

August 5, 2022

VIA ELECTRONIC SUBMISSION

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

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

Chief Counsel's Office
Attention: Comment Processing
Office of the Comptroller of the Currency
400 7th Street, SW
Suite 3E-218
Washington, DC 20219

**Re: Community Reinvestment Act (Docket No. R-1769, RIN 7100-AG29; Docket ID
OCC-2022-0002, RIN 1557-AF15; RIN 3064-AF81)**

Ladies and Gentlemen:

On behalf of its members, the Risk Management Association (“RMA”) thanks the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation and the Office of the Comptroller of the Currency (the “Agencies”) for the opportunity to comment on the joint notice of proposed rulemaking to amend the regulations implementing the Community Reinvestment Act of 1977 (“CRA”) (the “Proposal”).¹

RMA is a member-driven professional association whose sole purpose is to advance the use of sound risk management principles in the financial services industry. RMA helps its members use sound risk management principles to improve institutional performance and financial stability, and to enhance the risk competency of individuals through information, education, peer-sharing and networking. RMA has approximately 1,900 institutional members, which include banks of all sizes as well as non-bank financial institutions.

¹ *Community Reinvestment Act*, 87 Fed. Reg. 33884 (June 3, 2022).

One of the most important components of RMA's mission is to provide independent analysis on matters pertaining to risk and capital regulation. In this regard, the comments contained herein are informed by subject matter experts from member institutions from RMA's Operational Risk Management Council, Enterprise Risk Management Council and Compliance Committee, as well as subject matter experts and CRA, compliance and legal directors or managers of certain member institutions.

RMA supports the Agencies' efforts to amend and modernize the CRA regulations to adapt to the significant change in the banking industry and to make CRA regulations more clear, consistent and transparent.² RMA agrees with the Agencies' objective to make revisions to the CRA regulations in order to "[c]larify which activities qualify for CRA credit; update where activities count for CRA credit; create a more transparent and objective method for measuring CRA performance; and provide for more transparent, consistent, and timely CRA-related data collection, recordkeeping, and reporting."³ The successful implementation of these objectives would encourage and facilitate efforts by banks to help meet the credit needs of their local communities.

With the intent to assist the Agencies in accomplishing these objectives, we provide below responses to certain questions posed in the Proposal, as well as our suggested enhancements and clarifications. Our responses and comments pertain to the following topics: (i) asset thresholds; (ii) the transition period to comply with new data collection and reporting requirements; (iii) the proposed required criteria for certain qualifying activities; (iv) qualifying activities confirmation and illustrative list of activities; (v) eligible products for retail lending test and retail services and products test; and (vi) benchmarks, conclusions and ratings.

I. The Data Collection and Reporting Requirements Are Overly Burdensome for All

² See 87 Fed. Reg. at 34009.

³ *Id.*

Large Banks, Particularly Those Just over the \$10 Billion Threshold.⁴

Tailoring CRA evaluation and data collection requirements to bank size and type is one of the key objectives of the Proposal.⁵ The Proposal increases the asset threshold of each bank category, including the asset threshold of large banks from at least \$1.384 billion to at least \$2 billion.⁶ The Proposal also differentiates between large banks with assets of \$10 billion or less and large banks with assets of over \$10 billion to further tailor various elements of the proposed regulations, including assessment areas, certain components of performance tests, and data collection and reporting obligations.

Data collection and reporting is one of the key distinguishing obligations for banks with assets over \$10 billion from those with assets of \$10 billion or less. For banks with assets of at least \$2 billion but not more than \$10 billion, the Proposal requires these banks to collect and report certain small business, small farm and home mortgage loans, community development financing data and retail services and products data, with the option to collect deposit data.⁷ Banks with assets of over \$10 billion are required to collect and report deposits data, automobile lending data, community development services data, retail services data on digital delivery systems and retail services data on responsive deposit products, on the basis that such banks have increased resources.⁸ The Proposal also imposes new data collection and reporting of the proposed Retail Lending test and Community Development Financing test only on banks with assets of over \$10 billion because “smaller large banks may have more limited capacity.”⁹

Complying with the data collection and reporting obligations in the Proposal poses a significant burden for even the largest banks, as banks will need to make significant changes to many facets of their current systems, programs and procedures in order to properly collect the

⁴ This section is responsive to Question 50 of the Proposal, which provides, “The proposed asset thresholds consider the associated burden related to new regulatory changes and their larger impact on smaller banks, and it balances this with their obligations to meet community credit needs. Are there other asset thresholds that should be considered that strike the appropriate balance of these objectives?” 87 Fed. Reg. at 33925.

