Reinvestment
PARTNERS
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April 3, 2020

Bruce E. Feldman
Executive Secretary
Attention: Comments
Federal Deposit Insurance
550 17th St. NW
Washington, DC 20429

RE: RIN 3064-AF22

Dear Sir:

We have concerns about proposed alterations to the Community Reinvestment Act.

Reinvestment Partners is a 501 © non-profit agency in Durham, North Carolina. We were founded in 1984 at a project of North Carolina Legal Aid with the specific purpose of pursuing CRA-related campaigns. Since then, we have remained committed to our founding mission, we have added additional work to our portfolio of programs. We provide housing counseling to approximately 1,000 North Carolinians each year, supporting their efforts to buy a home or avoid foreclosure. We own and rehabilitate rental housing for households and small businesses. We manage twenty-seven Volunteer Income Tax Assistance centers in counties across North Carolina. We have an innovative nutrition program that enables SNAP recipients to purchase more fresh fruits and vegetables. Lastly, we conduct research and engage in public policy to help underserved communities access safe and affordable financial services.

We draw from our years of experience in community development, advocacy, and policy work to write this comment. The proposed changes to the Community Reinvestment, if not amended in meaningful ways, post concerns.

We have deeply held beliefs about the beneficial impacts of the law. Since its passage, the CRA has fostered the growth of an entire community development ecosystem. We have institutions in our state that, if given the support engendered by the CRA, can accomplish the difficult work that is needed to restore the economic health of distressed communities and underserved households.

The CRA Evaluation Measure (the "One Ratio") May Undermine the Ability of the CRA to Meet its Intended Purposes

We believe that the simple performance measurements proposed by the new rule will blunt the ability of examiners to adequately gauge the record of an FI in meeting the needs of consumers in its assessment areas. With oversimplification, the approach makes equal things that are inherently not the same. Moreover, efforts to ameliorate that with multipliers and monetization of non-financial costs only serve to contort an abstraction one step further from a meaningful analysis.

For example, the one-ratio system could create an incentive for FIs to concentrate their work in higher-cost areas. It will be easier to make larger-dollar loans, all thing being equal, in areas with higher housing costs. An FI will be able to achieve more toward its overall performance measure in a high-cost area. We understand that the new rule now compels FIs to do well in at least 50 percent of their assessment areas – ("AAs") an improvement over the previous system that allowed them to hand-select a small percentage of areas within their footprint – but while the new approach may be an improvement in some ways, it is still problematic.

Community leaders representing lower-income and rural areas in the South have already made this point. "Changes to the evaluation measure, by emphasizing dollar value rather than quantity of CRA activities," writes Bill Bynum, CEO of Hope Enterprise Corporation, "create a natural incentive for more substantial, easier activities, potentially reducing the smaller, more intensive investments that Deep South communities so often need.[1]"

Bynum's comment underscores how the Evaluation Measure formula will alter how FIs design their CRA programming in ways that are detrimental to the needs of underserved communities. Why would a profit-motivated financial institution choose to twenty projects when it could find ten elsewhere, if choosing a larger quantity of low-dollar projects meant more staffing hours, more due diligence workstreams, and all of it spread out across more extensive geography? The use of the "Evaluation Measure" will change how large and regional FIs view opportunities in some of the most distressed areas in our country. To Bynum's experience, FIs with greater CRA responsibilities in Mississippi tend to have footprints in places like Florida and Georgia; the few that are only in his state would have no reason to opt for work in rural Mississippi when they could focus exclusively on higher-return areas like Jackson and Biloxi.

No less of an authority than Lael Brainard, a Governor of the Federal Reserve System, touched upon the same concerns where she wrote that "An approach that combines all activity runs the risk of encouraging some institutions to meet expectations primarily through a few larger community development loans or investments rather than meeting local needs.[2]"

We have concerns that FIs will triage their work into a narrow range of AAs that meet a curated set of criteria for frictionless fulfillment of CRA goals. <u>We ask the Federal Deposit Insurance Corporation (the "FDIC") to consider a system that makes sure that AAs include a diversity of income profiles, and in related concern, to increase the percentage of AAs where an FI meets presumptive performance levels.</u>

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[1] Bynum, Bill. "FDIC/OCC Proposal Raises Concerns for Low-Income Rural Communities in the Deep South." December 16th, 2019.

[2] Brainard, Lael. "Strengthening the Community Reinvestment Act by Staying True to Its Core Purpose." A speech on January 8th, 2020, at the Urban Institute.
https://www.federalreserve.gov/newsevents/speech/brainard20200108a.htm

In a 2000 report to the US Department of the Treasury, a report outlined how the CRA encouraged FIs to acquire the human capital it needed to lend to non-profits, particularly in areas where borrowers lack the training to fulfill the underwriting needs for complex transactions:

> "When an institution's lending staff is less familiar with the types of loans sought by certain local borrowers, capital may not flow to them, even if they are creditworthy. For example, small business lenders develop experience in evaluating applications from different industries and administering different loan structures. Skilled lenders to local non-profit organizations learn the conventions of non-profit accounting and the mechanics of non-profit funding and contract sources. A FI's lack of such experience and its unfamiliarity with available credit enhancement programs, such as those sponsored by the Small Business Administration, HUD, USDA and the three primary housing GSEs (Fannie Mae, Freddie Mac, and the Federal Home Loan Bank System), can limit its ability to serve creditworthy LMI and minority borrowers. In the absence of the CRA, it is possible that depository institutions would not be as aggressive in learning about and taking advantage of these programs that can benefit the borrowers for whom the CRA was designed.[3]"

The Evaluation Measure may align CRA with the operational priorities of FIs, but it is unlikely that it will fit with the scope of community needs across the entirety of branch footprints. We believe it establishes a false sense of precision. While participants (FIs and consumers) may benefit from a less opaque examination process, rule writers should refine the process to incorporate more common sense into how we hold banks accountable to meeting the needs of communities.

We believe that with its bent toward oversimplification, the new rule may make the mistake of treating all types of loans and investments equally, even though we know that qualifying activities differ in terms of impact in meaningful and substantial ways. Putting it simply, not all credit is the same. Any financial professional would acknowledge that not all debt is the same: a first-position loan secured by real property is very different from one in a third position, for example. To any consumer, a prime loan is better than a subprime loan. A low-interest installment loan is better for a business than a credit card. To affirm an insight made within the proposed rule, it is also true that many recipients of community development loans and investments need long loan terms, and while the former approach may not have incentive FIs to meet those needs, the new method does not represent an improvement.

By interpreting the value of all debt capital equivalently, the new rule is blind to concerns. That basis runs counter to real-life perspectives. For example, financial institution (an "FI") can make a community a better place when it makes affordable loans to first-time homebuyers; we feel confident that we should leave non-banks to the business of financing sofas and televisions. While those seemingly obvious concepts are evident to most everyone, the proposed rule is agnostic to the quality of financing. Those beliefs underscore why we think that when the FDIC proposes to oversimplify how it counts CRA credit, it does so at substantial risk to our communities.

Where Activity Occurs
Regulators should refine the deposit-based assessment area approach:

[3] Litan, Robert, Nicolas Retsinas, Eric S. Belsky, and Susan White Haag. The Community Reinvestment Act After Financial Modernization: A Baseline Report. April 2000. https://www.treasury.gov/press-center/press-releases/Documents/crareport.pdf

As outlined in subpart C – Assessment Area 25.08, a "bank may delineate its facility-based assessment area (s) in the smallest geographic area where it maintains a main office, branch, or non-branch deposit-taking facility, but may delineate a larger assessment area that includes these locations, as provided in paragraph (b)(2) of this section."

Under this framework, a bank could effectively gerrymander its assessment areas to achieve the result of reducing or eliminating the number of areas where it had a retail lending product requirement. Rather than select all nonmetropolitan counties within a state, for example, a bank could limit its assessment area to the environs of the single rural county where it has a branch. If the rule establishes that an assessment area has a minimum quantity of loans (the letter proposes a threshold of twenty), then it is doubtful that many rural areas will qualify as assessment areas under the retail distribution test. (see below). As a result, we reject the use of a threshold – a percentage is a better choice. We understand that an FI might counter that it could end up with a retail product line assessment area after having made only a handful of loans, but the entity could always choose to expand its assessment area.

Retail Distribution Tests: We support the rule's inclination to drop the use of credit based on the income profile of a census tract. The underlying rationale, which is that giving credit for loans to middle-or-upper-income individuals in LMI areas for credit could weaken the impact of an FI's activities, is sound and defensible.

