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April 8, 2020

Via Electronic Mail

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

Robert E. Feldman
Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

Re: Community Reinvestment Act Regulations (Docket ID OCC-2018-0008; RIN 1557-AE34; RIN 3064-AF22)

Ladies and Gentlemen:

PNC Bank, National Association ("PNC") appreciates the opportunity to comment on the notice of proposed rulemaking ("Proposal")[1] issued by the Office of the Comptroller of the Currency ("OCC") and the Federal Deposit Insurance Corporation ("FDIC") (together, the "Agencies") to modernize the regulations ("CRA Regulations")[2] implementing the Community Reinvestment Act of 1977 ("CRA" or the "Statute").[3] We commend the Agencies for seeking the public's input on ways to enhance the CRA Regulations, consistent with the Statute, so that insured depository institutions may more effectively serve the convenience and credit needs of their entire communities, including low- and moderate-income ("LMI") individuals and neighborhoods, and other individuals and areas of need throughout the United States.

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[1] 85 Fed. Reg. 1204.
[2] *See, e.g.,* 12 C.F.R. Parts 25 and 195 (OCC CRA Regulations). The FDIC has adopted substantially identical CRA Regulations at 12 C.F.R. Part 345.
[3] Public Law 95-128, 91 Stat. 1147 (October 12, 1977), *codified at* 12 U.S.C. § 2901 *et seq.*

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PNC is a Main Street regional bank, with approximately $288 billion in deposits and approximately 2,300 branches and 8,800 automated teller machines ("ATMs") across the eastern and mid-western United States.[4] PNC offers a wide range of retail banking products and services to consumer and small-business customers, including deposit, lending, brokerage, investment management and cash management products and services. Our customers are serviced through our extensive branch and ATM networks, professionally-staffed customer service centers accessible via toll-free numbers, and customer-friendly online banking and mobile channels. PNC is ranked among the top small-business lenders and is one of the nation's top retail lenders and servicers of residential mortgage loans nationwide.

As a Main Street bank, we take pride in how we serve our customers and communities and are committed to making business decisions that positively impact our communities. This commitment is reflected in PNC's strong record of performance under the CRA. PNC has earned the top CRA rating of "Outstanding" in every performance evaluation issued since enactment of the CRA more than 40 years ago. Through executive leadership, strategic investments, and employee volunteerism, PNC is helping to build strong communities and create financial opportunities for individuals, families and businesses throughout PNC's footprint, including in LMI neighborhoods.

We engage extensively with local government officials, non-profit and community organizations, and business and civic leaders in each of our local markets. We do so by utilizing our proven Regional President model, with a Regional President in each of our local markets who is responsible for coordinating our community and civic engagement, as well as for ensuring that the full range of PNC products and services are effectively delivered to meet the deposit, credit, and other financial needs of the community.

PNC supports the communities where it conducts business through, among other things, job creation, local infrastructure investments, home loans, small business loans, financial education, and sponsorships. As highlighted in our most recent Corporate Social Responsibility Report:

- PNC provided more than $3.2 billion in financing that benefited LMI families and communities in 2018, including more than $2.3 billion in community development loans.

- Access to affordable rental housing is a fundamental need for low-income families and seniors. In 2018, we had more than $9.9 billion in affordable housing equity investments under management and were the second-largest low-income housing tax credit ("LIHTC") syndicator/investor in the U.S. National Multifamily Housing Council. We provided $340 million in 2018 to support LIHTC developments.

[4] PNC has branches in Pennsylvania, Ohio, New Jersey, Massachusetts, Michigan, Illinois, Maryland, Indiana, Florida, North Carolina, Kentucky, Washington, D.C., Delaware, Virginia, Georgia, Alabama, Missouri, Wisconsin, South Carolina, Kansas, and Texas.

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- In 2003, we pioneered investing in the New Market Tax Credits ("NMTC") program, providing equity capital to projects that create jobs and drive investment in some of the country's most distressed urban and rural communities. To date, we have made more than $3 billion in Qualified Equity Investments under the program and manage $628 million of NMTC allocations from the U.S. Treasury Department.

- The PNC Foundation and PNC Bank provided more than $77 million in charitable giving and sponsorships in 2018, the majority of which supports education, the arts, and economic development.

In addition, PNC has committed $500 million to Grow Up Great©, the company's signature multi-year, bilingual initiative in early childhood education. Since the program's launch in 2004, the PNC Foundation has awarded $173 million in grants to support high quality early education and more than 6.6 million children—particularly underserved children—throughout 25 states and the District of Columbia have been supported. Roughly 73,000 PNC employees have volunteered nearly 975,000 hours in support of the program and donated more than 1.4 million items for use in preschool classrooms or for the personal well-being of young children.

Under the day-to-day leadership and management of our Community Development Banking team, PNC works in close coordination with consumer groups, community-based organizations, neighborhood developers and local community development ("CD") corporations to find ways to improve the quality of life for individuals, families and businesses in LMI communities throughout PNC's footprint. We are actively engaged with national, regional, and local CD organizations. We connect community groups with in-house expertise and assist groups working with government agencies to locate other sources for technical, financial or investment support. These financial services, together with our philanthropic giving and volunteerism, create a series of benefits that strengthen our communities.

I. Executive Summary

We support the Agencies' efforts to modernize the CRA Regulations in ways that would continue to encourage banks to help meet the credit needs of their entire communities, including LMI and under-served neighborhoods and individuals, in a safe and sound manner. The Proposal presents an opportunity to modernize the CRA Regulations to better reflect the significant changes in the banking industry, technology, and customer preferences that have occurred in recent decades, enhance the incentives for banks to meet the credit, investment and service needs of underserved areas, and improve the efficiency and transparency of the CRA evaluation process.

The CRA was adopted in the late 1970s, and the CRA Regulations were last comprehensively assessed and updated more than a decade ago. Since that time, customer banking preferences have changed significantly and they continue to evolve, with more customers, including LMI customers, preferring to interact with their banking provider through

non-branch channels, such as online banking, mobile banking and ATMs. Banks are adapting to these changes in different ways depending on their respective business models.

As a Main Street bank, for example, PNC operates a physical branch network in many states. In fact, we are expanding our branch network into new states and communities using the same Regional President and community service model that has been a hallmark of our Main Street model. At the same time, PNC is leveraging state-of-the-art, customer-friendly digital banking capabilities to expand our retail banking operations outside our traditional branch footprint, while maintaining our commitment to help meet the credit needs of local communities. Today, all of our customers—both within and outside our branch footprint—can transact with us easily, conveniently and securely through digital channels, as well as via our toll-free Customer Care Centers.

We support several key aspects of the Proposal. For example, we support the Agencies' effort to clarify and provide increased transparency and certainty regarding the types of loans, investments, and services that qualify for CRA credit (together, "CRA activities"). We believe that the proposed illustrative list of types of CRA qualifying activities generally is comprehensive and that the proposed approach for both updating the list and obtaining clarification on whether additional activities qualify for CRA credit is appropriate. In particular, we appreciate the proposed clarifications that the following activities would be eligible for CRA credit:

- CD loans, investments and services supporting naturally-occurring affordable housing, including rental and owner-occupied housing;[5]
- Investments in essential community facilities and infrastructure, such as hospitals, that benefit LMI individuals, LMI areas or other distressed communities;
- Small loans to businesses and farms located in LMI census tracts;
- Small loans to small businesses and small farms in any area; and
- Investments in qualifying opportunity funds.

In addition, as discussed further below, we support the aspects of the Proposal that would require the establishment of deposit-based assessment areas by institutions that collect a majority of their retail deposits from areas where they do not have branches or deposit-taking ATMs, and provide additional incentives for banks to achieve an Outstanding CRA rating.

However, as discussed in more detail below, we believe that significant aspects of the Proposal require modifications to achieve the Agencies' goals and fulfill the objectives of the Statute. Most importantly:

- **Adjustments to Balance Sheet Measures**. The balance sheet focus of the Proposal fails to adequately recognize the significant benefits provided to communities by several bank activities, including (i) the origination of LMI mortgages and other

[5] We also support consideration of rental housing that partially or primarily benefits middle-income individuals or families in high-cost areas.

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qualifying retail loans that are then sold to free up resources to make new loans, (ii) the sponsorship and syndication of LIHTC and NMTC investments, (iii) small, but impactful, community development loans and investments, and (iv) community development services and donations. These activities provide communities with significant benefits and require substantial bank resources in terms of infrastructure, systems, and people, as detailed below. These activities receive CRA credit under the current framework that is commensurate with their true value, but would receive significantly less or no credit under the Proposal.