⁵ 87 Fed. Reg. at 33885; Office of the Comptroller of the Currency, *Community Reinvestment Act Proposal Fact Sheet* (May 2022), available at <https://www.occ.treas.gov/news-issuances/news-releases/2022/nr-ia-2022-47b.pdf>.

⁶ 87 Fed. Reg. at 33924.

⁷ 87 Fed. Reg. at 33996; Proposed §_42.

⁸ 87 Fed. Reg. at 33923.

⁹ 87 Fed. Reg. at 33924. Although the preamble to the Proposal mentions the Community Development Financing test, we believe that this was done in error and that the preamble was meant to reference the Community Development Services test.

requisite data and report it accurately. These changes may include hiring additional personnel, developing new policies and procedures, and creating new data integrity workstreams, among other changes.

Moreover, RMA respectfully suggests that the \$10 billion threshold is too low in light of the significant data collection and reporting obligations and the related costs of establishing a system and procedures necessary to comply with these obligations. Subjecting banks with assets of just over \$10 billion to the same extensive data collection and reporting requirements as their much larger counterparts places the smaller large banks at a significant disadvantage, as they must establish and maintain a program that complies with the complex evaluative framework outlined in the Proposal with significantly fewer resources. Further, the diversion of such banks' resources to establish and manage the required systems to comply with the Proposal's heightened collection and reporting obligations may reduce their ability to engage in community development activities, a result that runs counter to the CRA's purpose.

RMA recommends that the Agencies align this threshold with those used in other federal financial regulations that impose increasing obligations on financial institutions that correspond to their asset size. A higher threshold would prove more effective in identifying the banks that have the necessary resources to implement a CRA program that meets the Proposal's requirements. Raising the asset threshold likewise avoids the inadvertent consequence that banks that barely clear the \$10 billion asset threshold may engage in less community development to ensure sufficient resources to comply with the Proposal's data collection and reporting requirements.

II. Banks Require at Least Two Years to Comply with the New Data Collection and Reporting Requirements.¹⁰

As the Agencies acknowledge in the preamble to the Proposal, banks will have to adjust

¹⁰ This section is responsive to Questions 149, 153, 154 and 178, which provide:

Question 149: "What are alternative approaches to deposits data collection and maintenance that would achieve a balance between supporting the proposed metrics and minimizing additional data burden? Would it be preferable to require deposits data collected as a year- or quarterly-end total, rather than an average annual deposit balance calculated based on average daily balances from monthly or quarterly statements?" 87 Fed. Reg. at 33997.

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

Question 154: "In order to reduce burden associated with the reporting of deposits data, what other steps can the agencies take or what guidance or reporting tools can the agencies develop to reduce burden while still ensuring adequate data to inform the metrics approach?" *Id.*

systems and train personnel to comply with the new CRA regulations.¹¹ The Proposal's new requirements, including data collection and certain data reporting requirements, become applicable one year after publication of the final rule. RMA recommends that the transition period for data collection be revised to at least two years post the final rule's effective date. RMA separately recommends that the applicability date for new data collection requirements be set for the beginning of a calendar year to avoid banks being subject to both the existing and proposed reporting regimes in the same year.¹²

RMA believes that the Proposal significantly underestimates the time necessary to adjust and/or create systems able to collect and format data not currently being collected (*e.g.*, deposit data and consumer auto lending). Most banks do not currently collect deposits data based on the location of the depositor and would be required to make changes to their systems to do so. Banks also require time to determine how to format the data required under the Proposal. Specifically, many of the data collection and reporting requirements in the Proposal require that the data be provided in a machine-readable form that has yet to be prescribed by the Agencies.¹³ We note that some types of data do not readily lend themselves to being reported in a machine-readable format. Further, the fact that the form data would be required to be reported in has not yet been shared further delays banks' ability to prepare to meet such reporting requirements.