We support the idea not to give credit for making a mortgage loan to a high-income individual in a low-income census tract. We want to add detail to this concept: will the term low-income census tract cover those at or below 50 percent of AMI, below 80 percent AMI, or 100 percent AMI?

Examiners should give credit when it is due, and in that spirit, we would also ask that credit not be granted when FIs provide capital to support the purchase or refinance of properties in a low-income census tract if the lender cannot verify the borrower's income status. While we know that lenders expect already to report income, in practice, some lenders do a better job than others at providing a thorough and complete accounting of their information. We fear that some might underreport loans made to high-income borrowers in LMI tracts.

We have a concern about the cutoff point in the retail distribution test. As proposed, activity is graded only for "major" retail product lines - defined as lines that make up at least fifteen percent (or twenty loans) of a bank's overall volume in that assessment area.

We believe this approach will dramatically reduce the average number of assessment areas on a per-bank basis. The impact would be most dire in rural areas, where many communities have low levels of credit-granting activity. The rule would delink "credit deserts" from CRA assessment. (Question 16, pages 75-6)

Moreover, if a rule allows banks to fragment their "retail lending product lines artificially," the interaction with a threshold of as few as twenty loans portends fewer and fewer places where CRA is relevant. As a result, the definition of "retail lending product line" needs clarification. Would home equity lines of credit and home improvement loans be collapsed into the same product line as other mortgages, or would each count under a distinct bucket?

For example, in the Burlington, North Carolina MSA, only fourteen lenders originated more than nineteen mortgages in 2017. Additionally, some of those lenders may have a business line diverse enough to the point where mortgage lending constitutes less than 15 percent of their overall loan portfolio. When taken together, these steps could radically limit the number of smaller communities that still receive assessment area status.

When calculating the size of an institution's overall loan portfolio, regulators should exclude loans to non-depository financial institutions (RCON2081, RCON1545, RCON J451, and RCON2165), to foreign governments (RCON2081), and obligations to states and political subdivisions in the U.S. (RCON2107). Only loans held in domestic offices should be considered for inclusion.

Deposit-based assessment areas: 345.08 (c) While we applaud the intent to hold digital FIs accountable for the needs of underserved communities, we would encourage revisions to the proposed "deposit-based assessment area" qualification.

As proposed, an FI receiving more than 50 percent of its deposits from outside of the geographic area where it has facility-based assessment areas would have to delineate MSAs where it receives more than five percent of total retail domestic deposits. We are concerned that few, if any MSAs, will meet the five percent threshold for the definition of a "deposit-based assessment area."

Indeed, only a handful of states might attain more than five percent of an institution's deposits, and it is unlikely that deposit-based assessment areas will be fairly distributed across geographies. Some states and even fewer MSAs stand ever to meet the 5 percent hurdle, resulting in an outcome where places like New York, Los Angeles, Chicago, and San Francisco ("hotspots") qualify for additional investment, while simultaneously leaving truly underserved communities on the sidelines. The deposit-based assessment approach may mean that the digital FIs have assessment areas in the same locations where traditional FIs have their branch-determined assessment areas – a wasted opportunity.

We believe there is a better way. It creates an opportunity to address a significant and growing problem, which is the increasing prevalence of banking deserts. Regulators should assign CRA obligations to digital FIs in areas that, all things being equal, have fewer bank branches on a per capita basis. Some threshold should be set, where a geographic area can qualify for a designated destination for service by deposit-based FIs – perhaps those with less than a specified number of branches per square mile and those at the lower end of a normal distribution for a share of banked households. The aim would be to push digital FIs to include banking deserts in their assessment area mix.

The deposit-based assessment area approach should consider how it could lead to the provision of credit and community development funding in banking deserts. We believe that digital FIs should be given assessment areas in "banking deserts" – not in a large state or MSA, as hypothesized on page 43 of the proposed rulemaking. Given that a digital bank's entire platform circumvents a branch network, each stands capable of delivering needed credit in unbranched areas.

We believe that the assignment to a digital FI of an assessment area would not necessitate that a private company alters how it manages the operation of its business. Digital banks already use digital advertising to target consumers. They would apply the same technique to our proposed method. Google, Instagram, and Facebook permit advertisers to selectively distribute their marketing on a zip code level or to a narrowly specified consumer demographic.

The proposed rule contends that the new framework will eliminate "hotspots," but does not explain how its approach would do so. We agree that hotspots exist – for example, in Provo, Utah; Sioux Falls, South Dakota, Wilmington, Delaware; and Salt Lake City, Utah. In practice, the proposed method would create new hotspots in our largest MSAs.

Please review the table (appendix 1) at the end of this comment. Appendix 1 outlines (by name) the counties in North Carolina with the fewest branches. It adds detail by contextualizing those branch counts with the physical area of the county (square miles) and its population. Our table puts the numbers in a better context. The table lists (by county) the number of banks defined as "large" (CRA examination level) to underscore the nature of the flight of branches from rural areas in North Carolina.

The table makes several points:

- Rural areas tend to be served more often by small banks, and an FDIC-regulated branch does not serve most rural under-branched counties. Among the eleven counties in North Carolina with two or fewer branch offices, seven have a single "large" FI, and two have two "large" FIs
- The lack of branches, when combined by the large size of some of our rural counties, translates to wide-open areas with very few branches. Northampton County, North Carolina has 537 square miles and only one bank branch (.0019 branches per square mile). For comparison, Wake County has 835 square miles and 249 branches (0.29 branches per square mile).
- There is less of a linear relationship between the population size of a county and the average number of people living in the county on a per-branch basis. Some rural counties tend to the ones with the fewest number of people per branch. However, low-branch counties tend to fall as outliers at both ends of the branch per-person spectrum:

	High # people per branch	Low # of people per branch
High # square miles per branch	Bertie, Caswell, Camden, Jones, Madison, Hoke, Northampton, Caswell, Pender, Warren, Greene, Anson	Swain, Washington
Low # square miles per branch	Durham, Cumberland, Union, Davidson	Buncombe, Iredell, Dare, Pasquotank,

”high” equals top quartile, “low” equals bottom quartile

The shaded area made up of high-per-capita high-square-mile areas) deserves to be characterized as banking deserts. FIs which qualify under the deposit-based assessment area test should be given these types of counties for assessment areas.

Interestingly, three of the four counties in the bottom right-hand tier derive much of their economic activity from tourism. Dare and Pasquotank are part of the Norfolk MSA. Dare is a part of the Outer Banks; it may be rural, but it is not impoverished. The county seat in Buncombe is Asheville.

Three of the four in the bottom left-hand tier are in urban areas, with Union and Davidson both in the suburban Charlotte area.

There are no false positives in the upper row – each one is a highly distressed area. The economies in the high-high group concentrate on agriculture, and additionally, they are all located near each other. With two exceptions, they lie in rural Northeastern North Carolina.

In our state, we see that many FIs are leaving rural areas, most notably in Northeastern North Carolina. National banks are leading the exodus; Wells Fargo and Bank of America are closing roughly one branch every month in our state. When they leave, their assessment areas disappear as well. True, small FIs will still have obligations, but the structure of the CRA is such that those FIs have fewer examinations than larger banks. Indeed, few of the smaller institutions have staff that they can manage the same levels of complexity compared to the employees of larger FIs.

The proposed rule could be a step to encourage more FI presence in rural areas. While the FDIC’s mandate prevents it from intervening on the decision by any FI to close a branch, the FDIC could still use the CRA as a lever to incent institutions to enter underserved areas.

We should be doing more to encourage FIs to remain in or enter banking deserts. Between 2012 and 2017, forty percent of rural counties experienced a net loss of bank branches. According to the Federal Reserve, 39 of those counties were "deeply affected.[4]" We believe that the FDIC should explore the possibility of rewarding substantial credit to banks for locating new branches in counties where only one financial institution operates a branch (or branches). By doing so, the CRA exam process could restore competition to the marketplace in rural America. Elsewhere, the proposal suggests using a multiplier for institutions that make loans available in Indian Country. We support that approach, but we believe that new branches in Indian Country could be equally beneficial, and in fact, investment in new branches could do more to guarantee the long-term financial health of Indian Country communities.

Retail distribution test 345.11 – we ask regulators to decrease minimum loan volume for qualification: If a bank has to make fifteen loans in an area before that lending product can become a subject of examination in an assessment area, rural areas could be vulnerable to the situation where they fall in a FI's assessment area but where there is not enough lending activity in any single retail product line to justify its inclusion in an assessment.