- **Revise the Definition of Retail Domestic Deposits to Avoid Anomalies**. The proposed definition of "retail domestic deposits" has the potential to significantly skew the allocation of deposits to particular assessment areas. This is because it would appear that deposits collected from a corporation would have to be assigned, for CRA evaluation purposes, to the assessment area (if any) that includes the main office or facility of the corporate depositor. Thus, for example, a covered bank that provides deposit services to a corporate entity that engages in activities nationwide, and that generates funds across the entire nation, would have to assign *all* of that corporate customer's deposits to the assessment area (if any) that includes the corporation's main office. This allocation would overstate the covered bank's deposits associated with that assessment area, while understating the covered bank's deposits associated with other assessment areas. Moreover, because large corporations tend to have their main offices in metropolitan areas, this methodology has the potential to increase the prevalence of CRA "hot spots" in large metropolitan areas, while discouraging CRA activities in underserved rural or non-metropolitan areas. The Agencies can address this issue by adopting a definition of "retail domestic deposit" that is more aligned with the plain meaning of the *retail* element of that term.

- **Inclusion of Retail Consumer Loans Should Remain Optional for Banks Not Significantly Engaged in Such Lending**. Requiring *all* covered banks to collect, maintain and report data on their retail consumer loans (other than home mortgage loans), as proposed, would impose significant new costs on covered banks. For many institutions, the amount of qualifying retail consumer loans originated or held during a particular year may not be significant in relation to the institution's overall business or CRA qualifying activities. Requiring such institutions to establish and maintain the data collection and reporting systems necessary to accurately report the detailed information for each loan within a consumer lending product line, as proposed, would impose costs that are disproportionate to any benefit that would be obtained from such reporting.

Additionally, we recommend that the Agencies further modify and tailor the Proposal in the following ways to better reflect the impact of particular activities on communities, the efforts and infrastructure required to support such activities, and the challenges of complying with the Proposal's sweeping changes to the CRA framework.

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- **Retail Lending Distribution Tests**. The proposed Retail Lending Distributions Tests do not accurately or holistically assess a bank's impact on a community because the failure of a single retail lending product line to meet the borrower or geographic distribution tests, as applicable, would result in a Needs to Improve rating in an assessment area, regardless of the bank's overall performance.

- **Data Collection and Reporting Requirements.** We believe the Agencies overestimate the information currently available or that could be obtained without undue cost. Our experience attempting to collect the data necessary to evaluate the Proposal revealed that there are serious operational challenges in obtaining the necessary deposit, loan, and investment data—challenges that could not be easily addressed by a "check-the-box" or other similar solution that would designate activity as CRA-qualified at the time of underwriting loans or investments.

- **Transition Matters**. We believe that the data collection, recordkeeping requirements and assessment area requirements of any final rule should become effective no earlier than two years after the effective date of the final rule, and that the reporting requirements should become effective no earlier than three years after the effective date of the final rule. Any Retail Lending Distribution Tests included in the final rule should not become effective until a covered bank's first evaluation period that begins at least three years after the Agencies publish the peer and geographic comparator data necessary to assess compliance with such tests.

Each of these critical issues are discussed at length below, and we provide solutions and alternatives to help guide the Agencies. PNC also has actively participated in the development of comment letters on the Proposal by various trade associations, including The Bank Policy Institute and the American Bankers Association, and our comments supplement the comments provided in those letters.

II. Assessment Areas

The Agencies recognize in the Proposal that an institution's assessment areas for CRA purposes have "not kept pace with how consumers bank and how banking services are delivered today." In light of the evolution of banking since the passage of the CRA in 1977, the Agencies propose to update the definition of an assessment area to account for the different business models of institutions and the manner in which they deliver products and services to their customers.

Specifically, the Proposal would require a bank—consistent with current rules—to delineate an assessment area in each location where the bank maintains a main office, a branch, or a non-branch deposit-taking facility (currently, a "deposit-taking ATM"), as well as the surrounding areas where the bank has originated or purchased a substantial portion of its qualifying retail loans (a "facility-based assessment area"). In addition, the Proposal would require a bank that receives 50 percent or more of its retail domestic deposits from geographic areas outside of its facility-based assessment areas to delineate additional, non-overlapping

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assessment areas where the bank receives 5 percent or more of its total retail domestic deposits (a "deposit-based assessment area").

As discussed further below and consistent with our comments on the OCC ANPR, we support the designation of assessment areas in a manner that takes into account the different business models of banks and updates the assessment area designation requirements to reflect the fact that some institutions now collect the majority of their retail domestic deposits digitally from areas away from where their branch(es) are located. Consistent with the purposes of the CRA, an institution's CRA assessment areas should be based on the methods through, and geographies in which, a bank primarily collects deposits.[6] We believe the Proposal would appropriately meet these objectives through the delineation of both facility-based and deposit-based assessment areas.

A. Deposit-Based Assessment Areas

We believe it is reasonable for a bank that collects a majority of its retail deposits digitally from geographies outside of the areas surrounding its headquarters (and branch(es), if any) to have CRA obligations in those areas in which the bank collects a significant amount of deposits. In fact, it is not just reasonable, but consistent with the legislative intent of the CRA that a bank help meet the credit needs of the communities from which it collects deposits.[7] Under current CRA Regulations, for example, a digital bank would have an obligation to meet the CRA needs of the communities around its headquarters, which are often located in large cities, where CRA investment and loan opportunities are in heavy demand (so-called "CRA hotspot"), but would have no obligations to help meet the needs of the communities across the nation from which it collects a substantial amount of its retail deposits. In contrast, a bank with a traditional branch network, like PNC Bank, will have CRA obligations in each of the areas in which PNC Bank has a retail branch or a deposit-taking ATM. By shifting the CRA responsibilities of internet banks from the location of their headquarters to the communities in which they collect a substantial amount of deposits, the Proposal would create a more level-playing field under the CRA Regulations as well as help eliminate so-called "CRA hotspots." This aspect of the Proposal would also help bring the Agencies' CRA Regulations into the 21st century.

[6] *See* 12 U.S.C. § 2901(a)(1) (providing that Congress finds that regulated financial institutions are required by law to demonstrate that they serve the convenience and needs of the communities in which they are "chartered *to do business*"); *see also id.* at § 2906(a)(1) (requiring the appropriate Federal financial supervisory agency to evaluate an institution's "record of meeting the credit needs of its *entire* community, including low- and moderate-income neighborhoods").

[7] S*ee, e.g.*, 123 CONG. REC. S8958 (daily ed. June 6, 1977) (statement of Sen. Proxmire) ("Mr. President, for more than 2 years the Banking Committee has been studying the problem of redlining and the disinvestment by banks and savings institutions in older urban communities. By redlining let me make it clear what I am talking about. I am talking about the fact *that banks and savings and loans will take their deposits from a community and instead of reinvesting them in that community, they will invest them elsewhere*, and they will actually or figuratively draw a red line on a map around the areas of their city, sometimes in the inner city, sometimes in the older neighborhoods, sometimes ethnic and sometimes black, but often encompassing a great area of their neighborhood.") (emphasis added).

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We recognize, however, that establishing deposit-based assessment areas may present challenges for banks that would become subject to those requirements, and we are cognizant of the desire to avoid further concentrating CRA investments and activities in metropolitan "hot spots." For these reasons, PNC Bank would support some changes to the proposed requirements for deposit-based assessment areas. First, we would support providing banks the flexibility to draw deposit-based assessment areas more broadly than is provided in the Proposal, such as at the state level as opposed to at the level of a metropolitan statistical area. This change would help address concerns that deposit-based assessment areas could further feed urban CRA "hot spots" (as digital banks frequently raise a substantial portion of their deposits from metropolitan areas) and give banks more opportunities to meet the needs of rural areas and other communities in need. Second, we would support providing any bank that is required to establish a new deposit-based assessment area, either upon initial implementation of the Proposal or as the geographic distribution of the bank's deposits shift, with a longer phase-in period to meet its CRA obligations in the new area. It takes time to understand community needs and implement a CRA plan in a new geography.[8]

B. Facility-Based Assessment Areas

We are generally supportive of the proposed designation of facility-based assessment areas, but offer some suggestions for further clarification on (i) the definition of a non-branch deposit-taking facility, (ii) the changes to the delineation of an assessment area resulting from the establishment or closure of a new branch or facility, and (iii) CRA obligations in geographies where a bank maintains a small number of deposit-taking ATMs as an accommodation to its customers.

1. Non-Branch Deposit-Taking Facility

With regard to facility-based assessment areas, the Proposal would replace the term "deposit-taking ATM" with the term "non-branch deposit-taking facility." The Agencies do not address in the Proposal why they introduced this new term and what types of facilities they intend to capture through this change other than deposit-taking ATMs. The proposed definition of the term "non-branch deposit-taking facility" raises two key issues.

