDFI banks for Call Reports, CRA, HMDA, CDFI annual re-certification, CDFI award compliance, the CFPB's Dodd-Frank Section 1071 rule (when finalized), and Treasury's ECIP and SSBCI programs.
3. Give CDFI banks CRA consideration for all activities performed within CRA AAs *and* CDFI Investment Areas, *and* that benefit low-income or Underserved Target Populations; and
4. Give CRA consideration for collecting social impact data and actively participating in CDFI Fund Programs or other Federal, state, or local programs that offer tools to enhance services to their CDFI Target Markets or to reach deeper to serve low-income people and communities.

Further we note that under the proposal, "*large banks would be required to collect and report annually to the Agencies a list showing the MSAs and counties within each retail lending AA.*" This is so that the Agencies could then "verify retail lending AA designations using HMDA and CRA small business/small farm data, and the Agencies could explore calculating retail lending AAs for banks." The first part of the provision requiring the banks to collect and report MSA and County information is an added burden and we believe the Agencies should develop this list themselves.

Questions and Answers

- *Question 147. What are the potential benefits and downsides of the proposed approach to require deposits data collection, maintenance, and reporting only for large banks with assets of over $10 billion? Does the proposed approach create an appropriate balance between tailoring data requirements and ensuring accuracy of the proposed metrics? Should the Agencies consider an alternative approach of requiring, rather than allowing the option for, large banks with assets of $10 billion or less to collect and maintain deposits data? If so, would a longer transition period for large banks with assets of $10 billion or less to begin to collect and maintain deposits data (such as an additional 12 or 24 months beyond the transition period for large banks with assets of over $10 billion) make this alternative more feasible?*

  To the extent this requirement exists outside of the retail lending volume screen, it is essential that the *requirement* to collect, maintain and report deposits data be limited only to large banks. We refer the Agencies to our discussion regarding the limitations of the retail lending screen, especially the very real risk that the screen distorts the performance of banks serving small, primarily rural communities. Small and intermediate banks should have the alternative of choosing whether to be considered on the basis of FDIC summary of deposits records *or* the more detailed reporting required for $10 billion + banks.

  In the event that large banks under $10 billion in assets are in the position of having to collect and maintain this data, they should be allowed time beyond the transition period to comply to make this approach both more feasible and, crucially more useful.

- *Question 148. Should large banks with assets of $10 billion or less that elect to collect and maintain deposits data also be required to report deposits data? Under an alternative approach in which all large banks with assets of $10 billion or less are required to collect and maintain deposits data, should these banks also be required to report the data, or would it be appropriate to limit new data burden for these banks by not requiring them to report the data?*

  No. Reporting the data is substantially more onerous than collecting and maintaining it for use during a CRA examination. It is more appropriate to limit new data burden for these banks by not requiring them to publicly report the data.

- *Question 149. What are alternative approaches to deposits data collection and maintenance that would achieve a balance between supporting the proposed metrics and minimizing additional data burden? Would it be preferable to require deposits data collected as a year-or quarterly-end total, rather than an average annual deposit balance calculated based on average daily balances from monthly or quarterly statements?*

If required at all, it is logical to collect this data on an average annual deposit balance based on average daily balances from quarterly statements. Quarterly statements would be less burdensome than monthly.

- *Question 150. Should deposits sourced from commercial banks or other depository institutions be excluded from the deposits data that is reported or optionally maintained by banks? Should other categories of deposits be included in this deposits data?*

  Please see our discussion regarding mission deposits and non-brokered reciprocal deposits and in CDFI banks.

- *Question 151. For what types of deposit accounts, such as pre-paid debit card accounts, and Health Savings Accounts, might depositor location be unavailable to the bank? For these account types, is it appropriate to require the data to be reported at the institution level? Should brokered deposits be reported at the institution level as well?*

  These types of deposits should only be considered at the institution level, since a consumer can purchase the product in one location and use it in another one. Generally, if the product does not require customer identification be gathered on the individual cardholder in accordance with FinCEN guidance, the bank is not certain to have cardholder location. Additionally, even for some products where a bank may have an address (such as corporate incentive), the cards are funded by a business entity and cards are distributed across the country. So if the cardholder lives in FL for example, it may have been funded by an entity in CA.

  We note that prepaid cards have proven a powerful tool to help the 8+ million US households that are "unbanked" or without a savings account. The large majority of these households are LMI. Prepaid cards can help unbanked consumers save money, transfer funds, make deposits, write checks and make purchases. Several CDFI banks have developed pre-paid card products that help transition unbanked and underbanked customers to a banking relationship.

