AFC American Fintech Council

August 5, 2022

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

Benjamin McDonough, Chief Counsel
Office of the Comptroller of the Currency
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Federal Deposit Insurance Corporation
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Re: *Community Reinvestment Act: Joint Notice of Proposed Rulemaking; Request for Comment;* OCC: Docket No. ID OCC-2022-0002; RIN 1557-AF15; Board: Docket No. R-1769; RIN 7100-AG29; FDIC: RIN 3064-AF81

Dear Ms. Misback, Mr.McDonough and Mr. Sheesley:

The American Fintech Council (AFC) appreciates the opportunity to comment on the joint notice of proposed rulemaking modernizing the Community Reinvestment Act's (CRA) regulatory framework. AFC represents digital banks, banks with nontraditional business models and banks that have elected to be evaluated under the agencies' existing strategic plan option. As noted, the current regulations offer these banks some flexibility in meeting CRA obligations in a manner that is responsive to community needs and opportunities and appropriate considering their capacities, business strategies, and expertise. As the CRA regulatory framework adopts a more quantitative framework, we urge the agencies to ensure there is sufficient flexibility in the strategic plan option and around the large bank exams. It is critical that there is appropriate examiner review of performance context and other factors not captured by the metrics and that can account for different business models, business strategies, and other products that are heterogenous in meeting the credit needs of low- and moderate income (LMI) borrowers and underserved communities. This will help to remediate inequities in access to credit and financial services and facilitate greater financial inclusion for underserved borrowers and communities of color.

I. BACKGROUND

About AFC

AFC's mission is to promote an innovative, transparent, inclusive, and customer-centric financial system by supporting the responsible growth of lending, fostering innovation in financial technology (fintech), and encouraging sound public policy. We believe that the provision of well-regulated, responsible services and products by technology-driven financial services providers is critically important for the financial health of consumers, small businesses, and the banking system. AFC supports a fair financial services system where products are designed in compliance with regulation and where predatory conduct has no place.

AFC members are at the forefront of fostering competition in consumer finance and pioneering ways to better serve underserved consumer segments and geographies. Through a variety of business models, AFC members are refinancing higher interest rate credit cards, higher cost student debt and higher annual percentage rate (APR) auto loans, providing overdraft-free, lower- and fee-free banking and saving deposit accounts and other affordable financial services. AFC members are also lowering the cost of financial transactions – marketing, underwriting, debt subordination, payments - allowing financial institutions to meet the demand for high-quality, affordable products. The Federal Reserve, community bankers, and others have acknowledged that partnerships with fintechs can ensure that community banks remain competitive and vibrant.[1] Among other findings, federal and academic researchers have also documented that fintech providers enable bank lending in banking deserts, low-income communities, and to the "invisible prime" - consumers whom other lenders might overlook or overprice.[2]

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[1]Community Bank Access to Innovation through Partnerships, Board of Governors of the Federal Reserve System (September 2021). *Fintech Strategy Roadmap for Community Banks*, ICBA (March 2018). The State of Digital Lending, American Bankers Association (Jan. 2018).
[2]Di Maggio, Marco and Ratnadiwakara, Dimuthu and Carmichael, Don, Invisible Primes: Fintech Lending with Alternative Data, (October 6, 2021). See also: the expert report of Dr. Michael A. Turner in Avant vs. Colorado LLC d/b/a Avant, et. Al. (February 14, 2020)(see the study in Attachment here)(examined various credit profiles and credit needs and compared partnership loans to other credit alternatives available to Colorado consumers). *Alternative Data and Machine Learning in Fintech Lending: Evidence from the Lending Club Consumer Platform*, Federal Reserve Bank of Philadelphia, Working Papers Research Dept. (January 2019) (found low default rates achieved while serving people deeper in the risk spectrum than customers of over 85% of the top traditional banks). Federal research from the Paycheck Protection Program found more fintech loans in zip codes with fewer

One of the challenges of CRA modernization is to ensure that many of our members who are providing consumer credit and other financial services digitally and nationally, both directly and in third-party relationships with banks, have options around how their business models are considered under a new CRA framework.