What Counts

We believe that more work remains to be done in refining what counts for CRA credit. We support the intentions of the FDIC to replace vague terms such as "economic development" with enumerated activities (SBDCs, New Markets, Community Development entities, et al.) but we feel that isn't enough to merely specify – it's also incumbent to use CRA modernization as an opportunity to exclude specific purposes that previously qualified.

For example, the overly simplistic Evaluation Measure makes no distinction between a needed loan to a first-time homebuyer and an installment loan to buy a refrigerator. Similarly, under the new rule, an FI can receive credit for issuing high-cost credit cards, regardless of how well the product fits the needs of the consumer. Under the new system, FIs could claim credit for volunteer work that employees would have done regardless of its relevance to a CRA program. Whereas an FI once received CRA credit when it made grants for affordable housing, under the new rule, it could meet its obligation by originating subprime car loans.

Absent of an effort to reinsert judgment to the exam process, FIs may reorient how they interact with LMI communities, potentially in a scenario where loan quality sips and the mix of loans deteriorates. We also worry that the new standard will incent FIs to do more record-keeping of actions that would have already occurred – and not more in the way of measures that would support the development of our communities.

<u>Part V: Qualifying Activities Criteria 345.04</u>

We object with many of the activities that, as illustrated, would become qualifying activities ("QAs") under the Proposed Qualifying Regulatory Criteria."

25.04 b and 345.04 (b):

Volunteer hours: We oppose the intention to monetize volunteer hours and then apply that value to the numerator within the calculation of an FI's CRA evaluation measure. Previously, examiners could count volunteer hours under the services test, but it was the rare exception to see it explicitly recognized as a

[4] Board of Governors of the Federal Reserve System. "Perspectives from Main Street: Bank Branch Access in Rural Communities." Washington, DC. November 2019. https://www.federalreserve.gov/publications/files/bank-branch-access-in-rural-communities.pdf

factor in a PE. We did see instances where PEs for small FIs, where examinations can drill down with more project-level specificity, included credits for employee participation in golf tournaments.

Non-profit managers, if asked, may attest to the fact that most volunteer work is of negligible value. Non-profit staff usually have to be detailed to train and manage volunteers. Often, the real beneficiary is the corporation itself, as they tend to use volunteer projects for team-building efforts. Non-profit managers generally do not ask short-term volunteers to perform work that has high value – most work for one day and probably contribute 4 hours of useful service. Likewise, most nonprofits do not provide payment for Board members.

In the new system, volunteer hours could suddenly count for a lot in terms of CRA credit, even if the actual value to non-profits is minimal. <u>We ask that the FDIC strike any plan to allow FIs to monetize volunteer hours.</u> We strongly oppose using the median hourly compensation value (Question 9, page 40) for the banking industry. At $36 per hour[5], the monetized value to banks would almost always exceed the labor cost for the employees working officially for the same purposes.

Infrastructure: The FDIC should not extend credit for participation in the financing of infrastructure without creating significant changes to the proposed methods for evaluating the qualifications of projects. As suggested in 345.04 c (6), virtually any form of infrastructure financing could count. The definition only states that it must benefit LMI individuals, LMI tracts, distressed areas, and other previously identified locations that are used generally throughout this proposal as means-tested geographies. We fear this definition is so broad as to make it possible for almost all infrastructure-related activities to qualify. Moreover, the test is one-side – it says nothing about the potential for projects to create negative externalities.

While infrastructure may have been an approved activity in the past, its role as a numerical factor within a CRA evaluation measure (the “one ratio”) system provokes new concerns because of its sheer scale. Loan amounts for infrastructure dwarf those associated with housing and community development. Infrastructure lending may eliminate or substantially reduce the need for financial institutions to pursue smaller projects.

At the moment, certain types of municipal bond issuances may count for credit, but rules put strict specifications on what qualifies. FIs have to be prepared to demonstrate that the investment from such bonds directly affects low-income households inside specific assessment areas. The proposed rule would walk that back to the point where an FI could claim credit for any investment made in an assessment area that had any LMI individuals who used the associated infrastructure. The new rule contends that if it supports the construction of essential infrastructure in any part of a city, then the needs of low-and-moderate-income census tracts have been served. However, infrastructure is not the same as a home purchase loan; at the very least, the benefit derived from the former should not be mutually exclusive to the latter.

We have concerns about the use of infrastructure in the first place. We do not think that CRA credit will stimulate desired activities. FIs want to be able to act as issuers of municipal bonds, as it is a very lucrative business. There is no need to incentivize FIs to participate in municipal financing – they will eagerly do it regardless. <u>Our priority would be to end the use of infrastructure (including public entertainment venues) entirely; our next-best preference would apply far less weighting on a per-dollar basis.</u>

[5] Estimated average value of an hour of labor at a financial institution.

In §§ 25.04(c)(5) and 345(c)(5), please insert "primarily" to describe how a construction loan located in a census tract adjacent to a low-income tract would qualify. Several of our hospitals in our community could meet that criterion merely because of their location near student housing. The requirement should stipulate that the hospital must *primarily* serve LMI individuals. In the context of our community, our low-income health care clinics would qualify, but our major university hospitals should not.

Mortgage-backed securities, as proposed: While we are against the use of MBS in general, <u>if the final rule allows FIs to incorporate MBS, then it should only honor MBS investments that the FI holds continuously through the entire period between exams.</u> We agree with the critique of the proposed rule. The old system did incent FIs to buy MBS and keep them only until their CRA exam. Nonetheless, we worry that the new method still has loopholes that invite exploitation. An MBS is a liquid investment, capable of being sold within fractions of a second on public markets. The old approach – where a FI bought and sold just before and immediately after a CRA exam – may not occur but holding a loan for only one fiscal quarter is not the right solution.

If an examiner counts MBS as a qualifying activity, it could allow for "double counting:" once when the originator makes the loan, and then secondly, when it is sold. The latter event could be split among multiple buyers and sellers of an MBS, but the same effect would be to double the impact. Furthermore, under this system, the benefit to LMI consumers hinges on who buys the loan regardless of its impact on consumers. We do not see how a consumer benefits any more simply because a bank purchased a loan versus one of the GSEs.

To count in the evaluation measure, an FI should hold an MBS investment throughout the entire period of the evaluation. A regulator could apply sensitivity to the producer by making each quarter count as a pro-rata portion of the whole exam period. For example, if a FI held an MBS continuously for two quarters over the span of three years, then it could claim credit for one-sixth of the amount of the investment. Naturally, if only one-third of the MBS includes loans originated to LMI borrowers, then the total value should be $1/18^{th}$ of the face value.

Financial Literacy: The rule should require lenders to demonstrate that their financial literacy programs produced a net incremental benefit. It is not enough to create financial literacy content. It is not enough to distribute financial literacy content.

We are concerned that many institutions will produce duplicative financial literacy programming, leading to a growth in pamphlets but not in impact. We feel apprehensive that many digital FIs will opt to create financial literacy literature rather than putting their deposits toward private business activity. Many efforts that go under the basket of financial literacy today are already not impactful - providing non-profit groups with conference bags emblazoned with a savings-inspired slogan is not sufficient, and we feel equally dubious about a stack of pamphlets placed in the seating area of a quiet branch bank. These are trees falling in a forest where no one can hear them.

Instead, FIs should have to show that their efforts mattered. An FI that supports a homebuyer education class should be able to demonstrate that their funds led to the actual purchase of homes by first-time homebuyers. An FI with programs designed to improve credit should be able to demonstrate the number of consumers whose credit scores improved and the amount that their scores changed.

In-kind donations: We have concerns that FIs will inflate the value of in-kind contributions. Examiners should weigh in-kind contributions on a depreciated basis. The FDIC should provide a clear depreciation schedule for relevant types of equipment. For example, since a computer ceases to have value after two years, it should apply a two-year depreciation schedule. In some instances, in-kind donations should not qualify at all. For example, non-profits do not need software donations, as any non-profit can purchase software for a handful of dollars with a Tech Soup account. The story should be the same with most corporate gifts: no credit for filing cabinets, old chairs, and second-generation savings pamphlets ("don't buy trouble"). For the sake of simplicity, we would recommend that qualifying donations be limited to real property and automobiles – and again, at their depreciated value.

Credit cards issued to an LMI individual.

