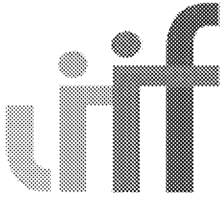

August 5, 2022

Board of Governors of the Federal Reserve System
Federal Deposit Insurance Corporation
Office of the Comptroller of the Currency

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

To Whom It May Concern:

The Low Income Investment Fund (LIIF) is pleased to respond to the proposed rule on the Community Reinvestment Act (CRA) issued by the Federal Deposit Insurance Corporation (FDIC), the Board of Governors of the Federal Reserve System (Board), and the Office of the Comptroller of the Currency (OCC) (together, 'the agencies').

LIIF is a certified Community Development Financial Institution (CDFI) with a mission to mobilize capital and partners to achieve opportunity, equity and well-being for people and communities. Since 1984, LIIF has deployed more than $2.8 billion to serve more than two million people in communities across the country from its five offices. An S&P-rated organization, LIIF innovates financial solutions that create more equitable outcomes for all by building affordable homes, quality educational opportunities from early childhood through higher education, health clinics, healthy food retail and community facilities. In 2020, LIIF refined its mission to focus on mobilizing capital by putting racial equity at the center of investments. As part of this new strategic direction, LIIF and Stewards of Affordable Housing for the Future (SAHF) entered into a joint venture with National Affordable Housing Trust (NAHT), a leading nonprofit Low Income Housing Tax Credit (LIHTC) syndicator.

Together, LIIF and NAHT have decades of combined experience working with CRA-motivated investors across the community development lending and investment portions of the CRA regulations. We rely on these investors to provide hundreds of millions of dollars in funding to serve low- and moderate- income (LMI) people and communities, as well as contribute hundreds of millions of dollars in critical grant funding each year to support our work. This capital has encouraged successful public-private partnerships and elevated best practices in the delivery of critical community assets like affordable housing, community health centers, affordable grocery options, and much more. We are also deeply familiar with the challenges inherent to the current CRA regulations. LIIF and NAHT operate across the country and develop and manage regional or national funds that span geographies. We often experience CRA-imposed geographic limitations that inhibit our ability to raise bank capital for impactful community development work in the communities where it is most needed. The proposed changes that would increase geographic flexibility and allow banks to receive credit for their community development activities anywhere in the country is a groundbreaking change with far-reaching benefits.

Our comments reflect the best practices and lived experiences of community development professionals who have decades of experience partnering with CRA-motivated investors and navigating the regulations. In the face of challenging times ahead – and as disparities by income and by race continue to increase – we need to ensure that banks are both obligated and incentivized to deepen their investments in the communities they serve.

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SUMMARY OF COMMENTS

After years of regulatory work to reach this proposed rule, LIIF is pleased to see many positive aspects in the proposal that can meaningfully expand CDFIs' reach and capacity, as well as increase the emphasis on some of the most impactful products that we offer. LIIF is particularly supportive of the following elements of the proposed rule:

- **Providing credit for activities conducted in partnership with or in conjunction with CDFIs.** This acknowledges the important role of Treasury-certified CDFIs in providing mission-based capital to underserved communities. While credit for working with CDFIs is not new, providing this "as of right" credit ensures much needed flexibility and relief from burdensome reporting requirements, and will help streamline the credit process for both banks and CDFIs.

- **Including CDFIs on the proposed list of Impact Review Factors.** Impact Review Factors would capture activities that are particularly impactful to community credit needs. Including activities that support CDFIs on this list acknowledges the role that we play in providing tailored, flexible, affordable and accessible capital to community partners.

- **Evaluating community development activities conducted anywhere in the country, rather than in the places where banks have branch locations.** Bank branch locations do not always align with the neighborhoods most in need of investment, and this is particularly true for the communities many CDFIs serve. The proposed geographic flexibility is a groundbreaking step to modernize assessment areas and can help bring community development capital to more neighborhoods.

Overall, the agencies have proposed a constructive update to CRA that has the potential to improve access to credit and community development activities in more communities than are being served under current CRA regulations. **However, there remain several critical areas in which the rule must better balance obligations, incentives, and enforcement so that the outcome results in increased capital flows and not less.** In addition to our comments in response to specific questions, LIIF offers the following suggestions as top priority recommendations to ensure the final CRA rule is successful:

- **Evenly weight the Retail and Community Development Tests.** The proposed rule reduces a bank's incentive to achieve a strong rating on its Community Development Test by setting a disproportionately low weight for community development activities compared to retail lending activities.[1] The Community Development Test and the Retail Lending Test should receive equal weighting – each 50% of a bank's overall CRA rating – to ensure consistent emphasis on diverse community credit needs. As proposed, a bank could achieve a Satisfactory rating with even a Needs to Improve conclusion on the Community Development Test. Greater emphasis on the Community Development Test would allow banks one more option for achieving an Outstanding rating and would motivate banks to excel on both tests considering their even impact on the overall rating.

- **Ensure banks continue to have a strong obligation to provide community development equity investments.** The proposed rule makes a major structural shift by combining community development loans (debt) and investments (equity) under one Community Development Financing Test. This is a dramatic shift from current regulations that removes the longstanding precedent

[1] Dworkin, David, "Could the future of CRA be in doubt?" July 10, 2022, https://nhc.org/the-future-of-cra-is-in-doubt/

where equity investments comprise 25% of a bank's overall CRA rating. Equity investments can be costlier and more time-consuming activities than loans but are also a critical form of capital in the community development finance ecosystem. CRA must recognize that not all capital is the same, and therefore the harder and costlier forms of capital should receive greater emphasis in an exam. LIIF is deeply familiar with the importance and impact of community development equity investments as both a leading recipient of New Markets Tax Credits, as well as part owner of the National Affordable Housing Trust (NAHT), a leading nonprofit Low Income Housing Tax Credit syndicator. We offer the following recommendations to ensure the proposed CRA rule neither intentionally nor unintentionally reduces bank motivation to conduct community development equity investments:

1. **Create a Community Development Lending Subtest and a Community Development Equity Subtest.** Recognizing the major structural shift that the agencies are proposing by eliminating the existing investment test, LIIF recommends that the new Community Development Test incorporate two subtests – a Community Development Lending Subtest and a Community Development Equity Subtest, each weighted at half of the overall Community Development Test. We also recommend updating the proposed impact review factors to reflect a more nuanced evaluation of responsiveness to credit needs, rather than creating a binary categorical checklist of activities.