RMA urges the Agencies to require that deposit data be collected and reported based on end-of-quarter or end-of-year balances (rather than an average annual deposit balance calculated based on average daily balances from monthly or quarterly statements). In addition, the Agencies should consider creating an online platform akin to the Consumer Financial Protection Bureau's ("CFPB") Home Mortgage Disclosure Act Loan Application/Register ("HMDA LAR") formatting tool to provide banks with a direct and efficient manner to submit the required data and reports.

A sufficient transition period should also account for the time and investment necessary to develop and implement data integrity plans (some of which may necessitate new technology) to enable a bank to test and validate the data it collects, as well as staff training and development of appropriate policies and procedures. The current proposed one-year transition period likewise

Question 178: "The agencies ask for comment on the proposed effective date and the applicability dates for the various provisions of the proposed rule, including on the proposed start date for CRA examinations under the new tests." 87 Fed. Reg. at 34006.

¹¹ 87 Fed. Reg. at 34005.

¹² The Agencies note in the preamble to the Proposal that they would determine the applicability data based on the time of year a final rule is issued, including considering whether the beginning of a quarter or calendar year is appropriate. *See* 87 Fed. Reg. at 34005.

¹³ *See e.g.*, 87 Fed. Reg. at 33996.

does not provide sufficient time for large banks that rely on third-party service providers for technology, data collection and reporting solutions to establish appropriate systems to furnish the relevant data to the service provider that, in turn, must validate such data prior to reporting.¹⁴

Building the technological infrastructure to collect new and large amounts of data in one year (and later report this data) will be very difficult for banks in light of other regulatory changes on the horizon, including a final rulemaking by the CFPB to implement Section 1071 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, 15 U.S.C. § 1691o-2,¹⁵ as well as various state regulations.

III. Community Development Qualifying Activities.

A. Community Development Activities Should Not Be Required to Be Conducted in Conjunction with a Government Program.¹⁶

Under both the current and proposed CRA framework, banks are evaluated under different tests for their community development lending, investments and services. To qualify for CRA credit under those tests, a bank's activities must have community development as their primary purpose. The Proposal expands the current four community development categories to 11 categories to help clarify eligibility criteria for different activities. Seven of the 11 categories of the community development purpose definition require that the activity be conducted in conjunction with a government plan, program or initiative. RMA suggests this requirement be eliminated. Doing so would credit a greater swath of community development activities that

¹⁴ As discussed in section I of this comment letter, raising the asset threshold that triggers these obligations may lessen their impact on smaller large banks that do not maintain such resources, systems or expertise in-house.

¹⁵ In September 2021, the CFPB issued a Notice of Proposed Rulemaking to implement the small-business lending data collection requirements of the Equal Credit Opportunity Act. The comment period for the rule closed in January 2022, and the CFPB's submission to the Spring 2022 Unified Agenda of Federal Regulatory and Deregulatory Actions provides that the rule is in its final stages; see <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202204&RIN=3170-AA09>.

¹⁶ This section is responsive to Questions 10 and 14, which provide:

Question 10: "What changes, if any, should the agencies consider to ensure that the proposed affordable housing definition is clearly and appropriately inclusive of activities that support affordable housing for low- or moderate-income individuals, including activities that involve complex or novel solutions such as community land trusts, shared equity models, and manufactured housing?" 87 Fed. Reg. at 33898.

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)?" 87 Fed. Reg. at 33906.

benefit the populations the CRA was enacted to serve and is consistent with the statute’s objective and purpose.