Credit cards should not qualify for credit under the small business lending test. Almost any business can be eligible for a small business credit card, and indeed, many small business credit cards are marketed to hobbyist businesses. The IRS disqualifies these entities when they fail to produce a reasonable profit for three consecutive years. Regardless, many people sign up for business credit cards because of the high rewards promotions. Is a hobbyist photographer who photographs a wedding for a relative, having used a business credit card to buy a camera, several software subscriptions, and the occasional battery (thus meeting a qualifying spend) the legitimate owner of a small business? Under a framework where the FDIC allows a credit card marketing scheme to become the determinant of a qualifying activity for CRA credit, it introduces noise into a nationwide grading system.

Moreover, objections do not stop there. Perhaps more significantly, a credit card is an inferior credit product for a small business. Small business credit cards bear high rates of interest, offer fewer consumer protections than do regular consumer-facing credit cards, and are an impatient source of capital. We understand that the current CRA regime honors those lines of credit, but the past should not be the decision-maker for the future. Small business credit cards provide the wrong kind of capital to a business. Yes, they have their place as a method to manage cash flow, but they are not the foundational tool for supporting the capital structure of a small business.

Low-cost private education loan to an LMI individual: The US Department of Education provides a variety of loan programs, all supported by robust consumer protections. Private student loans originated by private FIs do not meet the same criteria for consumer protection. FIs do not deserve to receive credit for issuing private student loans.

In-store installment loan to an LMI individual to purchase retail goods. Most of the nation's largest retailers already partner with FIs to provide in-store financing to consumers. These chain retailers offer risk-based credit to all customers. In some cases, interest rates to buy furniture or appliances at national chains exceeds 25 percent[6]. The practice is already concerning, as the availability of credit often allows retailers to exert pricing pressure on consumers who might otherwise find a better price at an independent small business. Many lenders incent partner retailers to sell "add-on" products inside purchase contracts, and as a result, many consumer borrowers also pay for credit insurance, travel clubs, and security services. Regulators should not reward FIs when they pursue these kinds of business lines.

General comments related to how the overall Evaluation Measure method ignores differing aspects of loan quality

We believe that subprime lending will qualify for CRA credit under the new regime. We know that not all loans are the same. Poorly-underwritten loans or loans with inadequate consumer protections, or loans

[6] Conn's HomePlus, through an exclusive relationship with Synchrony Bank, offers promotional lines of credit with financing rates of either 26.99 percent of 29.99 percent. https://www.mysynchrony.com/mysyf/payment-calculator.html?intcmp=na-pagena-nav-data_reason-internal

with unaffordable rates of interest are not beneficial at all. Accordingly, for regulators to include these loans risks a possibility where FIs will receive CRA credit where it is not due.

The Community Reinvestment Act has never been a factor that led banks to make subprime loans. During the first part of the first decade of the millennium, lenders originated billions in subprime mortgage loans – but not because of CRA. Research from several sources came to the same conclusion about the spurious relationship between CRA and subprime lending. In 2007, depositories operating outside of their branch areas and independent mortgage companies were three times more likely to originate subprime loans than were CRA-regulated depositories working within their branch footprints[7].

Yet this new rule, with its inclination to capture all types of loans, including unsecured installment loans, auto loans, credit cards, and even furniture loans, would reset what CRA covers. To that end, w*e believe that exams should not count "subprime" products*. Subprime mortgage products would include option-arm, no-doc, non-amortizing, or teaser rate mortgage loans. Similar exemptions should hold for the other forms of high-cost subprime credit listed above.

To question of how to report the list of qualifying activities and any subsequent updates (question 5, page 39), we believe that regulators should publish the list of activities in the final rule, provide immediate guidance on future changes, and periodically republish it on an easily accessible place on the relevant websites. As with the FDIC's practice of giving an email update on branch establishment and closure activity, regulators should proactively push out updated information to concerned parties. Given the low costs required to update websites and send emails, we think that it is reasonable to update the data every six months (question 6, page 39).

How it Counts: The Evaluation Measure
Choice of EM thresholds

We appreciate the effort by the FDIC to back test the proposed EM scoring against past evaluations derived under the old framework. However, we understand that the FDIC intends to wait to publish these outcomes after the final rule is approved. In the meantime, we only have the assurance from the rule writers that past estimates support setting the proposed thresholds in three ranges: 10 to 15 percent, five to ten percent, and two to five percent. In each category, the FDIC has set the proposed benchmark at one percentage point above the minimum.

When reviewed from that framework, the proposed thresholds appear to present low bars. For years, advocates have cried out against CRA "grade inflation."

In the 13 years between 2007 and 2019, FIs received a 'needs-to-improve" only 80 times – and more than half occurred in the four years from 2007 to 2010.

	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Out	112	117	97	79	42	54	62	72	57	52	45	54	58
Sat.	422	438	421	275	269	322	320	353	217	221	207	286	171
NTI	5	10	15	13	7	7	4	5	3	1	5	2	3
SNC	1	1	1	1	1	0	0	0	2	0	0	1	0

[7] *Paying More for the American Dream III: A joint report by the California Reinvestment Coalition, the Community Reinvestment Association of North Carolina, The Empire Justice Center, the Massachusetts Affordable Housing Alliance, the Neighborhood Economic Development Advocacy Project, the Ohio Fair Lending Coalition, and the Woodstock Institute.* April 2009. http://onlineresources.wnylc.net/EJC/Reports/AmericanDream/AmerDreamIII.pdf

In the last five years, examiners gave an average of fewer than 3 'needs-to-improve" ratings per year. Almost all the needs-to-improve ratings were given to small FIs.

In the status quo, regulators rarely punish FIs. We believe that it would be wrong to use the current results as the basis for a new scoring analog. If the goal is to improve the efficacy of the CRA, then metrics should expect more. Indeed, under the current proposal, thresholds will be set to the bottom tier of existing performance buckets – precisely the wrong direction.

Preserving Community Voices: In its defense of the new approach, the FDIC attests "by retaining performance context and a means for community stakeholders to share comments and concerns with examiners about assessment area needs and opportunities, the proposed rule would preserve community voices and help encourage FIs to meet the needs of their entire communities, including LMI neighborhoods."

How will the FDIC implement this intention? Will the FDIC leave it up to community groups to register their opinions directly to the FDIC? Will it compel examiners to reach out to community groups as a part of the examination process? We believe that very few community groups would know to comment; fewer would know how, when, and where to make one. We hope that examiners might make an effort to reach out to community groups, but the proposed rule makes no mention of such an institutional plan. The missing piece in taking community input is to compel FIs to meet directly with community groups. In the last several years, financial institutions have increasingly made it a priority to reach out to groups as a function of their exams or as a part of their due diligence process during a merger or sale. In the new model, where performance is a factor solely of supply and not of community demand, the likelihood of such efforts to continue logically diminishes. Why would the FDIC seek to de-emphasize community involvement? We believe that the rule should force regulators to do more than wait for potential commentary. Instead, it should compel financial institutions to seek out the opinions of community groups and community residents.

A critic of community meetings might contend that they cannot find a suitable community representative, or when they do, they derive no tangible benefit from the engagement. We believe that such a response reflects poor effort. True, not every assessment area can claim to have a CRA group. However, every community has an association of small business owners. Most community groups have voices that represent underserved individuals, and even if their focus is not specifically on access to capital, most groups should readily understand the needs that can be addressed by a well-intentioned financial institution. In our experience, when an FI meets with our group, they inevitably return for more engagement in the future. It should not be a reach for an examiner to ask a local FI to attempt to understand the needs of the groups inside their assessment area. Instead, we think convening local stakeholders should be a best practice.

The use of multipliers: Without a bias on multipliers of less than 1.0, the use of multipliers only serves to reduce the level of obligations place on FIs. (Question 8, page 39)

Elsewhere in this comment, we contend that credit should not be extended for a variety of currently qualifying activities: credit cards, non-secured installment loans used for the purchase of consumer goods, auto loans, and subprime mortgages, to name a few examples.

If regulators do continue to give credit for these products, then a multiplier of less than 1.0 should be applied in the evaluation measure.

We would support offering a "plus one" multiplier for mortgage loans issued to qualifying (LMI) borrowers for the first-time purchase of a home. Similarly, we see merit in "plus one" multiplier in other areas: longer-term loans to small businesses, home purchase loans in rural areas, and perhaps loans in Indian country.

How it Counts: The Retail Lending Distribution Test

The proposal states: "to receive a presumptive rating of satisfactory or outstanding at the assessment area level, (1) banks would be required to meet the minimum thresholds for performance on the applicable retail lending distribution tests in that assessment area for each major retail lending product line with <u>at least 20 loans in that assessment area.</u>"

There are several problems, some of a structural level and others related to proposed thresholds for examination review, in the construction of the retail lending distribution test.