2. **Consider alternative approaches to the Community Development Services Subtest, such as:**

    a. **Eliminating the Community Development Services Subtest** given that it has a disproportionately high weight on the exam for a limited number of eligible or impactful activities. Eligible activities under the proposed Community Development Services Test should be incorporated in the Community Development Test and the Retail Lending Test. Overall, a bank's CRA rating would be comprised of 35% Retail Lending Test, 15% Retail Services and Products Test, 25% Community Development Lending Subtest, and 25% Community Development Equity Subtest.

    OR

    b. **Modifying the Community Development Services Subtest to emphasize the responsiveness of community development services and products to borrowers and communities.** As proposed, the Community Development Services Subtest includes a limited number of eligible activities with minimal impact yet has a disproportionately high weighting on a bank's overall exam. Instead, the Community Development Services Test can be strengthened by incorporating grant contributions to nonprofit organizations and making the test more closely resemble the "responsiveness" test proposed in the Retail Services and Products Subtest. In this proposed approach, the Community Development Services and Products Subtest would account for the responsiveness of the Community Development Financing Subtest. A critical component of the responsiveness test under the Community Development Services and Products Test should be a bank's overall mix of community development financing types, with an emphasis on equity investments. To ensure "responsiveness" is a meaningful component of the overall exam, the Community Development Services Subtest could be increased from 10% of the overall Community Development Test

to at least 15%, with the Community Development Finance Subtest counting for 35% of a bank's overall rating.

- **Meaningfully incorporate demographic data in a bank's CRA evaluation to determine whether a bank is meeting the credit needs of the entire community**. Although the CRA statute directs the agencies to evaluate how banks meet the credit needs of their *entire* communities, the proposed rule maintains its current emphasis on serving low- and moderate-income communities and neglects to collect, track, or incorporate racial demographic data in the examination process. Bank redlining practices were very clear in their intent and approach, which was to view people and communities of color as inherently risky, regardless of their financial strength or ability to repay. Redlining was not about income or financial circumstances – it was about race.[2] Without data disaggregated by race and ethnicity, the regulators will not be able to fully assess a bank's track record of meeting the credit needs of its entire community, nor can the industry begin to more directly consider or craft products and services focused on racial equity. Ideally, racial demographic data is needed across CRA activities, including community development, so that the agencies can capture an accurate and complete picture of how banks are meeting the credit needs of their entire communities – including communities of color.

- **Incorporate Special Purpose Credit Programs (SPCPs) as an Impact Review Factor on the Community Development Finance subtest and an activity that is particularly responsive to credit needs on our proposal for a Community Development Services and Products subtest.** SPCPs are a critical tool allowing lenders to create credit products with favorable terms that target historically underserved classes — including by race.[3] The proposed rule takes a positive step by proposing to provide CRA credit for SPCPs that focus on consumer products and home mortgage lending, and LIIF strongly supports this proposal. However, the rule is silent on SPCPs under the Community Development Test, which would omit credit for banks that establish targeted lending programs for important activities such as affordable rental housing developments, child care programs and other community development projects. SPCPs are one of the most important tools available to affirmatively invest in racial equity and should be eligible for CRA credit on both the retail and community development tests.

- **Commit to ongoing public engagement around the newly proposed Impact Review Factors.** Effective implementation of Impact Review Factors will largely determine the success of the CRA rule; communities cannot afford for the regulators to miscalculate or underemphasize this component of the rule. It will take several years before the regulators have sufficient data to incorporate the Impact Review as a quantitative element of the exam process, and until then the Impact Review will largely be a qualitative consideration. Further, the impact review is a binary approach that indicates whether a bank has or has not participated in a pre-determined list of activities, rather than the level of responsiveness to community needs. There remains significant room to improve the impact review portion of a bank's CRA exam and the agencies should commit to seeking additional public input as they consider incorporating this essential element of the rule into a final evaluation.

- **Clarify community development financing by a consortium or third party.** Banks often provide financing that the recipient uses for its general purposes, rather than for passing through to

[2] Lucy Arellano Baglieri and Marla Bilonick, "A Conversation About the Community Reinvestment Act," July 29, 2022, *https://www.youtube.com/watch?v=6lqdSCw2cSs&t=2s*

[3] Barrow, Olivia, "Increasing Access to Credit in Communities of Color," May 31, 2022, https://www.theregreview.org/2022/05/31/barrow-increasing-access-to-credit-in-communities-of-color/

specific activities, or that will be used to fund future activities that have not yet been identified. In these cases, the bank and the recipient should be permitted to identify a reasonable geographic allocation for this type of financing. For example, a reasonable basis to assign geographic allocation could include the location of the recipient, where the recipient has historically worked, or where the recipient intends to work. The agencies should clarify that this is a valid process and that banks can rely on geographic allocations provided by the recipient/consortium (e.g., through side letters, which has been an accepted common practice).

Below, we offer responses to specific questions posed in the proposed rule.

III. COMMUNITY DEVELOPMENT DEFINITIONS

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

LIIF supports partial consideration for other community development activities if those community development activities meet the primary purpose standard and also meet a minimum threshold for serving low- or moderate-income individuals or geographies.

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?

To receive partial consideration, LIIF supports a minimum floor of at least 25% and potentially up to 50% to ensure the activity serves LMI individuals or geographies. LIIF recommends that the agencies set the threshold to receive full consideration above the 51% threshold to reflect that LMI individuals or geographies account for a meaningful majority of the activity.

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?