First, under the current rules, a deposit-taking ATM is a facility that is "automated" and "unstaffed". Under the proposed revision of this term, the automation and/or staffing of the facility is no longer relevant. We are concerned that this change may lead to confusion on what constitutes a "facility" for this purpose, as that term is not defined in the Proposal. A common definition of the term "facility" includes "a place, amenity, or piece of equipment provided for a particular purpose."[9] Eliminating the requirement that the facility be "automated" and "unstaffed" creates confusion on whether a piece of equipment, such as a banker's mobile phone

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[8] We are also supportive of maintaining the existing wholesale and limited purpose designations and the related Community Development Test under the current CRA rules for banks not engaged in retail lending, such as banks primarily engaged in custody and trust activities.

[9] *See* Lexico, *powered by Oxford,* at https://www.lexico.com/en/definition/facility.

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or a computer tablet used by a customer to make a deposit online, might be construed as creating a "non-branch deposit-taking facility." For this reason, we urge the Agencies to clarify what kinds of facilities they intend to cover as non-branch deposit-taking facilities other than deposit-taking ATMs.

Second, under the Proposal, each qualifier following "other than a branch" could be read as modifying "branch" or as modifying "banking facility." This language creates confusion on whether a banking facility that is not "owned or operated by, or operated exclusively for, the bank" would be considered a non-branch deposit-taking facility. Accordingly, we urge the Agencies to clarify that third party banking facilities would not be considered a branch. The following version of the definition would eliminate this ambiguity:

> *Non-branch deposit-taking facility* means a banking facility (other than a branch) that is (1) owned or operated by, or operated exclusively for, the bank, (2) authorized to take deposits, and (3) located in any state or territory of the United States of America.

2. Delineation of Assessment Areas

Consistent with the current rules, the Proposal would permit banks to delineate one or more assessment areas within which the OCC evaluates the bank's record, subject to certain limits on the geographic designation and delineation of the assessment area. The OCC will use the designated areas in the assessment of its performance unless the assessment areas do not comply with these requirements. We support the proposed approach of continuing to give banks the ability to choose and adjust the boundaries of their assessment areas, subject to relevant limits.

The Proposal provides that, with the exception of certain merger and consolidation transactions, banks' assessment area delineations "can only change once during an evaluation period and must not change within the annual period used to determine an assessment area CRA evaluation measure under § 25.10(c)." The preamble to the Proposal does not address why the Agencies limited changes to an assessment area designation in this manner. These limits raise two sets of issues.

First, banks that establish a branch or other deposit-taking facility in a new area would appropriately not be required to establish a new assessment area for CRA purposes during the remainder of the annual assessment area evaluation period in which the branch or facility was established or, in the event more than one branch is established over the course of an evaluation period, for the remainder of the entire evaluation period given the assessment area delineation already changed once. We believe this delay was designed to give banks time to engage with their new communities and develop plans to address the communities' needs. Nevertheless, under the proposed approach, the duration of the phase-in could be quite limited, especially if the branch was opened in the later part of an evaluation period. For this reason, we would urge the Agencies to provide a phase-in period for either the remainder of the evaluation period or at least

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a full calendar year from the date of establishing a new branch or deposit-taking facility before evaluating a bank's performance in the newly delineated assessment area.

Second, in the event a branch is closed in an assessment area and the bank has no other branches or facilities in the assessment area, we recommend that the Agencies clarify that a bank's CRA obligations to the assessment area end on the date of the closure of the last branch or facility in the area. Otherwise, the restrictions on changing delineation of assessment areas may disadvantage banks that receive an Outstanding CRA performance rating. The five-year evaluation period for a bank with an Outstanding rating makes it more likely that over time, changing conditions result in modifications to branches or facilities and thus assessment area delineations, precluding any later change in delineation during the evaluation period due to closed branches.

3. CRA Obligations and Certain Deposit-Taking ATMs

Under the current rules and the Proposal, a bank is required to delineate an assessment area in an area where the bank maintains a deposit-taking ATM, regardless of the amount of deposits the bank accepts in the area or at the ATM. We believe that this requirement does not create the right incentives for banks to maintain a deposit-taking ATM in a community as an accommodation to its customers. For example, banks may maintain a deposit-taking ATMs to accommodate the needs of a community after a bank closes a branch in the community. These ATMs may be used only infrequently by members of the community to deposit checks, but are viewed as being helpful for customers, including the elderly, who are less accustomed to depositing checks online through a mobile app or other technology solution. Requiring a bank to maintain an assessment area where it has only a single, or a small number of, deposit-taking ATMs may actually discourage banks from making these accommodations to its customers. For this reason, we believe a bank should not be required to delineate a CRA assessment area in an area where the bank maintains a single deposit-taking ATM if the bank collects only a relatively small amount of deposits in the area. In particular, we would suggest that if the deposits a bank receives in an area are 2.5 percent or less of the bank's total retail domestic deposits, the bank should not be required to create a facility-based assessment area in the area as a result of maintaining a single or small number of deposit-taking ATMs (and no branches) in the area.

III. On-Balance Sheet Focus of CRA Evaluation Measure and CD Minimum Do Not Adequately Reflect the Community Benefits of Several Key Activities

Under the Proposal, the CRA performance of covered banks would largely be assessed using a new CRA Evaluation measure and CD Minimum, in combination with the Retail Lending Distribution Tests discussed in Part V below. The CRA Evaluation measure and CD Minimum would both primarily consider the on-balance sheet qualifying activities of a covered bank. Due to this balance sheet focus, these performance measures fail to adequately consider the significant benefits that certain activities provide to local communities, including LMI communities. Appendix A provides examples of certain CD investments and services that PNC has provided in its local communities that have a high impact, but that likely would not receive

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commensurate CRA credit under the Proposal.

In particular, we are concerned that the proposed quantification methodology undervalues the community benefits provided by (i) the sponsorship of tax credit investment funds, including LIHTC and NMTC investments; (ii) loan origination activities; (iii) CD services and donations; and (iv) loan commitments. Each of these items is discussed in greater detail below.

A. Sponsorship of Low-Income Housing and New Market Tax Credit Investments

PNC Bank is one of the largest syndicators of LIHTC and NMTC funds for third party investors, including other bank investors. In this role, PNC Bank engages in a number of activities that are critical to the financing of affordable housing in communities throughout the United States. These activities include (i) working with the developer to ensure the project qualifies for LIHTC or NMTC; (ii) obtaining and/or providing support for tax credit allocations; (iii) organizing, and offering interests in, LIHTC or NMTC funds that meet the specific geographic and tax-related needs of the investor; (iv) monitoring the funds and their investments for ongoing compliance with applicable tax and other requirements; and (v) preparing and distributing fund information. Many smaller banks that invest in LIHTC or NMTC funds to satisfy their own CRA goals do not have the resources to structure, price, underwrite and manage these investments themselves and, therefore, may not be in a position to identify, source, and finance LIHTC and NMTC investments without the assistance of a fund sponsor and syndicator. For example, a syndicated fund sponsored by PNC invested $6.8 million in a 50-unit development with 45 of the units set aside for low-income tenants in Caldwell, ID. PNC originated, underwrote, and closed the investment on behalf of the syndicated fund and its seven investors, is now monitoring construction and leasing of the project, and will manage and report on the investment over the 15-year compliance period.

Under the current CRA regulations, PNC Bank receives CRA credit in connection with the investments it originates for contribution to a multi-investor fund and for the syndication services it provides to investors in the fund. However, because of the balance sheet focus of the Proposal, it is unclear whether the significant value provided to communities by LIHTC and NMTC sponsoring and syndication activities would be recognized, as these activities are largely not reflected on the syndicator's balance sheet.

To better account for the significant CRA value provided by LIHTC and NMTC syndicators, we believe the Agencies should provide a bank with CRA credit equal to 50 percent of the amount of LIHTC and NMTC investments that the bank syndicates and that support affordable housing or other CRA qualifying activities. This credit should apply for each year the syndicator manages the investment for the third party.

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B. Retail Loan Origination Activities

Under the Proposal, a bank that originates a qualifying retail loan would receive CRA credit equal to only 25 percent of the loan amount, and only for the year the loan was originated, if the loan was sold within 90 days of its origination. This proposed treatment greatly undervalues both the community benefits and bank resources associated with loan origination activities. For example, under the Proposal, a bank that originates a retail loan of $100,000 in January 2020 and sells the loan one month later would receive 90 days (or 3 out of 12 months) of CRA credit (valued at $25,000) for the loan during its annual assessment period. In contrast, a bank that purchases the same $100,000 retail loan in February 2020 and holds the loan for the remainder of the calendar year would receive 11 out of 12 months of CRA credit (valued at $90,000) for the loan during its annual assessment period. This means that under the Proposal it is worth vastly more – in terms of CRA credit – to purchase a loan on the secondary market than to originate the loan in the first place. We feel it is inappropriate, for several reasons, for the Agencies to create material disincentives for banks to remain engaged in the origination of retail loans.