We can accept the rationale of the demographic and peer comparator tests, but we have concerns about the level of performance required to at achieving a presumptive rating of satisfactory of outstanding.

We favor the logic of the geographic distribution peer comparator model. We have used something like the geographic distribution peer comparator model in the past when we have with FIs to review their performance on an MSA-by-MSA basis. It applies a sensible lens to analyzing how well an FI is meeting community needs. Moreover, we have found that FIs also value this approach, as it enables them to identify potentially problematic branches.

We do not see the value of the borrower distribution test (small business). We discuss our reasons for this position further down in this section. We believe that the geographic distribution test should be used exclusively for determining performance in the retail distribution test.

Grading standards are too low in the geographic distribution test formula: (345.11 sections b and c) Exploring the question of a performance level; we note that in the geographic distribution test using the demographic comparator, an FI performs well when the overall share of its small-loans-to-businesses ("SLB") lending in LMI tracts falls below the average percentage score of businesses in LMI areas in the AA. We believe that the performance bars are set too low. In the examples given in the proposed rulemaking, an FI could achieve a satisfactory with a peer comparison score of 65 percent. That would not seem to be satisfactory at all, as it would mean that the FI under examination lagged the market average by a substantial gap. Receiving a score of 55 percent would, in our opinion, indicate that the examined FI did a poor job of meeting the needs of companies in LMI tracts. Indeed, 55 percent falls far below "satisfactory;" it should be in the territory of "needs to improve."

In the geographic distribution test using the peer comparator, an FI performs well it does a better job of serving businesses in LMI tracts versus other FIs in the same AA. We have used a version of the peer comparator test in our engagement with many FIs. This test does the best job of assessing performance, as it creates a control for the local business mix. However, our partner FIs would have been embarrassed to receive a score of 65 percent, and indeed, such a score might have produced a call to the local branch from the CRA officer, demanding an explanation for such poor performance. A FI with a measurement score of 65 percent is falling behind on market share. It is not satisfactory at all – it is a description of an institution that is doing far less well than its peers.

Moreover, we fear that this could make it too easy for small banks to receive an outstanding rating. These low thresholds for satisfactory, when combined to let small banks that receive all satisfactory ratings to then receive an outstanding on their lending test (Part 25 b (ii)), create a cascading effect that is much too positive.

We identify several problems with the proposed construction of the borrower distribution test: In the borrower distribution test using the demographic comparator, the examiner grades an FI on the degree to which its small businesses make up the share of borrowers within an FI's overall business loan portfolio. The examiner measures performance by the context of the overall business mix (by size) in the AA. It establishes a test with an "apple-to-oranges" problem. The demographic comparator model puts a loan size figure over a business size number.

In the borrower distribution test using the peer comparator, there is no longer an "apples-to-oranges" problem, but the test still rewards activity that may not be worthy of credit. We feel better about the peer comparator version of the borrower distribution test, but both have problems. We would be willing to support the borrower distribution test with a much smaller threshold – perhaps a maximum of $250,000 – but $2 million does not fit the need. Due to the apples-and-oranges problem, the allowed loan sizing, and the use of a soft target for market share, we believe the FDIC should drop the small business borrower distribution test.

A small loan, as defined under the borrower distribution score, may capture relatively large loans. The loan size ceiling in the business borrower distribution score is itself problematic: the test rewards an institution that makes smaller-sized loans, all else being equal, but it uses an inflated definition of small. We could see the value of that if the ideal loan size was so low as to create challenges to overcome per-loan fixed costs. However, the proposed rule applies a loan size threshold for a loan to be considered an "SLB" to be anything under $2 million. It is hard to imagine the origination of a $2 million loan could threaten a FI's efficiency ratio.

Frequency of exams: The more straightforward nature of the evaluation method in the proposed rule should mean that exams can become more frequent. Given that assumption, we struggle to understand why the FDIC would simultaneously offer to reduce the frequency of exams. In its Community Reinvestment Act Fact Sheet, the FDIC predicts that under the new approach, "evaluations are streamlined and make reporting more timely and transparent," with the implication being that the public will no longer have to wait years for the publication of an exam. We agree with the FDIC's diagnosis. For example, the latest Wells Fargo CRA exam was more than two years late. We believe that the FDIC can do better and understand that these changes may improve its ability to publish the final PEs more promptly. Shouldn't a shorter examination process empower the agency to do a better job of monitoring activity?

CRA Evaluation: On Balance Sheet Qualifying Investments: In the proposal's suggested numerator for home mortgage lending, the FDIC proposes a method that may overestimate the actual share of an institution's performance. However, we know from experience that many FIs hold on to their CRA-qualifying loans more often than they do their standard conforming loans. They do so because of policies set up by the GSEs under the LLPA. As a result, the proposed metric would likely create a percentage that exceeds the actual share of lending to LMI borrowers. We recommend that the FDIC determine both counts (on the balance sheet only and all originations) and use the lower of the two percentages.

The discrepancy above is unique to the mortgage market and does not hold for the credit card, automobile loan, or other consumer loan markets.

Definition of domestic retail deposits as total domestic deposits (question 14, page 75): Domestic deposits should consist of transaction account deposits and short-term time deposits, such as savings accounts, made available to the bank from domestic individuals and small businesses.

- MMDAs of individuals (RCONP756 but not RCONP757)
- Other savings deposit accounts of individuals. (RCONP758 but not RCONP759)
- Deposits accepted by the FI from individuals into a transaction, MMDA, and non-transaction accounts (RCON6810, RCON0352, RCON6648, RCONJ473, and RCONJ474 but not RCONF233) which were then brokered to another FI.

No overriding reason exists to answer the question of how to treat brokered deposits. On the one hand, the bank that allowed its deposits to be brokered has ceased to have access to those funds, which could then be deployed for qualifying activities. However, the receiving bank does not have a direct relationship with the account holder who contributed the deposits. We know we should place accountability on one of the institutions – but which one?

We believe the bank with a direct relationship with the customer should bear the responsibility. The bank has chosen to deploy those deposits to another FI. Indeed, the acquiring FI may not even have branches in the same area where they were initially put on the account, so it seems onerous to expect that FI to do business in the community of the sending FI.

The deposit basis should include brokered deposits brokered from the examined bank to another bank. For example, of Bank of Main Street transferred deposits to Bank of 1st Street through a brokered arrangement, then the portion of those deposits attributable to deposit accounts that fall within the qualifying Call Report line items should be included in the deposit-based denominator.

A threshold of twenty loans is too high: While twenty loans may not be a high bar in most geographies, it could be a " bridge too far" for many rural areas. We note that the rules allow an FI to pick the smallest geographic area within the proposed assessment area definitions. If a rural bank chose to narrowly define its assessment area to the county surrounding its branch, it could likely use a technical procedure to evade examination. If every FI in a small county chose the same technique, then a retail lending product line could go unexamined even if it was utilized by a high share (not the number) of local end-users.

Accommodations for Smaller Financial Institutions

Flexibility for community FIs: We would like the rules to be the same for all FIs. We ask the final rule to commit to a universal system for all financial institutions. Smaller FIs should not be able to pick and choose the makeup of their examinations, nor should the FDIC examine them less frequently.

If the new regulations are better than the current system, then it stands to reason that the best public policy choice would be to apply the new rule set to all FIs.

Accordingly, we ask that the final rule mandate the same exam for all FIs, and secondly, that it stipulate that the maximum window between examinations should be no more than three years.

We have one other request, as well, related to how we define the size of a FI. Regulators should be wary of the possibility that individual digital FIs will be classified as “small” for the evaluation of their testing frequency, even though they have millions of accounts. Many of the digital “neo-banks” that serve lower-wealth households already have more than one million active accounts. The nation’s two largest bank issuers of prepaid debit cards each serve more than four million active accounts, and three of the largest "neo-banks" have more than two million active accounts (Varo, Simple, and Chime) each. Due to the fact they are disproportionately more likely to serve lower-income households, they tend to have fewer assets.

Their balance sheets are primarily built on deposits and not on loans held in their portfolios. CRA obligations grow from the presence of deposits – not assets – so this new kind of FI provokes a need for a new regulatory wrinkle. We ask that FIs with more than one million active deposit-taking transaction accounts have a normal CRA exam cycle.