  Many types of prepaid cards do not have an address associated with the purchaser or the user. For example, if a prepaid gift card is purchased at a retail store, no identifying information is collected on the purchaser or the end consumer of the card. Further, many prepaid cards are one-time use cards that may be issued in one geography, but customers can easily move them to a different geography. One of the key benefits of a prepaid card is that it is highly mobile. But, this feature makes it impossible for bank issues to track where the "deposit" is actually located for the purpose of calculating whether the deposit is within a facility based AA or not.

  We encourage the Agencies to consider the purpose of the products rather than the AAs in which the products are delivered. For example, an issuing CDFI bank may gather $100 million dollars in prepaid card deposits from throughout the United States. The CDFI bank may then use those funds to deploy a national lending program throughout the US that is designed to help LMI individual improve their credit or have access to pay day alternative loans. The bank should not be penalized for having $100 million of loans outside of the bank's assessment, particularly when the loan products are designed with the exact intent of helping LMI borrowers.

- *Question 152. What is the appropriate treatment of non-brokered reciprocal deposits? Should a non-brokered reciprocal deposit be considered as a deposit for the bank sending the non-brokered reciprocal deposit, but not be considered as a deposit for the bank receiving the reciprocal deposit?*

  Mission deposits, including those placed as non-brokered reciprocal deposits, "one way" deposit and those developed through relationships, are critically important to how CDFI banks raise deposits. Please see our discussion of this topic earlier in our letter.

- *Question 153. Do bank operational systems permit the collection of deposit information at the county-level, based on a depositor's address, or would systems need to be modified to capture this information? If systems need to be modified or upgraded, what would the associated costs be?*

  CDFI banks report that the costs of modifying and upgrading systems is enormous. One "large" CDFI banks estimates that adding fields for collection and reporting can cost between $30 and $50,000. The burden this imposes on under-resourced, small CDFI and MDI banks should be rigorously evaluated and given strong weight.

- *Question 156. Should banks collect and report an indicator for whether the loan was made to a business or farm with gross annual revenues of $250,000 or less or another gross annual revenue threshold that better represents lending to the smallest businesses or farms during the interim period before the CFPB Section 1071 Rulemaking is in effect?*

  This reporting should be aligned with the effective date of the Section 1071 final rule. Small business data required for the purposes of compliance with that rule should be shared directly with the relevant Agency. If information is not already reported, then another distinct reporting regime should not be implemented

- *Question 157. Would the benefits of requiring home mortgage data collection by non-HMDA reporter large banks that engage in a minimum volume of mortgage lending outweigh the burden associated with such data collection? Does the further benefit of requiring this data to be reported outweigh the additional burden of reporting?*

  CRA should align wherever possible with existing reporting requirements. We strongly urge the Agencies not to require non-HMDA reporting banks to collect and report home mortgage data outside of existing obligations.

  We note that expanding HMDA reporting requirements to otherwise non-HMDA reporting banks highlights an inconsistency in bank regulation, which is the increasing imbalance in the market between non-bank mortgage lenders and banks. Banks represent an increasing minority of HMDA reporting lenders, yet the nature of CRA leaves banks the only HMDA reporting lenders contemplated in this proposal to have their HMDA lending examined twice.

According to the CFPB, "The share of mortgages originated by *non-depository, independent mortgage companies* has increased in recent years. In 2021, this group of lenders accounted for *63.9 percent of first lien, 1-4 family, site-built, owner-occupied, closed-end home-purchase loans, up from 60.7 percent in 2020. Independent mortgage companies also originated 65.7 percent of first lien, 1-4 family, site-built, owner-occupied, closed-end refinance loans, an increase from 63.1 percent in 2020."*[14] (Emphasis CDBA).

We urge the Agencies not to exacerbate the regulatory imbalance by requiring home mortgage data collection by non-HMDA reporting banks.