Affordable housing is one of the seven categories that require the activity be conducted in conjunction with a government plan, program or initiative. Activities that support affordable housing include rental housing purchased, developed, financed, rehabilitated, improved or preserved in conjunction with a federal, state, local or tribal government affordable housing plan, program, initiative, tax credit or subsidy with a stated purpose or bona fide intent of providing affordable housing for low- or moderate-income (“LMI”) individuals. The preamble to the Proposal notes that the revised definition is intended to “add greater clarity around the many types of subsidized activities that currently qualify for consideration” and to “emphasize affordable housing activities benefitting [LMI] individuals.”¹⁷

The remaining six categories that have a similar requirement are what the preamble to the Proposal refers to as “place-based definitions” and include: (i) revitalization; (ii) essential community facilities; (iii) essential community infrastructure; (iv) recovery activities in designated disaster areas; (v) disaster preparedness and climate resiliency activities; and (vi) qualifying activities in Native Land Areas.¹⁸ Each of the place-based definitions requires that the activity be conducted in conjunction with a government plan, program or initiative that includes an explicit focus on benefiting the targeted geography. The preamble to the Proposal explains the reasons for this amendment, citing, just as for affordable housing, the need to “ensure that the activity is responsive to identified community needs” and “provide flexibility,” among other reasons.¹⁹

RMA believes that eliminating the “in conjunction with” requirement could nonetheless ensure that the qualifying activity focus on benefiting LMI communities and be responsive to community needs without rendering ineligible for CRA credit certain financing and services that would benefit these communities. For example, some banks currently finance building grocery stores in food deserts. This investment helps address a critical need of these communities, which tend to be LMI communities; however, under the proposed definition, such activity would not qualify for CRA credit if it is not made in conjunction with a government program.

Alternatively, if the Agencies remain inclined to situate the qualifying activity within a framework that will require certain accountability and oversight, RMA respectfully suggests that

¹⁷ 87 Fed. Reg. at 33894.

¹⁸ 87 Fed. Reg. at 33901. These are referred to as “place-based definitions” because each of the categories focuses on place-based activities that benefit residents of targeted geographic areas.

¹⁹ 87 Fed. Reg. at 33903, 33904.

the Agencies consider revising these definitions to permit activities conducted in conjunction with non-governmental organizations to be eligible for CRA credit. Many banks already work with nonprofits associated with or focusing on affordable housing and other community development activities described in the place-based definitions. Non-governmental organizations that could qualify could include organizations that have a stated purpose, or bona fide intent to service, or that otherwise directly support, servicing LMI individuals or communities. For example, providing financing to nonprofits that make loans to LMI individuals to obtain solar panels to minimize their electricity usage could be the type of activity eligible for CRA credit. Moreover, allowing community development activity in conjunction with non-governmental organizations to qualify for CRA credit is consistent with the Agencies' acknowledgment that there may not be government plans, programs or initiatives that focus on many of the activities of the place-based definitions or that exist in some of the targeted communities, such as with respect to disaster preparedness or climate resiliency.²⁰ In addition, a government plan, initiative or program may lack the expertise, knowledge of local community needs and relationships with local community leaders and organizations that a non-governmental organization that serves particular populations or communities may have that better situate it to understand and effectively address the credit needs of those communities.

In any event, RMA agrees with the stakeholders mentioned in the preamble to the Proposal that activities that align with a government plan should receive automatic CRA consideration.²¹ For example, such alignment could be demonstrated by comparing proposed CRA activities to government plans in other areas or that have been conducted in the past.

B. Area Median Income Threshold for Affordable Housing Should Be Increased.

RMA respectfully suggests that the standard used to determine whether rents are affordable for LMI individuals under the affordable housing definition be increased to 30 percent of 80 percent of area median income ("AMI"), instead of the Proposal's 30 percent of 60 percent of AMI. For certain higher-cost markets (*e.g.*, New York), RMA believes the AMI threshold should be further increased to 30 percent of 120 percent of AMI to account both for shortages in housing supply and the cost of housing generally, which combine to raise the benchmark of what is considered affordable housing in those markets. Revising the AMI threshold would allow

²⁰ 87 Fed. Reg. at 33906.