First, the Federal government *encourages* the sale of residential mortgage loans, including those made to LMI individuals and in LMI neighborhoods, through the government-sponsored entities (Fannie Mae and Freddie Mac), as well as through the Government National Mortgage Association ("GNMA") for Federal Housing Administration ("FHA") and Veterans Administration ("VA") guaranteed loans. These programs provide substantial liquidity to the residential mortgage market and free up funding for banks to make *additional* mortgage loans to LMI individuals and in LMI areas. Indeed, the vast majority of all residential mortgage loans—including those to LMI individuals and in LMI areas—are now securitized by Fannie Mae, Freddie Mac or GNMA.

Second, loan origination activities provide significant benefits to local communities, and involve the devotion of significant resources by the originating bank. For example, the origination of mortgage loans requires significant investment in infrastructure, systems, and people, including (i) engagement with the local community to understand the community's credit needs; (ii) marketing and sales staff; and (iii) staff to ensure compliance with the myriad of consumer protection laws that apply to residential mortgage loans, including the Equal Credit Opportunity Act, the Fair Housing Act, the Truth in Lending Act, the Real Estate Settlement Procedures Act, and the Home Mortgage Disclosure Act.[10]

For these reasons, we urge the Agencies to increase the percentage of CRA credit awarded for the origination of qualifying retail loans. Specifically, we suggest that the bank originating CRA qualified loans receive at least one full year of credit for the full dollar amount of the loan, even if the bank sells the loan in less than a year from the date of origination.

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[10] Indeed, the originating bank typically must provide a representation to any purchaser of the loan that the loan was originated in compliance with all applicable laws and, thereby, bears significant liability under these laws even if the loan is sold.

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C. CD Services and Donations

Under the Proposal, CD donations or services would be credited at the value of the donation or at the hourly salary as estimated by the Bureau of Labor Statistics for the job category of the service provided for the number of hours provided. Alternatively, the Proposal suggests a standardized rate of $36 per hour for valuing CD services. Like other CD activities, this amount would be further reduced if the CD services or donations only partially benefit LMI individuals and families, small businesses, small farms, or identified geographies.[11]

While we appreciate that the Proposal no longer requires that qualifying CD services be related to the provision of financial services, we are concerned that the Proposal significantly undervalues the community impact of CD services and donations.

CD services provide significant value to a community and help the bank understand and more accurately target the community's needs. PNC Bank's Community Development Banking team includes more than 80 employees that take a holistic approach to meeting community needs. This team is supplemented by Regional Presidents and Client and Community Relations Directors in local markets to help ensure PNC is integrated into the community, understands local needs, and makes the full suite of products and services available to customers. We engage extensively with local government officials, non-profit and community organizations, and business and civic leaders in each of our local markets. The CD services our teams provide can provide financial expertise and experience to community groups, while at the same time providing PNC Bank insight into the credit and community development needs of the community, better enabling the bank to meet those needs.

While it is difficult to quantify the value of these services, the Proposal's estimation does not come close to reflecting the value of these services to communities or the cost to banks. For example, 10,000 hours of CD services at $36 per hour amounts to only $360,000 of CRA credit under the Proposal—less than the balance sheet value of a single, moderately-sized mortgage loan. When combined with the extensive tracking and reporting burden detailed below in Part VII, the Proposal would effectively discourage banks from providing CD services. The on-balance sheet approach of the Proposal is unlikely to ever accurately quantify the value of these services to a community, even with a significant multiplier. Nevertheless, if the Proposal retains the on-balance sheet approach for CD services, we recommend that the Agencies apply at least a 20x multiplier to the calculated value of CD services to properly reflect the value to communities and to encourage banks to continue to provide CD services.[12]

Similarly, the Proposal understates the value of donations for CD purposes. Donations are much more beneficial to the recipient than a loan because a donation does not need to be repaid. Yet a donation receives less value than an on-balance sheet loan over an evaluation period because a donation only counts during the year in which it is made. The Agencies should

[11] Proposed 12 C.F.R. § 25.06

[12] We also support providing banks the option to use a standard $36 rate for calculating the value of CD services, which would reduce the burden associated with tracking the value of such services for banks electing to use this option.

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consider applying a multiplier to CD donations in addition to having the CD donation considered in each year of an evaluation period.

D. Loan Commitments

Under the Proposal, an unfunded loan commitment or line of credit to a small business, small farm or LMI family would receive essentially no CRA credit. This essentially negates the real value that small business and individuals receive from a loan commitment or line of credit. An LMI family that receives a home equity or credit card line of credit obtains tangible financial security, knowing that they have resources available to meet unanticipated financial obligations. Likewise, a small business that receives a line of credit is better able to plan for its financial future. For these reasons, we believe that banks should receive CRA credit for loan commitments and lines of credit, even if unfunded, that are otherwise CRA qualifying. We believe an appropriate valuation method would be to provide CRA credit equal to 50 percent of unfunded lines that are not unconditionally cancelable, and 25 percent of unfunded, unconditionally cancelable lines (similar to the credit conversion factor methodology used in the Agencies' capital rules).[13]

IV. Other Enhancements to the CRA Evaluation and CD Minimum Performance Measures

In addition to modifying how the activities above are quantified for purposes of CRA evaluations, certain other modifications to the CRA Evaluation and CD Minimum performance measures are necessary if these measures are retained in any final rule.

A. Revise Retail Domestic Deposit Definition to Avoid Anomalies

Under the Proposal, both the CRA Evaluation and CD Minimum performance measures would require a covered bank to engage in a specified amount of qualifying activity, in the aggregate and in its assessment areas, in relation to the bank's "retail domestic deposits" in the aggregate or gathered from the relevant assessment area, respectively. The Proposal would define a covered bank's "retail domestic deposits" by reference to the amount of "individual, partnership and corporate deposits" reported on line 1 of Schedule RC-E of the Call Report, less brokered deposits.[14] In addition, the Proposal would appear to require that a covered bank assign corporate deposits to a geography based on the physical address of the corporate depositor.[15]

Taken together, these provisions have the potential to significantly skew the allocation of deposits among assessment areas. This is because it would appear that deposits collected from a corporation would have to be assigned, for CRA evaluation purposes, to the assessment area (if

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[13] We note, moreover, that if a bank were to reduce or eliminate the amount of a credit line available to a customer, the amount of CRA credit the bank would receive would be reduced or eliminated, thereby encouraging banks to maintain the lines of credit made available to small businesses, LMI individuals or individuals in LMI areas.
[14] *See* Proposed 12 C.F.R. § 25.03 (definition of "Retail domestic deposit").
[15] *See* Proposed 12 C.F.R. § 25.20(c)(8).

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any) that includes the main office or facility of the corporate depositor. Thus, for example, a covered bank that provides deposit services to a corporate entity that engages in activities nationwide, and that generates funds across the entire nation, would apparently have to assign *all* of that corporate customer's deposits to the assessment area (if any) that includes the corporation's main office. This allocation would overstate the covered bank's deposits associated with that assessment area, while understating the covered bank's deposits associated with other assessment areas. Moreover, because large corporations tend to have their main offices in metropolitan areas, this methodology has the potential to increase the prevalence of CRA "hot spots" in large metropolitan areas, while discouraging CRA activities in underserved rural or non-metropolitan areas.

There is a better way. Specifically, as the Agencies noted, Items 6.a, 6.b, 7.a(1) and 7.b(1) of Call Report Schedule RC-E, in the aggregate, "could more accurately reflect a bank's capacity to engage in qualifying activities for individuals, small businesses and small farms."[16] This is because these items collect information on deposits maintained primarily for personal, household or family use. Importantly, using these items would also eliminate the potential for large corporate deposits to skew the allocation of deposits across different geographies, thereby better assessing the amount of "retail" deposits (the purported focus of the denominator of both the CRA Evaluation and CD Minimum performance measures) collected from specific assessment areas.