LIIF supports the proposed standard of government programs having a "stated purpose or bona fide intent" of providing affordable housing for LMI individuals and we support including a specific affordability standard in which rents cannot exceed 30% of 80% area median income (AMI). Additional verification of occupant income is unnecessary given that it is reasonable to assume government programs will already collect and verify this information.

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?

LIIF supports including activities that provide affordable housing to middle-income individuals in high opportunity areas given that these areas typically correspond to higher costs of living and therefore households further up the income scale struggle to access housing that they can afford. Middle-income households can also be supported through mixed-income housing developments, which is an important financing model that can have a stabilizing impact on a neighborhood.

We specifically echo the National Association of Affordable Housing Lenders in suggesting that the agencies allow consideration for housing at rents up to HUD's Fair Market Rent (FMR) standard in the relatively few, particularly unaffordable markets where the FMR exceeds 30 percent of 80 percent of the AMI, including New York, Los Angeles, Miami, and San Francisco. It is in these markets that middle-income people are more likely to be renters (because home prices also tend to be unattainably high) and to face rent burdens.

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?

LIIF recommends that the agencies consider modifying the definition of naturally occurring affordable housing to rental housing whose rent that does not exceed 30% of 80% AMI, rather than 30% of 60% AMI. The 60% AMI threshold may not provide sufficient financial flexibility to preserve naturally occurring affordable housing units across all market types.

We are concerned about naturally occurring affordable housing becoming unaffordable over time. Particularly in cases where a renovation may occur, LIIF recommends that the agencies consider the post-construction rents used in underwriting as a valid measure of anticipated rent levels. In general, we also recommend periodically collecting a rent roll to determine ongoing affordability, particularly while the bank receives CRA credit for a loan made in a prior year. These recommendations are consistent with those put forth by the National Association of Affordable Housing Lenders.

We also recommend that the final rule acknowledge that the full amount of a community development loan or investment commitment, regardless of whether it was originally generated in a prior period and/or is not fully disbursed, represents a financial obligation of the bank and is eligible for CRA credit.

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?

There is a shortage of affordable homes across the country among different communities and market types. As a result, LIIF strongly supports efforts to preserve naturally occurring affordable housing wherever it exists, regardless of geography. LIIF recommends focusing on the benefit to LMI renters when determining credit for naturally occurring affordable housing – for example, whether LMI renters have long-term access to the housing at an affordable rent. As noted above in question 5, we support periodic rent documentation to ensure LMI residents are the primary beneficiaries.

The proposal that the owner of the housing must pledge to preserve affordability for five years is too short. The Low Income Housing Tax Credit program requires a minimum affordability period of 15 years, with an additional 15 year affordability compliance period. Many states require even longer affordability

timelines for properties financed using the Low Income Housing Tax Credit. LIIF recommends that the agencies expand the pledge period to a minimum of 15 years of affordability.

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?

LIIF recommends providing particular attention to affordable homeownership options that are provided or supported by nonprofit affordable housing groups. Nonprofit affordable housing groups – including developers, owners, counselors, and others – provide products and services that are appropriately tailored to low- and moderate-income borrowers and help guard against predatory or unsustainable homeownership activities. The agencies could motive banks to partner with nonprofit affordable housing groups on affordable homeownership activities.

LIIF also echoes the National Association of Affordable Housing Lenders: financing the construction or rehabilitation of owner-occupied homes (including condominiums or cooperatives) should receive CRA consideration if: (1) the homes are located in a LMI census tract or a distressed or underserved middle-income non-metropolitan census tract; and (2) the sales price does not exceed four times the AMI. Financing the rehabilitation or reconstruction of an already owner-occupied home (so no sale is involved) should qualify if the owner is either LMI or middle-income.

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?

LIIF echoes comments submitted by the National Association of Affordable Housing Lenders:

1. Only the portion of the mortgage-backed security (MBS) attributable to CRA-qualified loans should be considered. Loans not meeting CRA eligibility should be disregarded to avoid over-stating their volume. Single family loans within an MBS pool would be considered individually. Multifamily loans within an MBS would be treated consistent with CRA policy – i.e., the entire loan would qualify if the property is at least 51 percent LMI.

2. Banks should be required to hold an MBS for which CRA consideration is claimed for at least two years, measured annually on a weighted portfolio basis. Applying the test on a portfolio basis would allow banks some flexibility while discouraging short-term holdings. In particular, this approach would discourage banks from purchasing MBS at the end of a year or exam period unless it has held other MBS for sufficiently longer periods to maintain the two-year average holding period.

3. At the institution level, not more than 25 percent of a bank's community development activity should be credited for MBS (excepting CDFI-issued MBS, which do not benefit from a deep liquid market). It may be necessary for a bank to rely more heavily on MBS in any given assessment area, since sufficient community development opportunities may not be available in any given assessment area in any given year. However, MBS should not be a primary way for a bank to fulfill its overall community development financing responsibilities at the institution level.

MBS issued by a CDFI should be treated the same as any other CDFI loan or investment.

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?

LIIF believes that place-based activities should be determined by their impact on LMI individuals and communities and not limited to activities conducted in conjunction with a government plan, program, or initiative. Potential standards for place-based activities that prioritize the benefits for LMI individuals and communities could include: demonstrating community engagement activities to understand the needs and priorities of local residents, such as through a survey or other outreach practices; prioritizing the development and/or preservation of housing affordable to households earning at or below 80% of AMI to prevent displacement; and providing financial support to retain and strengthen cultural amenities that are core to a neighborhood's identity.

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?

Generally, LIIF recognizes the following factors as essential elements of impact with place-based activities: mixed-income affordable housing, affordable high-quality early care and education options, quality K12 schools, access to reliable transit options, and access to health and wellness resources and services. To prevent the displacement of low- or moderate-income residents, it is essential than any place-based initiative include a strong affordable housing development and/or preservation strategy.

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?