²¹ 87 Fed. Reg. at 33902.

banks to receive CRA credit for multifamily rental housing that serves both low- and moderate-income individuals, thus advancing a core objective of the CRA.²²

Under the Proposal, in order for a bank to get CRA credit for multifamily rental housing, the monthly rent as underwritten by the bank, for the majority of the units, must not exceed 30 percent of 60 percent of the AMI for the metropolitan area or nonmetropolitan county.²³ This affordability standard in practice would limit CRA credit to multifamily rental housing occupied by low-income individuals. Amending the rental affordability standard for naturally occurring affordable housing to 60 percent is therefore overly restrictive and would render many properties whose units currently are rented by LMI individuals ineligible for CRA credit. Preventing properties rented to moderate-income individuals from receiving CRA credit because of the restrictive AMI thresholds is counter to the CRA's objectives of meeting the credit needs of low-*and* moderate-income individuals.²⁴

IV. RMA Supports Revising the CRA Regulations to Include a Qualifying Activities Confirmation and Illustrative List of Activities.²⁵

RMA strongly supports the Proposal's suggestion to establish a process for banks to confirm the eligibility of community development activities in advance. As noted in the preamble to the Proposal, this process would allow banks engaging in more complex, innovative activities that may require examiner judgment and the use of performance context to know if the activity would qualify for CRA purposes.²⁶ In order for the process to be most effective and encourage financial institutions to engage in a dialogue on potential CRA activity, RMA suggests that the regulation set a 60-day timeline for the Agencies to respond from the date a confirmation request is submitted, with the presumption that the activity will qualify for CRA credit if the Agencies do not reply by the end of the 60-day period. In addition, in order to achieve consistency in the interpretation of the CRA across the Agencies and maintain a unified

²² 87 Fed. Reg. at 33886 (noting that the CRA was designed to encourage banks to meet the credit needs of a bank's community, including low- and moderate-income neighborhoods).

²³ Proposed § 13(b)(2).

²⁴ *Id.*

²⁵ This section is responsive to Questions 31 and 32, which provide:

Question 31: "Should the agencies also maintain a non-exhaustive list of activities that do not qualify for CRA consideration as a community development activity?" 87 Fed. Reg. at 33912.

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

²⁶ *See* 87 Fed. Reg. at 33911.

approach, a determination by one Agency confirming an activity's eligibility for CRA credit should be binding on the other Agencies.

RMA also supports the creation by the Agencies of a publicly available non-exhaustive list of activities eligible for CRA consideration, which would be periodically updated, including by listing activities that are approved via the confirmatory process described above. Similarly, a non-exhaustive list of activities that do not qualify for CRA consideration as community development activities would be welcomed by banks.

V. Eligible Products for Retail Lending Test and Retail Services and Products Test.

A. The Designation of Major Product Lines for the Retail Lending Test Should Be Made at the Institution Level and Prior to the Beginning of an Exam.

Under the Proposal's Retail Lending Test, the Agencies evaluate a bank's record of lending to LMI borrowers and communities, small businesses and small farms in its assessment areas through a bank's origination and purchase of retail loans. Retail lending product lines evaluated under the test include closed-end home mortgage loans, open-end home mortgage loans, multifamily loans, small business loans, small farm loans and automobile loans. All products (except for automobile loans) would need to consist of 15 percent or more of the dollar value of the bank's retail lending in the respective area (facility-based assessment area, retail lending assessment area or outside retail lending area) over the relevant evaluation period (the "Major Product Line"). For automobile loans, the average of the dollar volume and loan count percentage would be used to arrive at the 15 percent threshold.²⁷

As proposed, the Major Product Line designation varies by assessment, and may also change within an assessment area during an exam period. This is because, although most exams cover three years of performance, the Major Product Line designation is made annually based on the prior two years' volume of activity.²⁸ In order to provide greater clarity, consistency and transparency, which are key objectives of the Proposal, the designation of Major Product Lines should be made at the institution level and prior to the beginning of an exam period, remaining consistent throughout the exam cycle. It would be difficult for banks to appropriately plan their CRA activity and efforts, particularly with respect to funding marketing efforts and improving the effective delivery of products, if they are unable to anticipate in advance of an examination period the products that may be deemed Major Product Lines and thus eligible for CRA credit.

B. Deposit Products under the Retail Services and Products Test Should

²⁷ Proposed § .22(a)(4).