The continuing importance of CRA

At the outset, we recognize and support the importance of the CRA in providing the agencies, regulated banks, and community organizations with the necessary framework to facilitate a vital financial ecosystem that supports LMI and minority access to credit and community development.[3] The law has an illustrious history of addressing systemic inequities in access to credit and financial services for LMI borrowers and communities, consistent with its core purpose. It has provided the agencies with a key tool for addressing persistent systemic inequity in the financial system whether it results from ongoing discrimination or is in response to the negative and informational externalities that lead to market failure.[4]

There are several areas of the quantitative metrics and benchmarks in the large bank exam as well as the strategic plan option that will require greater flexibility to accommodate different bank business models and product mixes. Reducing the complexity of the proposal would also help financial institutions and other stakeholders better ascertain whether the new approach will better harness bank activities to support LMI and underserved people and places, borrowers and communities of color. However, we support aspects of the proposal that are designed to better target CRA incentives consistent with the larger purposes of the law.

II. CLARIFYING DEFINITIONS & ACTIVITIES THAT SUPPORT UNDERSERVED COMMUNITIES & FINTECH

A. The importance of an illustrative list that also supports innovation

We support a publicly available illustrative list of qualifying community development activities like that the Office of the Comptroller of the Currency (OCC) maintains on its website. It would also be helpful to maintain a list of non-qualifying community development activities (Question 31). Importantly, examiners should have some discretion to consider new, less common, more

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bank branches, lower incomes, and larger minority populations. See e.g. Does FinTech Substitute for Banks? Evidence from the Paycheck Protection Program, NBER Working Paper 27659 (December 2020). Paycheck Protection Program: Program Changes increased Lending to the Smallest Businesses and in Underserved Locations, GAO (September 21, 2021). Who Received PPP Loans by Fintech Lenders?, Federal Reserve Bank of New York Liberty Street Economics (May 27, 2021).

[4] Robert E. Litan, Nicolas P. Retsinas, Eric S. Belsky, Susan White Haag, *The Community Reinvestment Act After Financial Modernization: A Baseline Report,* U.S. Treasury, April 2000.

complex, or innovative activities that arise and may require the use of performance context to determine CRA qualification. An illustrative list and a workable and timely process for confirming eligibility of qualifying activities both in advance and after the fact can provide room for innovation and greater upfront certainty. We also support the list being searchable.

B. *Community development definitions and activities that better target bank activities to people and places that are underserved*

We support the agencies' proposal to consider activities by a minority-depository institution (MDI) or women-owned depository institution (WDI) to promote their own sustainability and profitability (*Question 26*), including partnerships with fintech providers that help these institutions improve their products and services to underserved segments. The framework should also consider similar activities by all banks utilizing financial technology to better serve distressed or underserved segments.

We also support expanding current guidance to add: 1) eligibility for financial products and activities related to helping LMI individuals and communities, small businesses, or small farms prepare for, adapt to, and withstand natural disasters, weather-related disasters, or climate-related risks; and, 2) eligibility for community development activities related to revitalization, essential community facilities and infrastructure, and disaster preparedness and climate resiliency that are specifically targeted to and conducted in Native Land Areas.

C. *Impact Review Factors are important including those that also support innovative bank activities*

Undertaking a qualitative review of those activities evaluated under the Community Development Financing Test and Community Development Services Test can encourage bank activities that have a high degree of impact on and responsiveness to the needs of LMI communities. In addition to the specific factors proposed, it is important for the agencies to consider other activities where the bank can demonstrate impact based on detailed information, local data and community input. Examiners should also continue to consider bank activities that demonstrate innovativeness, such as how banks implement fintech to create meaningful improvements to products, services or delivery systems that meet an identified community development need.