With the expanded set of qualifying activities, the aspiration among regulators to develop how and where we apply CRA may limit their ability to make a judgment about the suitability of the capital for the consumers it reaches.

What is an example of an easy project that could supplant a hard project?

Making a subprime car loan is an example of an easy project. Making one thousand subprime car loans is almost as easy. For example, FIs should find it much easier to do either than to pursue a complicate New Markets Tax Credit project in a blighted urban area. Most lenders who originate installment loans for retail purchases do so through exclusive contracts. Exclusivity translates into a non-competitive marketplace. A regulatory incentive to issue loans is superfluous. It is much harder to patiently shepherd first-time low-to-moderate-income homebuyers through a process of improving their credit and saving for a down payment, knowing all along that some efforts may never lead to a mortgage and most will only lead to the purchase of modest homes with small mortgages. In a regime where all dollars are equal, which channel will FIs pursue?

Community Development – Qualifying Activities Section IV, Part A (2) CD Activities
CD Activities: Affordable Housing (construction)

<u>CD Activities: Economic Development</u>

Examiners should exclude TIF financing and opportunity zone investments – not just standard general obligation bonds. The rulemaking should not add a criterion to include qualifying opportunity funds (26 U.S.C. 1400-Z 2(d)(1) of any kind and within any location. The tax code has already done enough to incentivize the deployment of capital to opportunity zone districts. We see contradictions in our community between what should qualify as distressed and what has been designated as an opportunity zone. For example, the Treasury Department designated Chapel Hill's Franklin Street as an opportunity zone, even though it is the premier shopping area, and although local real estate developers have been adding new hotels, restaurants, and parking decks to Franklin Street for the last decade. Erwin Square in Durham, the location of recent new developments offering $2,000 per month 1-bedroom apartments and a variety of sushi bars and yoga studios, is also an opportunity zone. They share something in common that Treasury seems to have missed: any area with student housing can easily qualify as an opportunity zone. The CRA should not duplicate these errors.

<u>CD Activities: Community services for LMI individuals</u>

Narrow the Scope of Approved Housing Counseling: We believe that the FDIC should narrow when an examiner can give credit for housing counseling. As written, the proposal would reward any support for any housing counseling agency. The language should make specific the expectation that credit only happens when a FI provides support to a HUD-certified housing counseling agency.

Foreclosure prevention program funding should qualify for CRA credit only when FIs provide monetary support independent HUD-qualified housing counseling agencies. We still need housing counseling. Even though federal funding has ended, consumers still need support to avoid foreclosure. Likewise, HUD-certified housing counselors provide the best pre-purchase advice. As a certified HUD-qualified housing counseling agency, we have concerns that the loss of "hardest hit" funds will further erode the number of counseling agencies.

CD Activities: Revitalization or stabilization of LMI census tracts, distressed nonmetropolitan middle-income census tracts, underserved non-metropolitan middle-income census tracts, and designated disaster areas: We are concerned that an investment where LMI consumers could gain from as little as one percent of the overall benefit would qualify for full community development test credit. As a result, we support the intention to use a pro-rata system for evaluating community development projects, as this prior approach created opportunities for FIs to inflate the impact of their CD projects.

For years, FIs have taken advantage of a loophole in the services test to distort the value of their community development work. For example, a CRA officer formerly employed at a large FI revealed to us that her institution received tens of millions of dollars of credit for investing in a wind farm solely because the wind firm provides a job for a single lower-income individual. We support the pro-rata approach in part because of testimonials like hers.

However, we have significant concerns about applying a benefits approach without also incorporating the subsequent costs to LMI constituencies.

There are positives and negatives with all infrastructure projects. Large-scale projects have to destroy existing property. Sometimes they use eminent domain when residents object to new investment. Moreover, we know from our lived experience in North Carolina that the downsides of infrastructure investment are most likely to affect LMI constituencies adversely. Historically, many local governments have chosen to site projects in LMI areas and often to the detriment of the local area. In Durham, planners built a regional freeway through a low-to-moderate income neighborhood[8]. By any measure, the infrastructure investment destroyed the local community. Yet, by the method proposed in this rule, infrastructure investment would influence a rating to the positive only, regardless of its actual effect on the area. This example is an extreme case, but unfortunately, a person could find similar outcomes in low-income communities in cities throughout the country.

With that context, we feel that a pro-rata formula should be the product of two factors: the benefits as well as the harms created by a project to residents living in low-and-moderate-income areas.

All this underscores one of the chief problems with valuing a public good. Not only can it be difficult to estimate which populations will make use of it, but it is also challenging to determine the duration of its presence. Indeed, the changes will last for more than one year. The only way to honestly assess the value is through a cost-benefit analysis, using quantifying measurements of benefits and costs over a discounted rate through the total duration of the infrastructure's useful lifetime. A proper CBA of Durham's 147 Freeway construction in the Hayti neighborhood would have had to take into account many dynamics among low-to-moderate income households:

- Small business formation
- Homeownership rates
- Change in housing values – equity holdings for LMI households
- Valuations in small businesses
- Travel time to work

[8] Ehrsam, Frederick and Charles Becker. 2010. "The Downfall of Durham's Historic Hayti: Propogated or Preempted by Urban Renewal? Duke University: https://sites.duke.edu/djepapers/files/2016/10/Ehrsam-Fred_DJE.pdf

- Employment
- Morbidity and mortality
- Crime

Financial measurements cannot give the correct weighting to many of these dynamics. Nonetheless, they have a clear economic impact. A proper CBA will place monetary values on non-financial economic effects such as reduced homeownership rates, adverse health consequences, and new neighborhood distress.

Morbidity and mortality impacts bear significantly in reviewing an evaluation for its adequacy. In a rural community less than sixty miles from our offices, the people of Warren County, North Carolina, organized to protest a hazardous waste landfill for PCB-contaminated soil. Their activities became the starting point of the environmental racism critique. The problems created by an infrastructure project in their low-income community led to long-term impacts on the health of their residents.

While the preceding list of bullet points hints at a complicated analysis, it could only be the beginning. In the abstract, such a process would seem to weigh down analysis. However, when considered from an on-the-ground perspective, our history shows that the impacts can be substantial. A freeway project is only one example. In nearby Chapel Hill/Orange County, North Carolina, local planners placed a new waste disposal facility in a low-income neighborhood. While it would be true that LMI households will benefit from the supply of new landfill and heavy-metal disposal capabilities, they will probably gain less than most, given their likely consumption patterns.

On the other hand, they will suffer from noise, air pollution, and landscape degradation at a disproportionate rate, and their housing values will likely fall subsequently. The empirical evidence of the Rogers-Eubanks Waste Disposal Facility also demonstrates some of the problems associated with assuming that the future will follow the path that the project developer foresaw. In essence, the local community agreed to the project only after securing promises of a park, of sidewalks, a community center, and new water and sewer connections. Forty-eight years later, there is still no community center. Water infrastructure arrived slowly; in other areas, the local government never built water or sewer connections[9].

We have two strong beliefs:

1. First, we believe that regulators should never give credit to projects that use eminent domain to secure land over the objections of residents.
2. Secondly, we believe that regulators must identify both the costs and benefits of a project, using a discounted CBA that incorporates the costs and benefits to LMI households over the entire lifespan of the infrastructure project's impacts. We think the rulemaking should reflect the understanding that the effects could extend beyond the serviceable life of the infrastructure project itself. The CBA's account should include not just its financial measurements but also its economic ones.

Regulators should accept that a FI could complete a project with a negative value to LMI households. If so, then examiners should subtract that amount from the overall community development measurement.

[9] Newkirk, Vann. January 15, 2016. "Fighting Environmental Racism in North Carolina." The New Yorker. https://www.newyorker.com/news/news-desk/fighting-environmental-racism-in-north-carolina

Agricultural Activity: We have a concern that agricultural activity, which the proposed rule would measure inside the retail distribution test under the geographic scope, could create problems if it becomes a qualifying community development activity.

Explicit support for investment in Native American communities in Indian Country: We support the intention of the FDIC to give credit for activities inside Indian Country. *25.04(b)(2) and 345.04(b)(2)* The CRA tool could make a dramatic difference in these historically underserved communities. Speaking personally as someone who has visited several Indian reservations in Montana, I can attest that their residents live under great distress.