We recognize that, as the Agencies noted in the Proposal, only banks with $1 billion or more in consolidated total assets currently are required to report Items 6.a, 6.b, 7.a(1) and 7.b(1) on Schedule RC-E.[17] We do not, however, believe this limitation should prevent application of the more accurate measure of domestic "retail" deposits discussed above for covered banks with $1 billion or more in consolidated total assets. This is especially true because there is a reasonable proxy that could be used for covered banks with less than $1 billion in consolidated total assets. Specifically, all banks—including those with less than $1 billion in consolidated total assets—are required to report the amount of deposits of $250,000 or less on Schedule RC-O of the Call Report.[18] Because corporate deposits tend to exceed $250,000, these line items provide a reasonable proxy for domestic "retail" deposits for covered banks with less than $1 billion in consolidated total assets.[19]

For these reasons, we urge the Agencies to modify the definition of "domestic retail deposits" to mean:

- The sum of Items 6.a, 6.b, 7.a(1) and 7.b(1) of Call Report Schedule RC-E for all covered banks with consolidated total assets of $1 billion or more; and

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[16] *See* 85 Fed. Reg. at 1225.
[17] *See id.*
[18] This amount is reported on Memo line 1.a.1 for all deposit accounts other than retirement accounts, and on Memo line 1.c.1 for retirement accounts.
[19] For example, as of September 30, 2019, the sum of Schedule RC-E Items 6.a, 6.b, 7.a(1) and 7.b(1) for PNC Bank was $134.2 billion, and the sum of Schedule RC-O Memo lines 1.a.1 and 1.c.1 d was $136.1 billion.

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- The sum of Memo lines 1.a.1 and 1.c.1 of Call Report Schedule RC-O for all covered banks with consolidated total assets of less than $1 billion.

We recognize that adjusting the denominator of the CRA Evaluation and CD Minimum performance measures in these ways may require an adjustment of the specified ratios of these measures for each of the performance ratings (Outstanding, Satisfactory, Needs to Improve, and Substantial Noncompliance). Nevertheless, we believe adoption of the recommended definition of "retail domestic deposits" is necessary to align the definition with the stated purpose of capturing "retail" deposits and to avoid the anomalies created by any attempt to allocate large corporate deposits to particular geographies.

B. Inclusion of Retail Consumer Loans Should Remain Optional for Banks Not Significantly Engaged in Such Lending

Under the current CRA Regulations, a large bank's CRA performance under the lending test is primarily assessed based on the number, amount and geographic distribution of the bank's home mortgage, small business and small farm lending activities.[20] In addition, a large bank may, *at its option*, elect to have the Agencies evaluate one or more categories of the bank's consumer lending (e.g., auto, credit card, unsecured personal, and student lending) if the bank has maintained, and provides the agency with, data sufficient to allow such an evaluation. Finally, if consumer lending constitutes a "substantial majority" of a bank's business, the Agencies <u>must</u> evaluate the bank's consumer lending in one or more categories of loans.[21]

We believe these provisions of the current CRA Regulations strike the appropriate balance. On the one hand, the Regulations require the Agencies to assess the retail consumer lending activities of a large bank if those activities constitute a substantial majority of the bank's business. On the other hand, they do <u>not</u> require a large bank to collect, maintain and report data on the bank's retail consumer lending activities if such activities represent a relatively small percentage of the bank's overall business activities.

We believe this approach to retail consumer lending should be retained in any final rule. Requiring *all* covered banks to collect, maintain and report data on their retail consumer loans (other than home mortgage loans), as proposed, would impose significant new costs on covered banks.[22] For many institutions, the amount of qualifying retail consumer loans originated or held during a particular year may not be significant in relation to the institution's overall business or CRA qualifying activities. Requiring such institutions to establish and maintain the data collection and reporting systems necessary to accurately report the detailed information for each loan within a small consumer lending business line, as proposed, would impose costs that are disproportionate to any benefit that would be obtained from such reporting.

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[20] *See* 12 C.F.R. § 25.22(b).
[21] *See id*. at § 25.22(a).
[22] While the Retail Lending Distribution Tests would be applied to only "major" retail lending product lines, this limiter does <u>not</u> apply to the other aspects of the Proposal. For our comments on the proposed definition of a "major" retail lending product line, see Part V *infra*.

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Moreover, the Proposal's mandatory inclusion of consumer loans would potentially assess the distribution of a bank's customers when the bank has little or no control over such distribution. Indirect lending can be a significant portion of a bank's consumer lending portfolio, particular for automobile loans. These indirect loans improve funding availability in communities and help individuals conveniently and expeditiously purchase vehicles, but the customer often does not have a direct relationship with the funding bank—the dealer interacts almost exclusively with the customer. As a result, the bank has little to no influence over the customers that submit loan applications. A bank should not be evaluated under CRA measures for matters it cannot control.[23]

Finally, the Proposal would provide that a bank's facility-based assessment areas must include any surrounding location in which the bank has originated or purchased a "substantial" portion of "qualifying retail loans." Under the current rules, a bank has the option to include such consumer loans if the bank has elected to have that type of consumer loan taken into account is assessing its CRA performance. The Agencies should continue to give banks the option of whether to consider retail loans originated outside an assessment area in the delineation of that assessment area or, at a minimum, require inclusion of a specific type of retail loan only if the bank has originated or purchased a "substantial" portion of such loans in its current assessment period. "Substantial" for this purpose should be defined by rule to mean more than 50 percent of its total qualifying retail loans.

C. Loans in LMI Areas Must Receive CRA Credit

Under the Proposal, a bank would not receive CRA credit for providing a retail loan to a non-LMI borrower in an LMI census tract. This is a departure from the existing CRA Regulations, which give banks CRA credit for all loans to borrowers residing in LMI communities, regardless of the borrower's income level. The proposed treatment of such loans is also inconsistent with the plain language of the Statute, which provides that the Agencies must "assess [an] institution's record of meeting the credit needs of its entire community, including low- and moderate-income *neighborhoods*, consistent with the safe and sound operation of such institution."[24] It also is inconsistent with the legislative purpose of the Statute, which was to prevent "redlining", i.e., the practice of refusing to extend credit to certain *communities* based on the income level or demographic makeup of residents in the community.[25]

From a practical standpoint, loans to non-LMI individuals living in LMI areas can also materially improve the quality of life and safety of the entire community and, thereby, benefit the LMI individuals living the neighborhood. For example, a mortgage loan to a non-LMI individual to purchase or repair a home in an LMI community may allow the individual to restore an abandoned or dilapidated home in the community, which in turn helps beautify, increase the safety of, and raise home values in the community. Such activities may also provide

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[23] This is likely why the Proposal excludes brokered deposits from the scope of "retail domestic deposits."
[24] *See* 12 U.S.C. 2903(a)(1) (emphasis added).
[25] *See supra* p. 7 n.7.

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additional tax revenues for the local government, which can be used to improve local community centers, playgrounds, or schools. Likewise, a credit card or personal loan to a non-LMI individual living in an LMI neighborhood can contribute to the economy of the neighborhood, giving the individual increased resources to make purchases from local merchants. For these reasons, loans to borrowers resident in LMI census tracts should continue to receive CRA credit, as required by the Statute.

D. LMI Branch Add-On Does Not Give Adequate Credit for the Value of Branches

Under the Proposal, a covered bank could receive a maximum of a one percentage increase in its CRA Evaluation measure based on the distribution of its branches in LMI geographies.[26] In order to achieve even this limited, maximum benefit, *all* of the bank's branches would have to be located in LMI communities on a bank-wide basis (for the bank-wide CRA Evaluation measure) or in the relevant assessment area (for the assessment area CRA Evaluation measure).

We believe this benefit for branches in LMI communities is too small and fails to reflect the significant benefits, and costs, associated with the maintenance of physical branches in communities. Physical branches provide local communities unique benefits, including the ability to personally interact with bank personnel about the consumer's banking needs or issues and directly access a broad array of banking products. Branches also are a visible symbol of the bank's commitment to the community. In many areas, bank branches can also serve as important locations for community meetings and gatherings. Physical branches also entail significant costs, ranging from the need to maintain the "brick and mortar," to the personnel, security and compliance costs associated with a physical location.

Providing covered banks a maximum of a one percent benefit based on the percentage of its branches located in LMI geographies fails to provide adequate consideration to these benefits and costs, or a meaningful incentive for banks to establish and maintain branches in LMI communities. For these reasons, we recommend that the benefit for branches located in LMI geographies be at least doubled if the CRA Evaluation measure is retained in any final rule.[27]

We also encourage the Agencies to continue to count branches outside of LMI geographies that serve the needs of residents in LMI areas in any measurement of the availability and effectiveness of a bank's branch network in delivering services to LMI communities. The current Service Test for large banks considers branches located outside an LMI geography that

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[26] *See* Proposed 12 C.F.R. § 25.10(b)(2) and (c)(2).
[27] Technically, this would be achieved by changing the multiplier used in Proposed 12 C.F.R. § 25.10(b)(2) and (c)(2) from 0.01 to 0.02. Please note that all recommendations regarding adjustments to the calculation measures for the CRA Evaluation and CD Minimum performance measures are based on the calculation methodologies and rating standards included in the Proposal. Any changes to those methodologies or rating standards would necessitate corresponding adjustments to our recommendations to ensure that any final rule provided appropriate recognition to the value of the associated qualifying activity.