²⁸ See 87 Fed. Reg. at 33932-33933.

Include Deposits to Small Business.

Deposit products eligible for CRA credit under the Retail Services and Product Test should include deposit products for small businesses. As proposed, the Retail Services and Products Test is oriented around assessing the responsiveness of retail banking services and products to LMI consumers. Although credit products' responsiveness to the needs of small businesses is evaluated, the responsiveness of deposit products to the needs of small businesses is not.

Banks that do not focus on or have a limited consumer banking business (*e.g.*, business banks) would be placed at a disadvantage if deposit products for small businesses are excluded from evaluation under the Retail Services and Products Test. Their strategy and business model as non-consumer banks may not include providing products that are responsive to LMI individuals. RMA respectfully urges the Agencies to reconsider the evaluative components of a test that would foreclose banks with a limited consumer banking business from obtaining an Outstanding CRA rating, as that would disincentivize such banks from engaging in the community development that the Proposal seeks to foster and encourage.

VI. Certain Elements Undermine the Proposal's Intent to Create a More Objective and Transparent Method for Evaluating CRA Performance.

A. Benchmarks Should Be Provided in Advance.

The Agencies propose publishing benchmarks that would allow banks to compare their CRA performance with others in the same facility-based assessment area and retail lending assessment areas.²⁹ RMA respectfully requests that these benchmarks be published at least one year prior to the start of any CRA exam to allow banks the opportunity to understand the context under which their performance is being evaluated. Such transparency would be in line with the Agencies' goals in revising the CRA framework in the Proposal.

B. The Retail Lending Assessment Area Should Be Eliminated.

Under the Retail Lending Test, the Agencies propose to assess large banks' retail lending activity in their: (i) facility-based assessment area; (ii) retail lending assessment area; and (iii) outside retail lending areas (*i.e.*, outside of its facility-based assessment areas and retail lending assessment areas) at the institution level using a tailored benchmark.³⁰ The Proposal defines the retail lending assessment area as the areas delineated outside of the bank's facility-based

²⁹ See 87 Fed. Reg. at 33993-34003.

³⁰ Proposed § .22(a).

assessment areas where a bank has an annual lending volume of at least 100 home mortgage loan originations or at least 250 small business loan originations in a geographical area for two consecutive years.³¹

RMA appreciates the Agencies' efforts to account for the development in the banking industry moving away from branches. However, the addition to the Retail Lending test of a fluid retail lending assessment area that may change every two years in accordance with lending volume may, in fact, discourage banks from lending outside of their facility-based assessment areas. This is because establishing a CRA program in a new area requires significant time and investment, and the prospect of biennial changes in areas where a bank would need to implement a CRA program may lead a bank to reduce or even abandon lending outside of facility-based assessment areas, to the detriment of LMI communities in the long term.

Given the changes in the banking industry, RMA agrees that the Agencies should evaluate certain activity by banks outside of the areas' surrounding branches. The Agencies instead should evaluate a bank's lending activity at the institution level to assess its retail lending to LMI communities outside of facility-based assessment areas.

C. Weighting of Tests Focused on Retail Lending Undermines the Proposal's Intent to Create a More Objective Method for Evaluating CRA Performance.

The Proposal would assign a bank a performance conclusion³² and performance score³³ for each test at the assessment area, state, multistate metropolitan statistical area (“MSA”) and institution level, as applicable. In addition, Retail Lending Test conclusions would also be assigned to retail lending assessment areas and outside retail lending areas, as applicable. To determine a bank's CRA rating at the state, multistate MSA and institution levels, the Agencies propose to aggregate a bank's performance scores for each applicable test according to a specified set of weights tailored to the size and business model of the bank.³⁴ RMA believes the proposed weighting of these tests undermines the Proposal's intent to create a more objective method for evaluating CRA performance.

For large banks, in combining the raw performance scores, the Retail Lending test would be given a weight of 45 percent, the Community Development Financing test a weight of 30

³¹ Proposed §_.17.

³² The Proposal retains the five categories for conclusions composed of “Outstanding,” “High Satisfactory,” “Low Satisfactory,” “Needs to Improve,” and “Substantial Noncompliance.”