In low-income communities and geographies, LIIF supports including both mixed-income and mixed-use housing developments as eligible revitalization activities. Particularly in areas with limited investment or access to opportunity, communities benefit when housing developments provide access to more comprehensive resources and services – like affordable grocery options, child care, health care, and more. Further, growing evidence suggests that mixed-income housing can promote household stability and promote long-term neighborhood revitalization.[4]

In the highest-cost neighborhoods, housing targeted to low-income households earning 60% AMI and below should be considered an eligible revitalization activity. High-cost neighborhoods are often the least accessible to LMI residents but also often offer the greatest access to jobs, good schools, transportation, and other resources and necessities. Specifically increasing LMI people's access to live in these neighborhoods should be considered an eligible revitalization activity.

LIIF also encourages the agencies to include housing developments that have onsite or co-located early care and education programs as eligible revitalization activities in all geographies. High housing and child care costs are two of the primary challenges facing today's working parents and impeding access to stability and opportunity. Providing these two resources in the same location has a host of benefits for the

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[4] Purpose Built Communities, "How can we reimagine housing to advance equity?" *https://purposebuiltcommunities.org/lessons-learned/how-can-we-reimagine-housing-to-advance-equity/#quality*

community, including improved development and socioemotional development for children and increased workforce participation for parents who have reliable care for their children while at work.[5]

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

LIIF recommends including energy efficiency as a component of the disaster preparedness and climate resilience definition, and in instances where energy efficiency also benefits affordable housing and community facilities, the examiner could determine that an impact review is warranted on the community development finance test to account for an activity that has multiple benefits to LMI individuals and communities.

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?

LIIF supports incorporating other energy-related activities in the disaster preparedness and climate resiliency definition. While energy efficiency is an important step towards climate resilience, there should be a corresponding focus on reducing the use of nonrenewable energy sources more generally and transitioning to more resilient energy practices. For example, the agencies could include activities that increase access to affordable solar, wind and/or hydro-electric power; promote the preservation or creation of greenspace; reduce urban heat islands; and decrease the amount of impermeable surfaces and features that contribute to stormwater runoff.

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, LIIF supports adding solar projects that would benefit LMI residents in targeted census tracts as part of a disaster preparedness and climate resilience definition. Wind and hydro-electric projects may also be relevant projects in certain areas. However, to ensure alignment with the CRA statute, LIIF recommends that these activities be required to primarily serve LMI individuals.

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, LIIF supports adding activities that benefit LMI individuals regardless of geography. Potential activities include: increasing access to affordable solar, wind and/or hydro-electric power; promoting the preservation or creation of greenspace; reducing urban heat islands; and decreasing the amount of impermeable surfaces and features that contribute to stormwater runoff.

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

[5] Shaw, Kirsten, "New $20 Million Partnership Aims to Co-locate Child Care with Affordable Housing," June 21, 2022, *https://www.liifund.org/justgoodcapital/2022/06/21/20-million-partnership-aims-to-co-locate-child-care-with-affordable-housing/*

consideration be limited to activities that have a primary purpose of benefiting low- or moderate-income individuals or families?

LIIF strongly recommends that financial literacy activities have a primary purpose of benefiting low- or moderate-income individuals or families.

V. IMPACT REVIEW OF COMMUNITY DEVELOPMENT ACTIVITIES

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?

The impact review factors are an essential element of the proposed CRA rule's overall effectiveness. We strongly encourage the agencies to incorporate a meaningful qualitative analysis of responsiveness and impact within this review process. As proposed, the impact review suggests a binary approach to measuring impact, purely indicating whether a bank has or has not participated in a pre-determined list of activities. The proposal also indicates that impact will be considered based on the volume of activities that align with the impact review factors, rather than level of responsiveness to community needs. While we appreciate and agree that there are certain categories of activities that should be deemed particularly impactful, there must be an equally important review of the type of capital provided within those categories. For example, a bank that makes a short-term, variable loan to a CDFI should not receive as much impact credit as a bank that provides a long-term, fixed-rate loan facility to a CDFI. One form of capital is significantly more valuable to the CDFI and that is the type of activity that should be motivated by the impact review process.

We recommend that the agencies evaluate the type of capital and its responsiveness to community credit needs as part of the impact review process. Potential elements of responsiveness include:

- Equity investments
- Grant contributions, particularly operating grants to nonprofit organizations
- A product or credit facility that is not typically provided by conventional financial sources and/or not readily available in the market
- Below market rate capital

With the above caveat indicating the need for greater clarity and responsiveness within the impact review factors, LIIF does support the proposed list of impact review factors, including persistent poverty counties, high poverty census tracts, and areas with low levels of community development financing. Consistent with recommendations from the National Association of Affordable Housing Lenders, we also recommend including an impact review factor for activities that support community development equity investments, decarbonization in LMI communities, and activities in all rural communities rather than just non-metro areas.

LIIF also strongly recommends adding community development special purpose credit programs (SPCPs) on the list of impact review factors. While we appreciate and support the agencies' proposal to include home mortgage and consumer lending SPCPs on the Retail Services and Products Subtest, this leaves out an entire category of targeted community development lending programs. For example, in 2021, LIIF launched an SPCP, the Black Developer Capital Initiative (BDCI), in partnership with the National

Affordable Housing Trust.[6] BDCI features a loan product from LIIF that provides Black-led affordable housing development firms with early-stage capital at highly favorable and affordable interest rates so that the developers can move housing projects forward and support their business growth. Lack of access to affordable capital is a well-documented challenge facing Black borrowers, and LIIF's BDCI capital product fills an essential gap in the market.

While bank support for BDCI would have likely been eligible for CRA credit and an impact review factor due to LIIF's status as a certified CDFI, the proposed rule would not provide any incentive for a bank to create its own community development SPCP. We strongly encourage the regulators to provide parity by including incremental qualitative credit for SPCPs on both the Community Development Test and the Retail Services and Products Test (as well as the Community Development Services and Products Subtest, as proposed in Section XII, if the agencies choose not to proceed with LIIF's preferred approach). We have provided additional commentary about the value of SPCPs in our response to question 106.