We also support impact review factors for bank community development activities in all the geographic areas proposed that have high community development needs including high poverty census tracts and persistent poverty counties (*Question 34*), for activities supporting MDIs, WDIs, low-income credit unions (LICUs), and Treasury Department-certified community development financial institutions (CDFIs) including equity investments, long-term debt financing, donations and services (*Question 35*), and for activities benefiting Native Land Areas and Native communities (*Question 38*), as well as those activities that reflect a bank's leadership through multi-faceted or instrumental support.

D. *Other definitional improvements and key considerations*

We support the agencies' proposal to provide community development services consideration for volunteer activities in nonmetropolitan areas that meet an identified community development need, even if unrelated to the provision of financial services and we would support similar consideration in all areas (*Question 127*). As noted, broadening these types of activities can foster partnerships among different stakeholders, build capacity and create the conditions for effective community development.

III. THE STRATEGIC PLAN OPTION MUST RETAIN TODAY'S FLEXIBILITIES

A flexible strategic plan option is an essential part of a CRA framework that accommodates the full range of business models in the banking industry and the option should continue to be available to all banks notwithstanding the proposed metrics approach (*Question 134*). The strategic plan option in the current rule provides needed flexibility for banks that (because of their business model or product mix) do not fit well under the conventional retail framework that is designed primarily for branch-based banks that offer mortgages and small business loans. The current strategic plan framework has allowed digital banks, banks that focus on consumer lending, and banks with significant wholesale activities to fulfill their CRA obligations under a tailored evaluation that recognizes their unique business models, delivery systems, and product sets. We would also note that the guardrails in the strategic plan process – the requirements to solicit public input and secure regulatory approval – are designed to ensure that under the strategic plan option, a bank can meet its CRA obligations in a manner that is responsive to community needs and opportunities and appropriate considering the bank's capacities, business strategies, and expertise.

However, the agencies' proposed strategic plan option appears to be based primarily on applying otherwise applicable standards. This lack of flexibility is particularly concerning given the seemingly fixed and inflexible product scope and assessment area delineation. Diminishing the flexibility of the strategic plan option would defeat the purpose of strategic plans which is to harness non-traditional banks' potential to serve LMI communities. Strategic plans should serve as a way for CRA to accurately capture unique and innovative business models, not limit them. For example, there are fintech banks that are in the business of providing innovative mortgage and small business financing products, which are central to wealth building and deserve an important place in CRA, and there are fintech banks that are predominantly in the business of providing consumer loans (including to LMI borrowers and in LMI communities). Banks focused predominantly on consumer lending should have the option of having their consumer lending considered as part of their strategic plan. The assessment area requirements under a strategic plan should also accommodate banks that operate through bank-fintech partnerships.

We therefore urge the agencies to retain the flexibility that the current rule provides for strategic plans. The proposed rule states that banks would be given the flexibility "to set different metrics from those that would otherwise be applicable if a bank is substantially engaged in activities outside of the scope of the standard performance tests." We request that the agencies clarify the circumstances under which a bank will qualify for the flexibility from the otherwise applicable standards and clarify that the strategic plan option includes flexibility regarding which products are in scope, assessment area delineation, test weightings, and measurable goals for retail and community development performance. Allowing for additional flexibilities in the strategic plan process will help ensure that all banks can serve LMI communities and be recognized for their CRA performance in a way that is relevant to their business model.

Encouraging public participation

The agencies should announce pending and finalized strategic plans at the agencies' website (Question 137), and the final plan should be posted on both the appropriate Federal banking agency's website and the banks' website (Question 138). The agencies' notice should include the appropriate contact person at the bank for members of the public interested in commenting.

IV. THE PROPOSED LARGE BANK EVALUATION SHOULD BETTER ACCOUNT FOR DIFFERENCES IN BUSINESS MODELS, STRATEGIES, AND PRODUCT MIXES

The proposal's aim to better evaluate digital banking and online lending outside a bank's Facility-Based Assessment Areas (FBAAs), through both Retail Lending Assessment Areas (RLAAs) and Outside Retail Lending Areas. The RLAA approach is unnecessarily complex and inefficient for digital banks to execute. We are also concerned that RLAAs may not best target retail lending to underserved geographies with the greatest credit needs. A better approach could provide an incentive for banks to meet credit needs in these areas by providing meaningful additional positive consideration for strong lending performance in underserved geographies.