However, to answer question 3 (page 38) on additional criteria for loans in Indian Country, we believe that for this new factor to matter, regulators should expand the geographic scope of what counts as Indian Country. Usually, all or most economic activity takes place on the perimeter outside of the reservation. Appraisers have difficulty judging the value of land due to complexities with titling (and other similar issues), so most banks will find it untenable to issue loans for the purchase of a property. The rule should expand to cover loans made in census tracts adjacent to the perimeter of a reservation, or even with a certain number of miles (10) from the border of a reservation.

One thing remains uncertain, however. Very few banks have branches inside or in census tracts surrounding Indian reservations, and many reservations are not contained with a formal MSA jurisdiction. How will assessment areas in Indian country be determined?

Activities that help finance or support another FI's CD loans, CD investments, or CD services: The proposed rule suggests that the only combination of supportive investments will be those made by a large FI to support work identified first by a small FI. In our community, large FIs do almost all of the CD activity, as our small FIs do not have the staff with the expertise to evaluate and underwrite complicated CD work. We believe that the actual result will be to see larger FIs sharing participation in each other's projects. If so, how is this new criterion beneficial?

Manufactured Housing under the Affordable Housing Criterion: The FDIC should provide credit when an FI makes a loan or a grant to a non-profit to purchase or rehabilitate a mobile home park, provided that the majority of the residents are low-to-moderate income households. Reinvestment Partners used a $100,000 grant from a local FI to fund a down payment for a non-profit that wanted to purchase a mobile home park in Burnsville, North Carolina. As a result, we secured affordable housing for 27 families. Mobile home parks are an essential source of housing stock, particularly in rural areas. With our $100,000, the non-profit purchased the product at an LTV of less than 70 percent. The non-profit collects rent from the residents to satisfy the ongoing debt payments.

In some cases, resident groups need the money not just to preserve rents at an affordable level, but even to protect the park itself. Under current law in most states, park owners can arrange a sale of their mobile home park and force the residents to vacate their lots in 30 to 90 days. In many cases, residents will lose their homes, as many mobile homes cannot survive the stress associated with moving their unit. As well, zoning rules often prohibit new parks, so with each repurposed park sale, the number of pads shrinks.

We can draw from our experience to assert that mobile home parks need several types of capital.

First, residents need capital to purchase parks. In the non-profit model, a 501 © 3 secures a loan to buy the park and then agrees to rent the lots and potentially the units to income-qualifying tenants. In the resident-owned model, a group of residents forms a co-operative. The co-operative buys the land, but not the units. In both cases, the resident groups need capital.

Another need is for second-position financing to any entity to purchase an existing park or to purchase raw land to create a new park. We asked the North Carolina Housing Finance Agency to create a fund to supply this capital, but they declined our proposal. We would support the idea of providing credit to any FI that provides such financing, even if the buyer is not a non-profit or a resident-owned cooperative.

Create and update the published list of qualifying activities: We agree with the proposed rule's assessment that all stakeholders would benefit if the FDIC issued a list of qualifying activities. The underlying logic behind that change holds merit in our view, as we also believe that many stakeholders work without a clear understanding of which activities qualify for credit. Clear benchmarks will give FIs the security to push the envelope on their work, and it turn, it helps community groups to hold their local banks accountable to community needs.

Such transparency should not stop there, either. In some way, examiners should publish a summary report on each exam that provides an easily understood review of an FIs performance. We believe that community groups would utilize these documents in ways that they currently do not make use of full PE reports. A useful aspect might be a section that includes a chronological lens to reveal changes in an FIs performance compared to previous exams. Adding a temporal dimension would provide benefits far above additional demands on staff time, and indeed, it would make it much easier for regular citizens to make informed conclusions about an FI's activities.

Bank branch accessibility; definitions of underserved areas: While a bank branch is no longer the critical channel for serving consumers, it remains the first choice for many households and businesses.

Banking deserts are a real problem, and to make matters worse, the scope of the problem is increasing. The Federal Reserve's 2019 report[10] on bank branch access in rural communities noted that while half of US counties gained or retained the same number of branches during the time from 2012 to 2017, rural areas "experienced a considerable decline in bank branches. These deeply affected rural counties tend to be poorer, composed of residents with fewer years of education, and have a greater proportion of African-American residents relative to other rural counties.[11]"

The Federal Reserve's report went further to acknowledge that even today, most small businesses still prefer to access financial services through a local branch bank. The report cited literature showing that there was a positive correlation between a business's distance from a branch and the cost the company paid for capital[12].

The findings dovetail with the feedback we receive locally. Reinvestment Partners hosted a summit on bank branch closures in Rich Square, North Carolina. Many regulators attended the event.

We heard from small retailers who said that place a cash bag in the nighttime deposit window at the close of each business day. For those for whom the closure of a local FI means taking a new trip to an out-of-town branch 20 miles each way every night, desertification lengthens their workday. The closure has a

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[10] https://www.federalreserve.gov/publications/stakeholder-feedback-on-modernizing-the-community-reinvestment-act-201906.htm

[11] Board of Governors of the Federal Reserve System. "Perspectives from Main Street: Bank Branch Access in Rural Communities." November 2019. https://www.federalreserve.gov/publications/files/bank-branch-access-in-rural-communities.pdf

[12] Hans Degryse and Steven Ongena, "Distance, Lending Relationships, and Competition," Journal of Finance 55, no. 1 (February 2005): 231–66.

spill-over effect across the downtown business area, as a community without a bank branch becomes less competitive than others in nearby towns.

Therein, we ask the FDIC to exclude “mini-branches,” such as those in a grocery store, from qualifying as a branch location under the rules that identify branch deserts (from section 3(o) of the FDIA (12 U.S.C. 1813(o).) “Mini-branches” do not provide the same range of financial services as do those located in a standard free-standing bank branch. Most provide essential transaction account services, and some may take applications for mortgage loans, but few can serve small businesses. The Federal Reserve’s report – and our own experience – suggest that a mini-branch will not provide essential services.

Nonetheless, we believe the FDIC understands how the loss of branches can impact a community, and we also appreciate that the FDIC cannot control a bank’s decision to close. Still, examiners do have some leverage. We believe that the FDIC should increase the weighting that it gives to the presence of bank branches in underserved areas.

The FDIC proposes to apply an adjacency factor to its method for identifying underserved tracts. We agree with that idea in principle, as the catchment area of a branch extends far beyond a single census tract.

In the proposed rule, a census tract would have to meet a high standard to be classified as "underserved" (page 31). Tracts in urban areas would not be distressed if there a branch existed within two miles. A census tract in a rural area could be as distant as ten miles from the nearest branch before it became underserved. By this definition, no tract in New York City could receive a distressed designation.

Bank branch accessibility: low-to-moderate-income areas: We support a modest expansion of the catchment area within which a branch can be classified as located in an LMI area. A census tract’s specific income profile can belie its actual socioeconomic status. Many LMI census tracts are adjacent to middle-and-upper income census tracts. A bank branch can serve an LMI neighborhood without being inside the same census tract, particularly inside an urban area where census tracts are small in geographic size and where there is more significant heterogeneity in the income characteristics of proximate tracts. The same problem that produces "noise" in the definition of opportunity zones (see our comments earlier) has relevance here, as in many cases, the main arterial streets fall within an LMI classification, but the surrounding neighborhoods are middle-to-upper income – and vice versa. To add fidelity between CRA exams and on-the-ground reality, we would support a more contextualized view of what defines a “branch in specified areas” regarding the income classification component of the CRA evaluation measurement:

In urban areas, we would allow an FI to receive credit if a branch located in a non-LMI tract was located adjacently to an LMI tract.

In rural/non-metropolitan areas: We are concerned that some rural areas may not present an opportunity for a bank to cite a branch in an LMI tract, and if so, leaders in the affected community would have no means to leverage the CRA to incentive a bank to put a branch in its downtown. In some rural counties, the only reasonable place to put an office is in one of its small downtown areas. However, if land-use zoning rules limit bank branch locations to only areas that do not include LMI tracts, then banks have no choice but to exclude the LMI tracts in that county. We propose an alternative in such cases, whereby a bank may receive credit for having an LMI branch if it locates a branch office in a location that is as near as possible (within legal zoning rules) to an LMI tract.

FDIC Board of Director Martin Gruenberg reiterated some of the perspectives, but also added his concern that by “virtually eliminating the retail services test,” the proposed rule would effectively abolish CRA credit for efforts that help to reduce the number of unbanked Americans[13]. The CRA should add efforts at economic inclusion to its set of qualifying activities.