- *Question 158. Should large banks with assets of $10 billion or less be required to collect, maintain, and report automobile lending data? If so, would a longer transition period for large banks with assets of $10 billion or less to begin to collect, maintain, and report automobile lending data (such as an additional 12 or 24 months beyond the transition period for large banks with assets of over $10 billion) make this alternative more feasible? Does the added value from being able to use these data in the construction of metrics and benchmarks outweigh the burden involved in requiring data collection and reporting by these banks?*

  The narrow focus on automobile lending risks removing many types of consumer loans from evaluation. Personal loans, including credit builder loans, and more, will be left out of consideration for the purposes of this reporting. We recommend the Agencies consider a consistent requirement that focuses on all consumer lending. In this scenario, banks with assets less than $10 billion or less would have the option to collect, maintain and report consumer lending data. A longer transition period of 24 months would make this more feasible and useful.

- *Question 159. Should the Agencies streamline any of the proposed data fields for collecting and reporting automobile data? If so, would it still allow for constructing comprehensive automobile lending metrics?*

  As in other sections, we urge the Agencies to focus on simpler solutions, and use as few fields as possible.

- *Question 160. Should the Agencies consider publishing county-level automobile lending data in the form of a data set?*

[14] Summary of 2021 Data on Mortgage Lending, Consumer Financial Protection Bureau, June 16, 2022 www.consumerfinance.gov/data-research/hmda/summary-of-2021-data-on-mortgage-lending/

Yes. Publicly available peer data is very helpful when self-evaluating CRA performance.

- *Question 161. How might the format and level of data required to be reported affect the burden on those banks required to report community development financing activity data, as well as the usefulness of the data? For example, would it be appropriate to require reporting community development financing data aggregated at the county-level as opposed to the individual activity-level?*

  It would be more appropriate to require reporting at the individual activity level. Some community development projects serve geographic regions, such as counties, but others are targeted specifically to LMI populations regardless of geography. CDBA recommends that the Agencies include an indicator of whether a product is targeted or offered in an LMI location or targeted to a broader LMI community.

- *Question 162. What other steps can the Agencies take, or what procedures can the Agencies develop, to reduce the burden of the collection of additional community development financing data fields while still ensuring adequate data to inform the evaluation of performance? How could a data template be designed to promote consistency and reduce burden?*

  As noted above, we believe the Agencies should undertake to simplify much of this proposal. Where data reporting is still required, burden could be reduced automating the template and providing it to CRA software vendors.

- *Question 163. Should the Agencies require the collection and maintenance of branch and remote service availability data as proposed, or alternatively, should the Agencies continue with the current practice of reviewing this data from the bank's public file?*

  The Agencies should continue the practice of reviewing this data from the bank's public file.

- *Question 164. Should the Agencies determine which data points a bank should collect and maintain to demonstrate responsiveness to low-and moderate-income individuals via the bank's digital and other delivery systems such as usage? Alternatively, should the Agencies grant banks the flexibility to determine which data points to collect and maintain for evaluation?*

  For CDFI banks, these Agencies should defer to the process used by the bank in demonstrating the effectiveness of these delivery systems for the purposes of CDFI certification. For non-CDFIs, the Agencies could consider providing a schedule of baseline data to ensure consistency between exams, and grant banks the flexibility to determine any additional data points to collect and maintain for evaluation.

- *Question 165. Are the proposed data collection elements for responsive deposit products appropriate, or are there alternatives to the proposed approach that more efficiently facilitate the evaluation of responsive deposit products? Should the Agencies require collection and maintenance of specific data elements for the evaluation of responsive deposit products? Alternatively, should the Agencies grant banks the flexibility to determine which data points to collect and maintain for evaluation?*

  The proposed data points are adequate, and closely track what many banks already report to the CFE Fund for certification of BankOn products.

- *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?*

  The Agencies should provide a template for the collection of retail services and products information.

- *Question 167. What steps can the Agencies take to reduce burden of the proposed information collection requirements while still ensuring adequate information to inform the evaluation of services?*

  The Agencies could consider a questionnaire that banks can answer in part or full, at their discretion. The questionnaire would serve as a guide to help bank understand what the Agencies want to know.

- *Question 168. Should large banks with assets of $10 billion or less be required to collect and maintain data on deposit product responsiveness and/or digital and other delivery systems? If so, would a longer transition period to begin to collect and report such data (such as an additional 12 or 24 months beyond the transition period for large banks with assets of over $10 billion) make this alternative more feasible? Does the added value from being able to use this data outweigh the burden involved in requiring data collection by these banks?*

  Banks in this category should be permitted to report this data at their option.