Finally, we do caution that the factor focused on affordable housing in high-opportunity areas should prioritize developments that are primarily affordable to households earning no more than 60% AMI and with long-term affordability restrictions in place. The lowest income households are disproportionately likely to be housing cost-burdened in high-opportunity areas and therefore have less access to the employment, transit, jobs, schools, and other necessities that are often available in these communities. As the agencies consider affordable housing in high-opportunity areas as a potential impact review factor, we strongly encourage including provisions to ensure the housing achieves the greatest impact for those with the greatest need.

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?

LIIF supports the proposed factor focused on activities supporting MDIs, WDIs, LICUs, and Treasury Department-certified CDFIs. We do not believe any activities should be excluded from receiving credit, but we do support identifying certain activities as particularly responsive – e.g., equity investments, grant contributions and long-term fixed-rate loan facilities. As noted in Section XIII of our comments, LIIF recommends incorporating an evaluation of a bank's responsiveness to credit needs in the Community Development Services Subtest. Under a Community Development Services and Products Subtest, highly impactful forms of financial support – like equity investments, long-term debt financing, and grant contributions – should be considered particularly responsive to the needs of MDIs, WDIs, LICUs, and CDFIs.

LIIF also echoes comments from our CDFI peers that the agencies should include any wholly owned subsidiaries of CDFIs, MDIs, WDIs and LICUs, as well as LLPs and other funds managed by these entities. Subsidiary entities are necessary for CDFIs to manage increasingly complex financial tools and must be included in this definition. We also suggest ensuring the language is explicit such that all CDFIs are clearly eligible for this designation.

Finally, we suggest that activities with nonprofit organizations that hold a NeighborWorks charter receive the same treatment. These mission-driven organizations undergo rigorous financial and management

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[6] Low Income Investment Fund, "LIIF Launches Black Developer Capital Initiative," August 2, 2021, *https://www.liifund.org/news/post/liif-launches-70-million-black-developer-capital-initiative/#:~:text=SAN%20FRANCISCO%20(August%202%2C%202021,led%20for%2Dprofit%20and%20nonprofit*

assessments prior to receiving their charters and on an ongoing basis thereafter. Furthermore, membership in the NeighborWorks network is only available to organizations that demonstrate a commitment to resident leadership, ensuring that the organization continues to represent the interests of the communities in which it works.

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?

LIIF supports the proposed standard of $250,000 in gross annual revenue. Many of the home-based family child care providers that LIIF works with across the country would qualify as a small business under this threshold. These child care providers serve an essential function in their community, providing a safe and nurturing environment for children to learn and grow while their parents have peace of mind that their children are safe and cared for while at work. LIIF supports this proposed threshold since it would incorporate many family child care businesses as an impact review factor, which is warranted.

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?

LIIF supports aligning definitions across agencies as this promotes consistency and clarity. As noted above in question 34, LIIF recommends that the impact factor focused on affordable housing in high-opportunity areas should prioritize housing that is affordable to households earning 60% AMI or below, and should include long-term affordability restrictions.

VI. ASSESSMENT AREAS AND AREAS FOR ELIGIBLE COMMUNITY DEVELOPMENT ACTIVITY

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 assessment areas to increase consistency across banks?

LIIF recommends that all banks, regardless of size, be required to delineate whole counties as facility-based assessment areas to both ensure consistency across banks and remove the possibility of redlining certain communities in the process of delineating a partial county.

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

LIIF supports the agencies' proposed approach to evaluate bank activity in facility-based assessment areas and retail lending assessment areas, as well as to evaluate any remaining lending activity in areas outside of these assessment areas. Banks have an obligation to meet the credit needs of the communities where they do business, and with an increasingly digital financial services system, many banks are working in increasingly larger parts of the country. Incorporating this activity into a CRA exam is necessary to fully evaluate how a bank is meeting the credit needs of its communities.

QUESTION 46. The proposed approach for delineating retail lending assessment areas would apply to all large banks with the goal of providing an equitable framework for banks with different business models. Should a large bank with a significant majority of its retail loans inside of its facility-based assessment areas be exempted from delineating retail lending assessment areas? If so, how should an exemption be defined for a large bank that lends primarily inside its facility-based assessment area?

Banks have an obligation to meet the credit needs of the communities where they do business, even in areas that may reflect a disproportionately small amount of their overall business. The agencies have proposed benchmarks and metrics that should sufficiently account for a situation in which banks have minimal lending activity outside their facility-based assessment areas. Further, in these circumstances, performance context should be applied to account for any potential challenges in meeting the needs of the bank's retail lending assessment areas. Still, LIIF does support incorporating a reasonable standard under which banks would be exempt from delineating additional retail lending assessment areas. The National Association of Affordable Housing Lenders has proposed a "materiality standard" to screen out lending that is insignificant to the community of the bank. We encourage the agencies to consider this standard.

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

LIIF strongly supports the proposed rule's flexibility that provides credit for community development activities nationwide and we do not believe any restrictions should be put in place that could distort the market. We believe the most effective approach to motivating banks to do effective community development activities outside of their facility-based assessment areas is to ensure there is a meaningful incentive for them to do so. For example, while we agree that banks should not be required to conduct community development in their retail lending assessment areas, we recommend that the agencies consider providing credit at the assessment area level to banks that do choose to conduct community development activities in their retail lending assessment areas. This provides banks with an added opportunity and layer of comfort in adequately serving their retail lending assessment areas, while also encouraging banks to seek out community development opportunities in the geographies where they have a lending presence, and therefore are likely to have some level of familiarity with the community.

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

Yes, LIIF supports providing this flexibility to all banks. The need and/or opportunities for community development activities do not always align with facility-based assessment areas and all banks should have the flexibility to provide effective community development activities in areas where the need is greatest.

VII. PERFORMANCE TESTS, STANDARDS, AND RATINGS IN GENERAL (PAGE 142)

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?