We also appreciate the agencies' tailored approach to evaluating CRA activities of intermediate banks – not requiring that these banks designate RLAAs and evaluating an intermediate banks retail lending performance on an aggregate basis in areas outside of its FBAAs, rather than evaluating outside assessment area performance in specific MSAs or non-MSA portions of states where there are concentrations of lending.

All banks should have the option to have community development activities outside of FBAAs considered, as proposed, including banks that elect to be evaluated under a strategic plan (Question 48). The additional flexibility and certainty will allow digital first banks to identify impactful community development opportunities that serve geographies with high unmet community development needs across the nation, including areas where few banks have branches or concentrations of retail loans, while still prioritizing local partnerships and initiatives. It would also help mitigate the larger issue of CRA hot spots.

We also support the higher weighting placed on state and nationwide activities for banks with limited physical footprints. This ratio should be something that can be further customized for banks operating under a CRA strategic plan based on their business model.

A. The Retail Lending Test is not suited for digital banks with a different product mix

We represent a number of digital first banks that would have very few FBAAs; banks whose lending is geographically dispersed; banks who offer a wide range of consumer credit and deposit products and services that are heterogeneous in meeting LMI credit needs but are difficult to evaluate on a consistent quantitative basis; and banks that rely on a diversity of funding sources. Under the proposed framework, most would seek to be evaluated under the agencies' proposed strategic plan procedures given their business strategies and retail product offerings. For many, a significant focus of their retail business would be evaluated under the qualitative Retail Services and Products Test – just 15 percent of the overall 60 percent retail exam, as proposed. Whether evaluated under strategic plan procedures or the large bank exam, flexibility is needed to account for these business models.

B. Performance Context and additional factors critical for some business models and strategies

We emphasize how critically important it is for examiners to consider the performance context information proposed for §__21(e) (Question 55) in applying each performance test and that additional factors be considered when evaluating retail lending performance as proposed in § __22(e). We urge the agencies to consider the following factors, among others:

- ✓ Whether the substantial majority or a significant portion of the bank's retail activities are loan products and services not defined as retail products for purposes of the Retail Lending Test and included in the quantitative metrics and benchmarks;

- ✓ The bank's business strategy (e.g., if a bank holds loans in portfolio or sell them into the secondary market);
- ✓ Geographic dispersion of loan products and services;
- ✓ Data anomalies (e.g., where there are very few banks reporting retail lending data and deposits); and
- ✓ Institutional capacity and constraints (e.g., financial condition of the bank, presence/lack of other lenders in the area, safety and soundness considerations).

C. Large banks can demonstrate the benefits of financial technology in meeting LMI credit and services needs through the optional Retail Services and Products Test

Providing large banks with assets of $10 billion or less the option of being evaluated for their digital and other delivery systems and responsive deposit and other credit products can help demonstrate how these systems and products are addressing gaps in the market for LMI borrowers and communities. It should remain at the option of these large banks (*Question 103*).

COVID-19 magnified the challenge of ensuring the availability of high-quality financial services and products to LMI borrowers and communities. Banking deserts and underserved census tracts are proliferating and in thousands of communities across the country as bank branches closed at record rates during the crisis.[5] An analysis of majority Black and LatinX communities found low levels of bank concentration as measured by the Herfindahl-Hirschman Index, relative to their majority white counterparts.[6] Evaluating retail services and products provides large banks with assets of $10 billion or less the options to demonstrate how the availability and responsiveness of their mobile and online banking services are providing financial services to geographies and individuals underserved by banks. Indirectly, it will also encourage bank third-party relationships, strategic partnerships, and investments in fintech providers that have a demonstrated track record of using financial technology to help banks better reach segments of the market that remain underserved.