³³ Numeric value from 0–10.

³⁴ See 87 Fed. Reg. at 33987.

percent, the Retail Service and Products test a weight of 15 percent and the Community Development Services test a weight of 10 percent. Moreover, the proposed Retail Lending test only includes retail lending, whereas the current lending test incorporates an institution's retail lending and community development lending. Assigning the largest weight to the proposed Retail Lending test will inevitably discourage large banks whose CRA strategies do not involve significant retail lending from attempting to obtain an "Outstanding" rating because such a rating would be unattainable without a dramatic shift in business strategy. This, in turn, could result in stagnation of such banks' CRA activities and programs, and consequently, lead to fewer products and services provided to communities the CRA is trying to target.

D. Retail Lending Performance Thresholds Should Be Recalibrated to Encourage Large Banks to Aim for an "Outstanding" Conclusion and to Incentivize CRA-Eligible Activities.

Under the Proposal, the four performance thresholds ("Needs to Improve," "Low Satisfactory," "High Satisfactory" and "Outstanding") are calculated using local data points ("benchmarks"). The benchmarks include both community benchmarks and market benchmarks. Community benchmarks reflect the demographics of an assessment area (*e.g.*, the percentage of families that are low-income, and the percentage of small businesses or small farms of different levels of revenue in an assessment area). Market benchmarks reflect the aggregate lending to targeted areas or targeted borrowers in an assessment area by all reporting lenders.³⁵

The Proposal would require banks to be at 100 percent of community benchmark or 125% percent of market benchmarks to achieve an "Outstanding" conclusion, a threshold "well in excess of the average of local lenders," making it nearly impossible for large banks to achieve an "Outstanding" conclusion.³⁶ In fact, the Agencies' own analysis of 2017–2019 CRA data indicates that no bank over \$50 billion would have achieved an "Outstanding" conclusion if the proposed thresholds applied to their performance.³⁷ By establishing an out-of-reach performance level for an "Outstanding" conclusion, the Agencies may inadvertently reduce CRA activities as institutions conclude that they can realistically achieve "Satisfactory."

In addition, by making it unattainable for large banks to obtain an "Outstanding" conclusion on the most heavily weighted test, the Proposal requires banks to offset the lower conclusion on the Retail Lending Test with better conclusions on other tests if they hope to

³⁵ 87 Fed. Reg. at 33939.

³⁶ 87 Fed. Reg. at 33945.

³⁷ 87 Fed. Reg. at 33954.

achieve an “Outstanding” rating, which is difficult—if not impossible—given the current weighting of the Retail Lending Test in comparison to other tests.

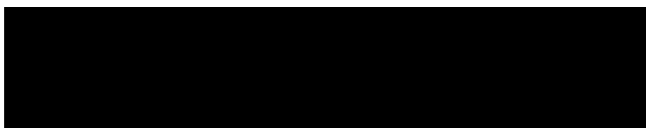
E. A Bank’s Rating Should Not Be Impacted by Its Non-CRA Activities.

Under the current CRA regulations, a bank’s rating may be downgraded if there is evidence of discriminatory or illegal credit practices in any geography by the bank or in any assessment area by any affiliate whose loans have been considered as part of the bank’s lending performance.³⁸ The Proposal would expand the Agencies’ ability to downgrade a bank’s rating if there is evidence of any discriminatory or other illegal practice, even if unrelated to CRA activities.³⁹ RMA respectfully requests that the Agencies maintain the current regulatory provision that a bank’s rating may be downgraded due to discriminatory or illegal practices relating to the bank’s lending activities. A bank’s CRA rating should not be downgraded on the basis of activity that is unrelated to the bank’s CRA activities and program.

* * *

RMA appreciates the Agencies’ consideration of its comments on this important rulemaking and stands ready to provide any further information that may be helpful. RMA looks forward to continued engagement with the Agencies on these issues.

Respectfully submitted,



Edward J. DeMarco, Jr.
Chief Administrative Officer and General Counsel
Risk Management Association

³⁸ Proposed § __.28(c)(1).

³⁹ Proposed § __.28(d)(1).