A note of concern on the calculation: the proposal reads that examiners would multiply the share of LMI branches within all branches by .01. If the first number is a percentage – for example, 33/100ths = .33, and then multiplied by .01 equals .0033. (Part 25.10 b. 2 and c.2)) If so, then even an FI with 100 percent of its branches in LMI areas would hardly see any impact on its overall number. Perhaps the writers of the rule meant to consider the branch percentage as a whole number – in our example, it would be 33 – but regardless, as written, the rule would portend a situation where branch location was mostly irrelevant.

CD Activities: Naturally occurring affordable housing. While we recognize that private landlords do supply a large portion of low-cost rental housing, in our community, we see considerable variation in the quality of that housing. We need some means of determining if the capital provided by institutions leads to a beneficial effect on the community. If a landlord uses private financing to purchase multi-family housing but then does not maintain the properties at a level above minimum housing codes, how can an examination process conclude that the bank has met the needs of the community? In Durham, almost forty thousand individuals live in apartment units with rents of less than $600 per month. The majority do not meet code. We have a lead-removal program at Reinvestment Partners; even with funding support from two government agencies, we cannot begin to remediate the entirety of the scope of lead paint in the local rental stock. Likewise, we have purchased many units with mold, leaking windows, holes in walls, and other fundamental problems. Each property we purchased still had tenants in place, even though the properties were below code.

To overcome the heterogeneity in naturally occurring affordable housing ("NOAH"), the FDIC should limit the types of financing that it approves for credit. It should support the acquisition of NOAH by non-profits and local governments who commit to improving the stock of housing. It could approve credit for the refinancing of properties

Discriminatory Practices: In Section 25:15, the proposal indicates that examiners will downgrade FIs when there is evidence, as evidenced in the event of violations of a set of seven listed laws, of discriminatory practices. What penalty will the FDIC apply? Will there be an impact on a bank's evaluation measure? If not, then how will an FI's overall exam score be impacted? If the evidence is only in one assessment area – perhaps because of the often-mentioned "rogue employee" will the downgrade affect the bank-level performance or merely inside the affected assessment area? If the violation is limited to one area – and that area is not inside an assessment area – then will the exam reflect that problem in any way whatsoever? We believe the reasons that drive our concerns should be clarified before any version of the rule goes into effect.

Other comments

Strategic plan – Part 25:16 part (e). The proposed rule would ask FIs to submit a proposed plan and then to submit the document out for public review for at least thirty days. While we think that period is itself problematic solely because it represents a narrow window, we are more concerned by the rule's stated expectations for public disclosure. The rule would require banks to publish the plan in one newspaper in each assessment area. The requirements should be increased. First, the plan should be published in the local newspaper with the largest daily (or as close to daily) circulation in each assessment area – and on

[13] Statement by Martin J. Gruenberg, Member, FDIC Board of Directors; Notice of Proposed Rulemaking: Community Reinvestment Act Regulations. December 12th, 2019. https://www.fdic.gov/news/news/speeches/spdec1219d.html

more than one occasion. For example, in Birmingham, Alabama, an assessed bank would be expected to publish a notice in the Birmingham News. The News is published three times per week and has a daily circulation of 147,000. It would not be satisfactory to place the announcement in the Birmingham Times or Patch Weekly.

Beyond that, as it is the case that newspaper readership is declining[14], to the point where some metros no longer have a local daily publication, an effective disclosure policy should be updated to reflect how people consume information. The disclosure standard should include digital media purchases in each assessment area. In our experience, digital advertising is less costly than print advertising. Additionally, it is far more effective at reaching readers withing targeted geographies, and it is possible to demonstrate that consumers have read a media release.

Another improvement would be for consumers to have the ability to ask their FI, or the FI's regulator, to receive a notification when the final PE is published. The distribution could occur through regular post, by electronic mail, or even through a link to a portal. This simple procedural addition would deliver value to consumers.

Retail deposit types, Federal Deposit Insurance Act section 3(1) 12 U.S.C 1813 (1): Examiners should apply a commonsense method to determining which types of deposits count as the baseline denominator in bank-level and assessment area level tests. No mystery exists to debate if deposits in consumer and business accounts should qualify. However, certain other types pose more questions. First, any deposit that is not eligible for FDIC insurance should be excluded. On the other hand, deposits held by municipalities should contribute to the measurement of an FIs performance. Finally, brokered deposits should count somewhere – either in the bank that initially received the funds or in the one that has acquired them.

In our view, it makes the most sense to attribute those deposits to the FI that accepted them from an end-user. In FDIA section 29 12 USC 1831f(g), brokered deposits are excluded from being counted as a qualifying deposit for the receiving FI, but the language is silent on how those deposits should affect the entity that initially took them. An FI should not be excused from making use of a deposit in the area where it was received because it elected to pass those assets on to another institution. If that was the case, then many deposits received in distressed areas would be taken out of service. The same argument could easily befall deposits made to online institutions.

Concluding thoughts

In discussing efforts to overhaul the Community Reinvestment Act, Federal Reserve Board Governor Lael Brainard comments that "it is much more important to get it right than to do it quickly.[15]"

The CRA has always been a valuable tool. Behind the scenes, it is the catalyst that leads to projects that make our communities better places to live. In our city (Durham, NC), a bank that extended financing to build affordable apartments to low-income seniors received CRA credit. The FI that made a grant to the community development effort that now provides low-cost space to several non-profit groups received CRA credit.

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[14] Pew Research Center. "Fast Facts about the newspaper industry's financial struggles as McClatchy files for bankruptcy." February 14th, 2020. https://www.pewresearch.org/fact-tank/2020/02/14/fast-facts-about-the-newspaper-industrys-financial-struggles/

[15] Brainard, Lael. American Banker, BankPorch. February 2020, page 24.

We have concerns that the simplification will squander the existing capacity to solve hard problems facing our communities. Since its passage in 1972, the CRA has grown to become an industry with a population of professionals who can bring extensive skills and experience to resolve a variety of difficult challenges in underserved neighborhoods. Public comments from FIs and community organizations attest to a common belief, which is that they have invested significant time and resources into building the CRA ecosystem, and even if specific updates may be needed, they still want to make use of the infrastructure in place to meet known needs. We have concerns that the new rule will make those capacities superfluous.

In the new rule, where FIs have many more options to earn credit, challenging but essential community development projects will be left undone. The new standard for qualifying activity will expand the number of ways that banks can meet their obligations; since the rule is indifferent to quality, it seems inevitable that the “simple” will supplant the “challenging.” Indeed, our reading of the proposal suggests that financial institutions could jettison their CRA departments entirely and still receive full credit.

Lastly, we see a gap in the rule regarding how it measures progress on the goal of reducing the number of unbanked households. The new approach appears to be silent on how it will incentivize FIs to bring more consumers into the formal payments system. We feel that the exam process must explore the question. As entities that can access capital at below-market rates, through deposits or the Fed window, FIs should be compelled to expand public access to banking.

Although modest progress occurred between the last two FDIC surveys on the unbanked, more than six percent of households still lack any kind of bank account. Almost 20 percent have a checking account or a savings account, but not both. We experience cases where FIs offer a product for the unbanked but fail to design it in a way that will attract consumers. For example, some have cards that require consumers to electronically transfer funds from another bank account into the account as a condition of approval. Such an approach guarantees that the company will do nothing for the unbanked, even if they have designed a product that they can claim is meant to fit with the needs of the target unbanked consumer. An earlier CRA Interagency Update floated the idea that mobile banking could itself be an example of service to the unbanked. We reject that assumption – while it is true that many LMI people may use such a service – it by itself does nothing to create new customers.

Reinvestment Partners would like to express its appreciation for the opportunity to comment on the rule. Please reach out to our Executive Director if we can provide any clarification on our comments.

Sincerely,

[redacted]

Adam Rust
Director of Research
Reinvestment Partners

Appendix 1

North Carolina banking deserts

County	2010			2014			2019		
	FIs	Branches	Large FIs	FIs	Branches	Large FIs	FIs	Branches	Large FIs
Bertie	3	7	2	2	3	1	1	2	0
Northampton	4	6	2	2	2	1	1	1	0
Jones	3	3	2	2	2	2	1	1	1
Camden	1	1	0	1	1	0	1	1	0
Madison	4	5	2	4	5	3	2	2	1
Caswell	2	2	0	2	2	0	2	2	0
Hyde	1	4	0	1	4	0	1	3	1
Tyrell	2	2	1	2	2	1	2	2	2
Gates	3	3	1	3	3	1	2	2	1
Graham	2	2	1	2	2	1	2	2	1
Greene	2	2	2	2	2	2	2	2	2