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demonstrably serve the needs of LMI area residents, consistent with supervisory policy.[28] These branches located near LMI areas have a similar impact on LMI communities and should count towards the CRA Evaluation measure branch add-on.

E. Consideration Also Should be Provided for Alternative Delivery Systems and Innovative and Responsive Community Development Activities

More generally, the CRA Evaluation and CD Minimum performance measures included in the Proposal fail to provide adequate consideration for the other ways that banks help meet the banking and credit needs of their local communities, particularly alternative delivery systems and innovative community development services. Under the Service Test within the current CRA Regulations, large banks are assessed based on the availability and effectiveness of their alternative systems for delivering retail banking services in LMI geographies and to LMI individuals.[29] This component of the current CRA Regulations recognizes that banks can help meet the banking and credit needs of LMI individuals and geographies through alternative delivery channels. Today, those channels increasingly include online and mobile applications that provide consumers and small businesses, including those in LMI geographies, access to the full panoply of the bank's products and services.

Although one of the goals of the Proposal is to better reflect how technology has fundamentally altered the banking industry,[30] the Proposal provides no clear mechanism for banks to receive CRA credit for their extensive investment in online and mobile banking technologies, which have revolutionized and democratized the availability of banking services. To rectify this inconsistency, we recommend that any final rule provide covered banks with up to a 0.5 percent increase in their bank-wide and assessment area CRA Evaluation Measures based on an assessment of the availability and effectiveness of the bank's alternative systems (including ATMs, online banking and mobile banking applications) for delivering retail banking services in LMI geographies and to LMI individuals. Covered banks demonstrating strong availability and effectiveness of their alternative systems would receive a higher increase (up to a maximum of 0.5 percent), and those demonstrating poor availability and effectiveness would receive no or a lesser add-on to their CRA Evaluation measure.

Similarly, the innovativeness and responsiveness of a covered bank's community development services and activities should be evaluated and expressly incorporated into the CD Minimum measure. Under the current CRA Regulations, the Agencies assess (i) the innovativeness and responsiveness of a large bank's community development services under the Service Test, and (ii) the innovativeness, complexity and responsiveness of its community development investments as part of the Investment Test.[31] The Proposal, however, does not expressly provide a covered bank credit for developing innovative ways for helping meet the

[28] OCC Bulletin 2018-7, *Community Reinvestment Act: Supervisory Policy and Processes for Community Reinvestment Act Performance Evaluations* (June 15, 2018).
[29] *See* 12 C.F.R. § 25.24(d)(3).
[30] *See* 85 Fed. Reg. at 1205.
[31] *See* 12 C.F.R. § 25.23(e).

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community development needs of its communities or for being responsive to the community development needs of its communities, even where such activities may not have a commensurate on-balance effect.[32] We believe these considerations should be retained in any final rule, but expanded to consider innovative or responsive community development activities generally, including innovative or responsive community development lending, investment or services. As with the add-on for LMI branches under the CRA Evaluation measure, we recommend that a covered bank receive up to a 0.5 percent benefit to its CD Minimum measure based on the innovativeness, complexity and responsiveness of its community development activities.

V. Retail Lending Distribution Tests

The Proposal's general performance standards would subject banks to a new set of tests and empirical benchmarks applied in each assessment area that are designed to measure the distribution of qualifying retail loans to LMI individuals, small farms, small businesses, and LMI geographies, as well as small loans to businesses and farms. While PNC appreciates the transparency, objectivity, and consistency these tests would bring, we believe their application is too broad and performance requirements too rigid. As explained more thoroughly above,[33] we urge the Agencies to continue to allow consumer lending that does not constitute a "substantial majority" of a bank's business to be an optional evaluation measure, based on the election of the bank.

A. Revise Thresholds for "Major Retail Lending Product Lines"

We recommend that the Agencies increase the dollar volume threshold for a product line to be considered a "major retail lending product line," and, thus, subject to the Retail Lending Distribution Tests, to at least 30 percent of the dollar volume of the bank's retail loan originations. This level of loan originations would help ensure that the products tested under the Proposal's distribution tests are aligned with the bank's core product offerings.

Similarly, we also recommend that the Agencies increase the minimum level of loan originations that must exist within an assessment area for the Retail Lending Distribution Tests to apply in that assessment area. As proposed, a major retail lending product line would be evaluated in an assessment area if the bank originated only 20 loans in the assessment area over the entire evaluation period. That equates to an average of 4 to 7 loans per year during a 5 or 3 year evaluation period, respectively. That number of loans is insufficient to provide a statistically reliable data set and properly evaluate the distribution of the bank's lending, particularly when unfavorable results in one major retail lending product line would result in the bank failing to satisfy the Retail Lending Distribution Test for that assessment area. We recommend the Agencies increase the origination threshold for each assessment area to at least 50 loans per year to provide sufficient data for a meaningful analysis under the Retail Lending Distribution Tests. This would help ensure that a bank's retail lending distribution is evaluated

[32] Rather, the Proposal only indicates that the innovativeness and responsiveness of its activities may be considered as part of the bank's "performance context." *See* Proposed 12 C.F.R. § 25.14(b)(1)(iii) and (v).
[33] *See supra* Part IV, section B.

only in those markets where the bank has a sufficient volume of lending to allow adequate statistical analysis.

B. Clarify That Each Subcategory of Consumer Loans Must be Separately Assessed in Determining Whether It is a "Major" Product Line

The Proposal also is unclear as to whether automobile, credit card, other revolving credit plans, and other consumer loan product lines must be collectively viewed as a single product line in determining whether the bank has any "major" consumer lending product lines, or if each subcategory of consumer lending is considered a separate retail lending product line for purposes of this determination. The OCC has orally confirmed that each subcategory of consumer lending is meant to be evaluated separately to determine if it constitutes a "major retail lending product line";[34] nevertheless, the Proposal's language is ambiguous and should be clarified to ensure that each subcategory is assessed separately for purposes of determining whether it constitutes a "major" product line. It would not be reasonable, for example, to require that a bank's unsecured personal loans be evaluated merely because the bank's auto loans constitute a significant percentage of its overall retail lending.

C. The Tests Should be Adjusted to Focus on the Bank's Overall Performance

As proposed, the Retail Lending Distribution Tests would be onerous for banks with a significant number of assessment areas *and* fail to provide an accurate assessment of the bank's overall lending performance. For example, assume a bank has 150 assessment areas and 3 major retail lending product lines, one of which is small loans to businesses (which is subject to geographic and borrower distribution tests). Under the Proposal, this bank would be subject to more than 600 tests just for the Retail Lending Distribution analysis required by the proposal.

Moreover, under the Proposal, a bank would have to meet each applicable Retail Lending Distribution Test in an assessment area for the bank to receive a Satisfactory rating in the assessment area; in other words, the more products and services a bank offers an assessment area, the more chances it has to fail the assessment area. In fact, a bank could *pass* the Retail Lending Distribution Tests for the vast majority of its major retail lending product lines, yet still receive a *Fail* rating in the assessment area.[35] This draconian result does not provide an accurate picture of a bank's overall efforts and successes in meeting the needs of the community in an assessment area.

Accordingly, we recommend that the Agencies revise the Retail Lending Distribution Tests to more holistically and accurately reflect a bank's impact on a community. Specifically, the Agencies should modify the rule to provide that a bank satisfies the Retail Lending Distribution Test for an assessment area if at least 50 percent of the bank's major retail lending product lines subject to such tests within the assessment area satisfy the borrower distribution

[34] American Bankers Association Q&A with the OCC on the CRA Proposal (March 6, 2020).
[35] We recommend that the Agencies codify in the final rule that a "significant portion" means greater than 50 percent to increase the certainty and transparency of the final rule.

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test and, where applicable, geographic distribution test. For instance, assume a bank has three major retail lending product lines subject to the borrower distribution test (home mortgage, small loans to businesses, and automobile), and one major retail product line subject to the geographic distribution test (small loans to businesses) in an assessment area. The bank should qualify for a Satisfactory rating in the assessment area if, for example, its home mortgage and small loans to businesses satisfy the borrower distribution test and its small loans to businesses product line meets the geographic distribution test. In this scenario, the bank has passed three out of the four tests. This approach would provide a more holistic assessment of the bank's lending in the assessment area, and avoid penalizing a bank for a single lending product line when 50 percent or more of its lending product lines satisfy the Agencies' tests.