LIIF supports the proposed approach to establish a specific mechanism seeking input about needs and conditions across localities. We recommend including specific feedback from the community about the

most pressing local needs and the types of financing being provided (or not provided) by banks. This information, which incorporates feedback directly from the public, will help determine the most useful performance context information.

LIIF is also pleased that the agencies are contemplating making demographic and economic information about localities available to banks and the public. We echo the National Community Reinvestment Coalition's (NCRC) recommendation to incorporate the following datapoints: housing vacancy rates, housing cost burden ratios, unemployment levels, poverty rates, levels of segregation and measures of health and environmental quality standards. LIIF also recommends incorporating a measure of availability and affordability of child care facilities. Child care is one of the primary costs impacting family finances, and the lack of affordability combined with a lack of supply of child care facilities is a major barrier preventing parent workforce participation as well as child health and development.

Performance context data will be particularly relevant when working to meaningfully incorporate impact review factors in a bank's rating and could also help determine a bank's 'responsiveness' under the proposed Community Development Services and Products Subtest, if the agencies chose to take this recommendation (our suggestion for this subtest is incorporated in our answers under Section XIII). For example, the agencies could look for bank activity that specifically seeks to address one or more of the local priorities illuminated by performance context data, such as financing a new child care facility in a community where parents are unable to access quality care because it is either unavailable or unaffordable. A bank that focuses on one or more of these proven areas of need could receive additional impact review or other qualitative considerations.

VIII. RETAIL LENDING TEST PRODUCT CATEGORIES AND MAJOR PRODUCT LINES

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?

LIIF recommends evaluating multifamily lending only under the Community Development Financing Test because multifamily loans are commercial real estate loans, not retail loans. The agencies should not assume that all multifamily lending in LMI census tracts is favorable lending since financing high-rent properties in these neighborhoods could ultimately contribute to the displacement of LMI residents. Further, multifamily lending outside of LMI census tracts could provide much-needed affordable housing to communities that offer greater opportunity, such as good schools and employment opportunities. The agencies should primarily focus on the affordability of multifamily lending, which is consistent with affordable housing's consideration as part of the Community Development Test.

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?

No, LIIF does not support designating banks that are primarily multifamily lenders as limited purpose banks. These banks should be evaluated under the Retail Lending Test to ensure the geographic distribution of their multifamily lending is not excluding LMI communities.

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?

LIIF recognizes the need to balance the need for liquidity in the market with the need to limit the threat of loan churning for CRA rating purposes. Generally, LIIF supports treating purchases as equivalent to originations when the purchase is directly from the originator; beyond that initial purchase, we do not believe the loan should be considered for CRA credit.

We do support treating retail loan purchases as equivalent to loan originations for loan purchases that are made from a CDFI. CDFIs have a long track record of providing flexible, affordable, highly impactful products to our borrowers. Our work has also proven to be safe and sound. However, because our loans are tailored to each borrower and based on the needs of the community, our products are often nontraditional and do not meet the underwriting or collateralization requirements that most traditional banks require. As a result, the CDFI industry has not yet found access to a secondary market in which we can sell our loans to investors and access liquidity to do more highly impactful lending. Given the outsized impact that loan purchases from CDFIs could have on access to capital in LMI communities, LIIF strongly urges the agencies to treat such purchases as equivalent to loan originations.

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?

Yes, LIIF supports adding an examination of bank motivation for purchasing retail loans and we support both removing such purchased loans from the bank's metrics and also incorporating this information as a factor in considering the bank's performance. Such activity is contrary to CRA's intent and should be treated accordingly.

IX. RETAIL LENDING TEST EVALUATION FRAMEWORK FOR FACILITY-BASED ASSESSMENT AREAS AND RETAIL LENDING ASSESSMENT AREAS

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, LIIF supports incorporating additional factors, including comments about a bank's retail lending performance, when developing Retail Lending Test conclusions. This is an important opportunity for community and other stakeholder voices to be heard.

X. RETAIL LENDING TEST EVALUATION FRAMEWORK FOR RETAIL LENDING TEST CONCLUSIONS AT THE STATE, MULTISTATE MSAS, AND INSTITUTION LEVEL

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

LIIF supports evaluating all large banks on their retail lending at the institution level in their outside retail lending areas, and we do not believe any exemptions are necessary.

XI. RETAIL SERVICES AND PRODUCTS TEST

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

LIIF strongly supports including special purpose credit programs (SPCPs) as an example of a loan product or program that facilitates home mortgage and consumer lending for low- and moderate-income individuals. SPCPs are one of the most effective tools available for lenders to proactively address historic and ongoing inequities effecting disadvantaged classes, including communities of color.[7] As noted in our answer to question 34, LIIF recommends also including community development SPCPs as an impact review factor on the Community Development Finance Subtest, and as an example of a responsive credit product on the Community Development Services and Products Subtest (proposed in Section XIII below). SPCPs can take the form of any credit product or program, including community development products and programs, and it would be a missed opportunity to limit SPCPs to only retail lending activities.

XII. COMMUNITY DEVELOPMENT FINANCING TEST

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, LIIF supports allocating these activities at the highest level as a step to ensure consistency and simplicity in the evaluation of activities that cannot be allocated to a specific county or state.

QUESTION 119. The agencies are seeking feedback on alternatives to determining the denominator of the bank assessment area 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 assessment area (described above) in contrast to the proposed approach of relying on dollar amounts of deposits?

LIIF supports the proposed approach of using the dollar amounts of deposits in an assessment area as the denominator of the community development financing metric. This is a simpler approach and offers a more realistic chance for accurate data than the proposed alternative. The dollar amount of deposits in an assessment area is a valid measure of a bank's capacity to do business.

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?

Despite the increased data collection and reporting burden associated with this new data requirement, LIIF does recommend that all large banks be required to collect deposits data. To mitigate the burden, the agencies could provide an implementation window for banks to establish the new data collection and reporting infrastructure necessary to meet this regulatory requirement. Ultimately, this data is integral to

[7] Barrow, Olivia, "Increasing Access to Credit in Communities of Color," May 31, 2022, https://www.theregreview.org/2022/05/31/barrow-increasing-access-to-credit-in-communities-of-color/

the agencies' ability to fully implement the proposed rule and adequately evaluate how banks are meeting the credit needs of the communities they serve.