1. Evaluating Digital Delivery Systems and Deposit Products that are responsive

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[5] Bank Branches and COVID-19: Where are Banks Closing Branches during the Pandemic? FEDS Notes (December 17, 2021). US banks shutter record number of branches in 2020 | S&P Global Market Intelligence (spglobal.com).
[6] An analysis of financial institutions in Black-majority communities: Black borrowers and depositors face considerable challenges in accessing banking services, Brookings (Nov. 2021). Reviews of the Paycheck Protection Program also found "that over-reliance on established financial institutions can have undesirable distributional implications…borrowers in Black neighborhoods that do receive government support tend to use Fintech lenders and travel further." Jeffrey Wang and David hao Zhang, The Cost of Banking Deserts: Racial Disparities in Access to PPP Lenders and their Implications, Harvard University (April 29, 2021).

The agencies propose evaluating digital delivery systems by the range offered, the number of accounts opened digitally, accountholder usage by census tract, and the bank's digital strategies and initiatives (Question 100). We support this proposal on digital offerings, the consideration of affordability as a factor (Question 101), and for the inclusion of a ratio that identifies the percentage of responsive deposit accounts compared to total deposit accounts for each year of the evaluation period (Question 109), along with a review of related marketing and awareness efforts. While this evaluation would provide some insight into whether bank offerings are reaching LMI and underserved consumers, it is important to indicate that there are limitations in the methodology of evaluating a number of these activities at a census-tract level, and particularly in nonmetropolitan areas. Even where data anomalies or limitations limit a quantitative review, we urge the agencies to provide full qualitative consideration for a bank's digital delivery system.

In terms of tracking the geographic location of where an account is opened, we recommend that when an account requires Customer Identification Program (CIP) information, then the address of the depositor be utilized. As noted, there are some types of deposit accounts where depositor location is unavailable to the bank (e.g., pre-paid debit card accounts, Health Savings Accounts, gift cards) (Question 151). We support the proposal to report accounts without depositor data at the institution level, and reporting deposit accounts that do not require CIP data in this manner.

The agencies have proposed also to consider responsive retail lending products and programs that facilitate consumer loans to LMI borrowers, credit products that meet the needs of the smallest businesses and farms and credit products and programs that are conducted in cooperation with MDIs, WDIs, LICUs or CDFIs. The agencies rightly acknowledge through their LMI responsiveness framework that while access to credit and deposit products is important, the quality of those credit and deposit products is critical. We support the agencies' consideration of the additional categories of responsive credit products, including: consumer lending programs that utilize alternative credit histories in a manner that would benefit LMI individuals; consumer lending programs that provide affordable loans to LMI individuals; listing special purpose credit programs as a responsive credit product or program that facilitates lending targeted to LMI borrowers; and other consumer lending programs that use financial technology in a manner that would benefit LMI individuals and geographies.

2. The CRA framework should encourage bank activities that incorporate financial health

We also recommend that the agencies consider programs that measure consumer financial health. Today, banks are increasingly able to measure the outcomes of their product offerings and investments. Regulators have indicated support for developing better tools to assess and monitor financial health.[7] Financial health measurement typically utilizes the frameworks developed by the CFPB or the Financial Health Network. We would support an approach that would give banks consideration for a meaningful program to measure financial health of the banks' deposit and credit products; whether the program identified positive outcomes resulting from those products (e.g., increased savings balances or credit scores); and whether the bank used the measurement to improve the responsiveness of its products.

V. CONCLUSION

The agencies' proposed framework around CRA is a complex but consequential undertaking that has broad implications for the credit and community development needs of LMI people and places, underserved geographies and borrowers and communities of color. AFC urges you to adopt greater flexibility into the framework to better reflect nontraditional banking models, national digital banking strategies and different product mixes. If you should have any further questions, then please do not hesitate to contact me at gerron@fintechcouncil.org or 301-801-6121.

Sincerely,

/s/Gerron S. Levi

[7] Acting OCC Comptroller Michael Hsu, Understanding Consumer Financial Health and Well-being in Turbulent Market"(July 14, 2022). The Federal Reserve Bank of San Francisco has also undertaken research on financial health measurements.