D. Renewals, Extensions and Line Increases

Finally, it is unclear from the Proposal whether a renewal or extension of a loan, or an increase in a line of credit, would be considered an "origination" for purposes of the Retail Lending Distribution Tests. We believe banks should receive CRA credit via the Retail Lending Distribution Tests when a pre-existing loan or line of credit is renewed or extended, or a line of credit is increased. Under the current CRA framework for large banks, increases in credit lines, extensions of loans, and renewals count the same as new originations. Typically, such actions require a new credit decision by the bank, or at least a review of any changes to the customer's risk profile, and, thus, such actions should be treated as a new origination. This approach is consistent with the current CRA framework and other regulatory frameworks and related agency interpretations.[36] We urge the Agencies to clarify that these actions will continue to be considered an "origination" for purposes of the Retail Lending Distribution Tests.

VI. Rating Standards and Considerations

Subpart D of the Proposal sets out the standards that would be applied in assigning presumptive ratings to covered banks, the way in which "performance context" would be considered in assigning such ratings, and other factors that may be considered in assigning CRA ratings. As noted previously, PNC supports the goal of the Proposal to increase the objectivity, transparency and certainty of the CRA evaluation process. Accordingly, we support those aspects of the Proposal that would:

- Assign covered banks presumptive ratings based on their demonstrated CRA performance during the evaluation period;
- Ensure that a covered bank is evaluated only based on the performance standards in effect on the first day of its evaluation period, unless the bank elects otherwise; and
- Provide that any modifications to the performance standards applicable to covered banks be adopted through the notice-and-comment rulemaking process.[37]

[36] *See, e.g.*, Regulation O, 12 C.F.R. § 215.3.
[37] *See* Proposed 12 C.F.R. §§ 25.12(a) & (b)(2), and 25.17(a).

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We believe these provisions would enhance the CRA evaluation process by ensuring that covered banks have fair notice of, and an opportunity to comment on, changes to applicable CRA performance evaluation criteria and the ability to prospectively adjust their activities to account for such modifications.

We do, however, have several recommendations regarding how the rating standards and considerations portions of the Proposal could be improved, consistent with the overall objectives of the CRA and the Proposal.

A. Performance Levels Required for Outstanding vs. Satisfactory Rating

As noted previously, achieving an Outstanding CRA performance rating is a core corporate objective of PNC and we are proud that PNC has achieved an Outstanding rating in every CRA performance evaluation conducted since the CRA was enacted in 1977. We are pleased that the Proposal would provide banks, like PNC, that achieve an Outstanding CRA performance rating tangible benefits, including an extended 5-year evaluation cycle and a certificate or seal that could be publicly displayed. We believe these measures would provide appropriate recognition of banks, like PNC, that have invested the time and resources to comprehensively meet the needs of its local communities, including LMI individuals, families and neighborhoods.

However, we believe the level of performance proposed for an Outstanding rating under the CRA Evaluation measure is set too high relative to the level of performance required for a Satisfactory rating. Specifically, under the Proposal, a covered bank would have to have a ratio of CRA qualifying activities to retail domestic deposits, both on a bank-wide and assessment-area basis, of 6 percent to achieve a Satisfactory CRA rating.[38] To receive an Outstanding rating, however, a bank would have to have a level of qualifying activities to retail domestic deposits on a bank-wide or assessment-area basis of *almost twice* that level—11 percent. We are concerned that, by setting the bar so high, the Agencies may unintentionally *discourage* institutions from striving for an Outstanding rating. We believe a more appropriate scale for the CRA Evaluation measure would be to set the level required for an Outstanding rating at 1.5x the level set for a Satisfactory rating. Doing so would still require a bank to have 50 percent more qualifying activities relative to the CRA Evaluation measure denominator[39] to achieve an Outstanding rating, as compared to the level required for a Satisfactory rating.

The Proposal's method for calculating presumptive performance ratings also fails to holistically consider the bank's performance and can result in severely distorted ratings. Under the Proposal, the bank-level rating is dependent on the rating received in a significant portion of assessment areas.[40] A bank would not be eligible for a Satisfactory rating in an assessment area if it does not meet or pass a 6 percent CRA Evaluation measure, 2 percent CD Minimum, or any applicable Retail Lending Distribution Test. This means a bank can *separately* meet or pass each

[38] *See* Proposed 12 C.F.R. §§ 25.12(c)(2)(i) & (d)(2)(ii).
[39] As discussed in Part IV *supra*, we believe the definition of "retail domestic deposits" should be revised to more accurately reflect retail deposits and prevent data anomalies.
[40] Proposed 12 C.F.R § 25.12.

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one of these tests in a significant portion of all assessment areas yet still fail to receive a Satisfactory at the bank level because of its distribution of performance metrics across assessment areas. In fact, as indicated in the table below, a bank with major retail lending products lines in home mortgage, automobile, and small loans to businesses could meet or pass over 83 percent of applicable tests at the assessment area level and *not receive a Satisfactory rating in a single assessment area*, let alone a significant portion.

Pass	Fail

			Retail Lending Distribution Tests				
AA	6% CRA Evaluation Measure	2% CD Minimum	Home Mortgages (Borrower)	Automobile (Borrower)	Small Loans to Businesses (Borrower)	Small Loans to Businesses (Geographic)	Rating
1							Needs to Improve
2							Needs to Improve
3							Needs to Improve
4							Needs to Improve
5							Needs to Improve
6							Needs to Improve

These results do not accurately portray a bank's performance of meeting the needs of its communities. To avoid such distorted results, the Agencies should change the general evaluation framework so that a bank receives a bank-level rating for each test above if the bank receives that rating in a significant portion (i.e., 50 percent or more) of its assessment areas.

B. Performance Context

We strongly support the continued consideration of performance context as part of the CRA evaluation process. The Proposal's on-balance sheet focus has the potential to drastically underestimate the value of community development services, loan origination activities, and sponsorship and syndication of LIHTC and NMTC investments, among other activities. As a result, the Proposal could fail to encourage banks to continue to serve the needs of its communities through these means, and recognize the considerable infrastructure, systems, people, and time devoted to such activities.

While we have proposed ways to better quantify these activities in a manner consistent with the Proposal's framework, they still may not be adequately recognized. Moreover, CRA *opportunities* may differ significantly between assessment areas, even those that appear similar from a population, economic or demographic perspective. This is why it is critical that performance context continue to play a meaningful role in CRA performance evaluations.

It is important that the Agencies continue to factor in the level of CRA opportunities in an assessment area when conducting CRA performance evaluations. For example, banks may significantly rely on partnerships with high-capacity community-based organizations that are not present in all assessment areas for CD loans and investments. Similarly, economic conditions can have a significant impact on the level and nature of a bank's qualifying CRA activities—local, regional, and nationwide economic conditions should continue to be factored into overall

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assessments. With the Proposal's quantitative focus, it is paramount that the Agencies continue to consider the qualitative characteristics inherent in a host of community development activities and investments.

C. Other Considerations

As under the current CRA Regulations, the Proposal provides that evidence of discriminatory or other illegal credit practices may have an adverse effect on a covered bank's CRA rating.[41] In 2017, the OCC provided important clarifications regarding when evidence of discriminatory or other illegal credit practices might have an adverse effect on a bank's CRA rating.[42] These clarifications, however, were not incorporated into the Proposal. We recommend that the Agencies revise proposed 12 C.F.R. § 25.15 to more expressly incorporate the clarifications and guidance provided in OCC PPM 5000-43.

VII. Data Collection and Reporting Requirements

The Proposal would require banks to collect and maintain their Retail Lending Distribution Test results, CRA Evaluation measures and CD Minimum calculations, and presumptive ratings determinations. In order to calculate and verify the results, banks would be required to collect, maintain, and report voluminous amounts of data. While we appreciate that the Agencies understand that the proposed data collection, recordkeeping, and reporting requirements would require expensive upfront changes, we believe the Agencies underestimate the costs involved in obtaining and verifying the data required under the Proposal. This would be in addition to the costs and resources already in place for HMDA data which would no longer be used in CRA evaluations but would still be scrutinized by the public.

In attempting to gather data to analyze the Proposal, we have encountered a number of operational challenges in identifying and collecting the necessary deposit, loan, and investment data. For example, while the Proposal's performance tests look in part to data that is reported on the Call Report, most of the relevant line items on the Call Report are pulled from a number of different internal data sources and for a different regulatory purpose—regulatory reporting and not CRA compliance. In order to identify what components of Call Report line item data is CRA-qualified, we had to identify the original data feed, including adjustments to the original data feed to address unique Call Report Instructions; trace each individual data feed back to the system of record; generate new reports of the relevant data from each original system of record, identifying key information needed to assess whether the activity is CRA-qualified, including the address of record of the borrower or project and the income of the borrower; and send individual reports to internal data experts to geocode, assign to PNC Bank assessment areas, and identify what geographies or borrowers are LMI. Adding to the data challenges is the Proposal's change of the scope of existing categories of regulatory reporting, such as raising the threshold for small

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[41] *Compare* 12 C.F.R. § 25.28(c) and Proposed 12 C.F.R. § 25.15.
[42] *See* OCC Policies and Procedures Manual (PPM) 5000-43, October 12, 2017. PPM 5000-43 was subsequently revised slightly on August 15, 2018.

loans to businesses from $1 million to $2 million.