__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?

To provide the greatest certainty and clarity, LIIF supports aligning the benchmark data with the data that is available up to the first day of the evaluation period. This ensures banks know the target to which they're being held, and the community has a clear standard to which they can hold the bank accountable. However, the examiner should also take performance context into consideration to appropriately account for evolving market conditions or other changes that may have shifted the landscape since the benchmarks were established.

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

As noted in question 120, LIIF recommends requiring all large banks to collect and maintain deposits data. This is essential to accurately tailoring metrics and benchmarks, and ultimately to assessing a bank's performance.

__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?

LIIF strongly recommends incorporating a significant weight to the impact review factors. Many of these activities will be highly impactful for LMI individuals and communities yet the activity itself may also be smaller, more complex, and perceived as risky. Often these activities may not happen *but for* a meaningful incentive through CRA. Impact review factors promise an opportunity to create a meaningful incentive, but the weighting process must ensure this promise is met.

__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?

LIIF strongly encourages the agencies to commit to additional public engagement around the impact review factors as community development finance data is collected over the coming years. Without additional data, it is infeasible to develop an effective model to measure the responsiveness of impactful activities, or to incorporate the impact review factors into the quantitative Community Development Finance Subtest. Once additional data is collected, LIIF supports ultimately publishing standard metrics outlining the percentage of a bank's activity that met impact criteria, as well as additional relevant qualitative data.

XIII. COMMUNITY DEVELOPMENT SERVICES TEST

General Comments on CD Services Test

LIIF appreciates the agencies' attempt to create consistency between the Retail Lending Test and the Community Development Test by incorporating a separate analysis of services in each test. As proposed, though, we are concerned that the Community Development Services Subtest ultimately includes too few eligible activities for the disproportionately high weight it holds on a bank's overall exam. If the agencies accept LIIF's proposal to create an investment subtest within the Community Development Test and increase the overall weight of community development activities to 50% of a bank's overall rating, then LIIF recommends eliminating the Community Development Services Test and creating two subtests – the Community Development Lending Subtest and the Community Development Investment Subtest – each weighted at 25% of the overall Community Development Test. Eligible activities under the proposed Community Development Services Test should be incorporated in the Community Development Test and the Retail Lending Test.

If the agencies do not proceed with the above structure, then LIIF recommends an alternative structure that would integrate community development responsiveness factors into the Community Development Services Subtest. This would strengthen the Community Development Services Subtest by making the subtest more closely resemble the "responsiveness" test proposed in the Retail Services and Products Subtest. Specifically, we recommend the following changes to the Community Development Services Subtest:

- Update the subtest to incorporate services and products and rename the subtest accordingly, e.g., the Community Development Services and Products Subtest.
- Increase the overall weight of the Community Development Services and Products Subtest to 15% of a bank's total rating.
    - Note: LIIF only recommends increasing the weight of the Community Development Services and Products Test if there are corresponding changes to the weighting of the other subtest. Specifically, LIIF supports:
        - Community Development Finance Test: 35%
        - Community Development Services and Products Test: 15%
        - Retail Lending Test: 35%
        - Retail Services and Products Test: 15%
- Incorporate grant contributions to nonprofit community development organizations as an eligible activity on the subtest. Operating grants have a significant impact in the community development funding ecosystem yet are small compared to bank lending activities. Separating this activity out from the broader bucket of community development loans and investments and assigning a score to it would encourage more grant making by banks.
- To determine the Community Development Services and Products Subtest rating, the agencies would account for the responsiveness of a bank's Community Development Financing Subtest. Factors that demonstrate responsiveness and which could be incorporated as part of the subtest evaluation include:
    - Providing a mix of products (i.e., equity investments, loans, and grants) to serve communities.
    - Providing credit facilities not typically provided by conventional financial sources and/or not readily available in the market.
    - Providing below market rate capital.
    - Participating in regional and/or national funds sponsored by CDFIs.
    - Developing community development special purpose credit programs (SPCPs) to address specific historic inequities.

- Providing similar or higher levels of equity investments in comparison to the average amount of equity investments provided over previous assessments.

LIIF believes modifying the Community Development Services Subtest to this new structure would achieve three key goals,: 1) consistency between the Retail Lending Test and the Community Development Test, 2) better emphasis on the responsiveness of community development products and services to communities on the ground, and 3) a reasonable balance between the quantitative and qualitative elements when evaluating community development activities.

We also see this proposal as consistent with the proposed Impact Review Factors, which are an essential component of the more quantitative Community Development Finance Subtest, whereas the Community Development Services and Products Subtest would offer a more nuanced qualitative evaluation of the same activities. For example, a bank that makes a short-term, variable loan to a CDFI would receive an impact review for this financial support to a CDFI. The Community Development Services and Products Subtest would then look at this bank's short-term, variable loan to a CDFI and note that while this activity is impactful by nature of supporting a CDFI, the type of financial support provided is not particularly responsive to a CDFI's credit needs. As a result, that bank would not receive credit on the Community Development Services and Products Subtest for being responsive to credit needs, but it would receive an impact review on the Community Development Financing Subtest. Alternatively, a bank that provides a long-term, fixed-rate loan facility to a CDFI could receive both an impact review factor on the Community Development Financing Subtest and positive credit for 'responsiveness' on the Community Development Services and Products Test.

As articulated, we see the impact review factors and the Community Development Services and Products Subtest operating hand-in-hand to more fully capture the value and impact of different products and services. The success of this approach is predicated on the weighting structure of the four subtests, such that community development finance is incented in the overall exam (35%) and the "responsiveness" of community development activities has a meaningful influence on a bank's overall rating (15%).