- *Question 169. Should large banks with assets of $10 billion or less be required to collect community development services data in a machine readable form, as prescribed by the Agencies, equivalent to the data required to be collected and maintained by large banks with assets of over $10 billion? Under this alternative, should large banks with assets of $10 billion or less have the option of using a standardized template or collecting and maintaining the data in their own format? If large banks with assets of $10 billion or less are required to collect and maintain community development services data, would a longer transition period for these banks to begin to collect and maintain deposits data (such as an additional 12 or 24 months beyond the transition period for large banks with assets of over $10 billion) make this alternative more feasible? Does the added value* *from being able to use this data in the construction of a metric outweigh the burden involved in requiring data collection by these banks?*

Banks in this category should have the option of using a standardized template or collecting and maintaining the data in their own format. It is appropriate to require this data be collected in machine readable form, such as excel. A longer transition period is always desirable. Unfortunately, the added value from being able to use this data in the construction of a metric outweigh the burden involved in requiring data collection by these banks.

- *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?*

  As small banks retain the option to continue to be examined under the existing small bank proposal, if they opt into the metrics based test, it is appropriate to provide the option to use data that a small bank maintains in its own format or by sampling the bank's loan files.

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

  This tool would be useful.

- *Question 173. Should the Agencies disclose HMDA data by race and ethnicity in large bank CRA performance evaluations?*

  The Agencies should not disclose this HMDA data if it is not to be included in the CRA conclusions. It is a burden that is not justified by the regulation.

XX. Content and Availability of Public File, Public Notice by Banks, Publication of Planned Examination Schedule, and Public Engagement

CDBA strongly supports the proposal to allow banks to retain their public file in digital form only and make paper copies available to the public upon request. Further, it is appropriate to continue to require a bank to provide in the public area of its main office and each of its branches the public notice that would be set forth in proposed appendix F.

CDBA also supports the current practice of publishing at least 60 days in advance of the beginning of each calendar quarter a list of banks scheduled for CRA examinations during the next two quarters. We further support codifying the practice of forwarding all public comments received regarding a bank's CRA performance to the bank and may also publish the public comments on the appropriate Agency's public website.

Questions and Answers

- *Question 174. Are there other ways the Agencies could encourage public comments related to CRA examinations, including any suggested changes to proposed § __.46?*

  We understand that the Agencies have community contacts that are consulted over the course of a CRA exam. The Agencies should continue their current practice in regards to these comments.

- *Question 175. Is there additional data the Agencies should provide the public and what would that be?*

  Please see our answer to question 174.

- *Question 176. Should the Agencies publish bank-related data, such as retail lending and community development financing metrics, in advance of an examination to provide additional information to the public?*

  As this data should is only being compiled by the Agencies in the context of reviewing banks for CRA compliance, it should only be made publicly available by the Agencies in the context of delivering a final exam report. This is true regardless of the public nature of the other sources of any relevant data.

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

  Yes, these can be valuable context and the public should be free to comment.

XXI. Transition

Questions and Answers

- *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.*

  A one-year period to allow for the transition to new tests is insufficient. At least two years should be permitted. CDFI banks in particular are severely impacted by long-term labor shortages and there will be insufficient time to hire and train sufficient staff in a single year. In order to ensure adequate time to transition from the current regulations to the proposed regulations, the start date for CRA examinations under the new tests should be no earlier than three years from the publication of the final rule.

  In addition, we urge the Agencies to set the date for collection of community development financing data to May 1. CDFI banks note that an unsupportable amount of reporting is already due by March 1 (small business and HMDA) to make it feasible to submit new data points in barely a month.

- *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?*

  We respectfully request that the Agencies exhibit flexibility in the implementation of this rule relative to the timing of the release of the final Section 1071 Rulemaking. The timing of the change to the small business and small farm definitions should have a cushion of an additional 12 month from the CFPB's finalization of its proposed rule.

- *Question 180. When should the Agencies sunset the Agencies' small business loan and small farm loan definitions?*

  The definitions should "sunset" when they are no longer applicable for any exam data. For example, a bank may have an "old" set of data in one year and a "new" set for a different year the same exam period.

I. CLOSING

CDFI banks demonstrate on a daily basis how to make the "affirmative obligation" of CRA an outright priority. We urge the Agencies to recognize the contributions CDFI banks make as insured depositories and essential partners to the broader industry as "key in helping to meet the credit needs of low-or moderate-income individuals and communities."

We appreciate your consideration. Please contact Brian Blake at blakeb@pcgloanfund.org with any comments or questions.

Sincerely,

[redacted]

Brian Blake
Public Policy Director