XIV. WHOLESALE AND LIMITED PURPOSE BANKS

LIIF supports the proposed approach for evaluating wholesale and limited purpose banks. Consistent with our previous comments to the agencies, we support using assets rather than deposits as the denominator of the community development financing metric for wholesale and limited purpose banks. These banks are typically large institutions that do not have a significant base of deposits, making assets a more appropriate measure of capacity to lend. We also support the agencies creating a community development financing benchmark at the institution level specifically tailored to wholesale and limited purpose banks. This allows for a more consistent comparison between these institutions and is consistent with LIIF's previous comments in which we recommended that the agencies establish peer comparators to evaluate these banks' community development activity.

XVI. ASSIGNED CONCLUSIONS AND RATINGS

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.

LIIF strongly recommends evenly weighting each the Community Development Test and the Retail Lending Test at 50% of the overall rating. While home mortgages and small business loans are absolutely core to bank's responsiveness to local credit conditions, so too are the affordable housing developments, child care programs, health clinics, community centers and other local assets, services and amenities that make up neighborhoods. These resources provide an outsized impact in communities but tend to receive less focus from the financial sector, as opposed to mortgage and small business lending in which there are other active market participants.

The proposed rule suggests that if a bank does not receive an Outstanding conclusion on its Retail Test, the bank cannot receive an Outstanding rating overall. This is a function of the weighting between the Retail Test (60%) and the Community Development Test (40%) and the proposed conclusion and rating point system. However, according to table 9 in the proposed rule (p. 251), none of the 44 largest banks would currently receive an Outstanding conclusion for the Retail Test. If an Outstanding rating is virtually unattainable, it is possible that banks will instead have incentive to only aim for a Satisfactory Retail Test conclusion, and thus a Satisfactory rating overall. As proposed in the NPR, a bank could achieve a Satisfactory rating with even a Needs to Improve conclusion on the Community Development Test. If a portion – or majority – of banks aim for a Satisfactory rating, the result could be severely diminished appetite to engage in community development for the purpose of the CRA examination. Greater emphasis on the Community Development Test would allow banks one more option for achieving an Outstanding rating and would motivate banks to excel on both tests considering their even impact on the overall rating.

XIX. DATA COLLECTION, REPORTING, AND DISCLOSURE

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?

LIIF supports requiring large banks to collect and maintain deposits data. We also support providing a longer transition period for banks to develop the internal infrastructure to meet this new requirement. We believe this sufficiently balances the need to collect more accurate data while also providing reasonable flexibility to meet the increased data collection burden associated with this requirement.

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?

LIIF recommends that the agencies require banks to report deposits data. It is inefficient to require banks to collect and maintain this data without then allowing the agencies to evaluate the data.

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?

LIIF supports collecting community development data at the activity-level.

QUESTION 173. Should the agencies disclose HMDA data by race and ethnicity in large bank CRA performance evaluations?

Yes, LIIF strongly supports this proposal and encourages the agencies to act swiftly to disclose HMDA data by race and ethnicity in large bank CRA performance evaluations. HMDA data and CRA have been historically linked due to the connection between fair lending and CRA. Formalizing the connection between these HMDA and CRA is a commonsense and long overdue step. Further, since HMDA data can be challenging to use, there are incredible benefits to the agencies organizing and analyzing HMDA data as part of a CRA performance evaluation. This would significantly improve the usability of HMDA data and also provide a more thorough analysis of bank CRA activity, as intended by the CRA statute.

LIIF does recommend that the agencies also meaningfully incorporate HMDA data into CRA performance evaluations such that fair lending violations illuminated through HMDA data would directly result in a downgrade on a bank's CRA exam.

XX. CONTENT AND AVAILABILITY OF PUBLIC FILE, PUBLIC NOTICE BY BANKS, PUBLICATION OF PLANNED EXAMINATION SCHEDULE, AND PUBLIC ENGAGEMENT

QUESTION 175. Is there additional data the agencies should provide the public and what would that be?

As noted throughout LIIF's comments, we are disappointed that the proposed rule neglects to collect, track, or incorporate racial demographic data in the examination process. Bank redlining practices were very clear in their intent and approach, which was to view people and communities of color as inherently risky, regardless of their financial strength or ability to repay. Redlining was not about income or financial circumstances – it was about race. Without data disaggregated by race and ethnicity, the regulators will not be able to fully assess a bank's track record of meeting the credit needs of its entire community, nor can the industry begin to more directly consider or craft products and services focused on racial equity.

Ideally, racial demographic data is needed across CRA activities, including community development, so that the agencies can capture an accurate and complete picture of how banks are meeting the credit needs of their entire communities – including communities of color. As noted above in response to question 173, LIIF strongly supports the agencies disclosing HMDA data by race and ethnicity in large bank CRA performance evaluations. We suggest extending this to all bank performance exams, and also implementing similar data collection and reporting requirements on race and ethnicity of community development activities. For example, the agencies could consider collecting information on the racial composition of a community development organization's board; the stated racial equity mission of an affordable housing developer or other borrower; or the race/ethnicity of those primarily served by a community development activity, such as the anticipated race/ethnicity of families attending a child care program financed by a bank in an LMI community.

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

Yes, LIIF supports additional opportunities for public comment in the CRA process. This should be consistent with and in addition to our recommendations in response to question 55 about performance

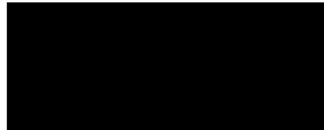
context, where LIIF recommends that public input about community credit needs and opportunities should inform a bank's performance context for specific geographies.

CONCLUSION

Finally, LIIF would like to reiterate our appreciation for the tremendous work that went into developing this proposed rule. CRA is an incredibly important law and the regulations enforcing it have the potential to strengthen the flow of capital into underserved communities. We are grateful for the opportunity to comment.

If you have any questions regarding these comments, please contact me at dnissenbaum@liifund.org or Olivia Barrow, Policy Manager, at obarrow@liifund.org.

Sincerely,



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