Additionally, PNC Bank does not currently collect retail and commercial loan or investment data in the manner that the Proposal would require. As currently required for data integrity reviews by Agency CRA examiners, we have been maintaining separate records of CRA-qualified activities along with supporting documentation. These records focus on the originations and purchases of qualified loans and investments, including as relevant any renewals and amendments, during an evaluation period and do not tie these activities back to the balance sheet or related regulatory reports.

We do not believe the above data challenges and others presented by the Proposal could be addressed by a simple “check-the-box” solution that would, for example, allow designation of an activity as CRA-qualified and geocoded at the time of underwriting or investment. Banks have multiple underlying systems for different activities and business areas. For instance, the system generating the Call Reports, which ties into the Call Report line items of retail lending activities the OCC has identified as CRA qualified, in many cases is not the same system used by underwriters at the time of approval and entry of a loan into a bank’s core system. Accordingly, enterprise-wide system changes would be required and the answer does not lie in a single solution.

Additionally, the decision on whether an activity is CRA-qualified requires expertise and consideration of key regulatory factors. Historically, the decisions on whether an investment is CRA-qualified have involved review from a bank’s CRA first and second lines of defense. For bank equity investments alone, CRA qualification is not just a question of CRA credit but also one of permissibility, particularly with regard to ensuring banks do not make impermissible investments in Volcker covered funds. If we were to look to the businesses entering into the loans or making the investments to self-identify whether an activity is CRA qualified, the business staff responsible for “checking the box” would need to undergo extensive, ongoing training. While many banks do in fact train key business personnel to be familiar with the CRA, this does not extend to all personnel involved in entering loans and investments into a system. We are in reality talking about training all underwriters and investment personnel to ensure a “check-the-box” solution is administered properly.

Even if a bank were to build the required systems and system connections and successfully train its staff to identify correctly CRA-qualified activities (e.g. trained to interpret the Q&As and to consistently reference the proposed updated list of qualified activities), the bank would still need to obtain and maintain backup documentation for purposes of internal reviews by the first line and testing by the second line of defense to ensure integrity of the data and subsequent supervisory reviews. Consequently, a “check-the-box” solution would not obviate the need for banks to continue to dedicate significant resources and expertise to CRA qualification decisions.

While we recognize that the Proposal requires data to create the peer comparators in the Retail Lending Distribution Tests, other data necessary to calculate a bank’s performance scores should not be required to be reported. Banks should not be required to collect and report data on,

for example, CD services if the bank does not seek to count the activity toward its CRA Evaluation measure scores. Otherwise, a bank would be required to implement systems to log and track if any employee volunteers at any time during an evaluation period. Similarly, a bank would need to track and record any time an investment benefits any percent of LMI borrowers. Such a system's cost would outweigh the benefit to counting the activity toward the bank's performance measures. In light of the above, we recommend that the Agencies minimize and tailor the recordkeeping and reporting requirements of the Proposal so that reported data not necessary for peer comparators is accurate, but not complete.

The proposal also does not address data integrity expectations for evidencing qualifying CD activities, geocoding, or threshold tolerance rates for errors or omissions. We encourage the Agencies to address these points in the final rule.

VIII. Transition Matters

Under the Proposal, covered banks would have one year after the rule's effective date to comply with the new assessment area, data collection and recordkeeping requirements, and two years after the effective date to comply with the rule's reporting requirements.[43] In addition, covered banks would be evaluated under the new performance standards beginning with the first evaluation period that begins after the rule's reporting requirements become effective.

We appreciate that the Agencies have recognized that covered banks will need a transition period in order to adjust their CRA strategies to the new framework contemplated by the Proposal and develop the systems, policies, procedures and resources to implement the associated data collection and reporting requirements. We believe, however, that certain modifications to the Proposal's transition periods are necessary, particularly in light of the substantial changes the Proposal would make to the current CRA framework and the new data that banks would be required to collect.

In particular, we believe that the data collection, recordkeeping requirements and assessment area requirements of any final rule should become effective no earlier than two years after the effective date of the final rule, and that the reporting requirements should become effective no earlier than three years after the effective date of the final rule. The additional one-year transition period for both sets of requirements would provide needed and appropriate time to plan, approve and implement the significant new data and system changes, as well as related internal controls, that would be necessitated under the Proposal.

In addition, we believe any Retail Lending Distribution Tests included in the final rule should not become effective until a covered bank's first evaluation period that begins at least <u>three years after</u> the Agencies publish the peer and geographic comparator data necessary to assess compliance with such tests. Even after the rule's reporting requirements take effect, it will likely take the Agencies a period of time to compile, verify and publish the data to be used by covered banks in assessing their compliance with the Retail Lending Distribution Tests. It

[43] *See* Proposed 12 C.F.R. § 25.01(c)(4)(i)(A).

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would be unfair to evaluate a covered bank under these tests until the Agencies publish the data necessary for a bank to evaluate itself against the geographic and peer comparator data for its assessment areas *and* the bank is given time to make any adjustments to its CRA and lending strategies as may be necessary or appropriate in light of that newly published data.

IX. Conclusion

Thank you for the opportunity to comment on the Proposal. We share the Agencies' view that there are opportunities to modernize and enhance the CRA framework and continue to encourage banks to help meet the credit needs of their communities in a safe and sound manner. At the same time, there are significant aspects of the Proposal that require modification to achieve the Agencies' goals and fulfill the objectives of the Statute. We urge the Agencies to resolve the critical issues noted above and address this letter's other concerns and recommendations.

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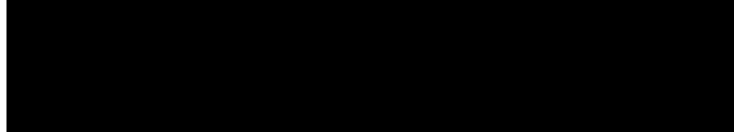
If you have any questions regarding the content of this letter or would like more information on the same, please do not hesitate to contact me, at 412-768-6795 or karen.larrimer@pnc.com, or Kieran J. Fallon, Senior Deputy General Counsel, at 202-973-6256 or kieran.fallon@pnc.com.

Sincerely,



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Appendix A – Examples of CD Activities That Would Be Undervalued by the Proposal

ACTION Housing - $750,000 Program-Related Investment

In Pittsburgh, PA, PNC provided a $750,000 program-related investment to ACTION Housing to bridge state funding essential for the renovation of the Centre Avenue YMCA, a four-story structure in the Hill District neighborhood. The project will renovate 73 single-room occupancy units, which includes air conditioning, a new energy efficient HVAC system, and replacement of shared bathrooms with 10 individual bathrooms, of which 5 will be ADA accessible. Additional work will include installation of an elevator, a renovated kitchen, common space and programming space on the 1st floor.

Hopeworks – Financial Education

PNC provides financial literacy services in conjunction with Hopeworks, which focuses on education, technology, and entrepreneurship to propel young people to build strong futures and break the cycle of violence and poverty in Camden, New Jersey. The organization connects youth to life-changing opportunities where their growing technology skills go to work for enterprising businesses within the community. PNC's Community Development Banking team coordinates monthly Chat n' Chew financial seminars for young people age 16-24.
The Chat n' Chew format is an informal time for financial questions (during which time pizza is delivered), followed by the presentation of a financial topic, with time to answer individual questions/meet one-on-one with youth. Feedback from Hopeworks' Executive Director notes that youth participants proactively share that the financial seminar conversations are helping them and they appreciate opportunities to get assistance with their individual financial situation and information needed to prepare for opening and managing an account.

Family Promise of Lower Bucks – Financial Education

PNC staff conducts financial education workshops on a bi-monthly basis to homeless families through Family Promise of Lower Bucks, a Philadelphia area non-profit organization. This organization offers compassionate and concentrated support to homeless children and their families. Families receive 24-hour-a-day support, a safe place to stay, three meals-a- day, and comprehensive support services, all free of charge. PNC's outreach includes small, fairly personal PNC-led sessions helping a small group of 3 to 4 single moms, often unbanked. Approximately 25 workshops have been presented since 2019 due to open invitations from the organization and positive feedback from participants.

Madisonville Community Urban Redevelopment - $500,000 Unsecured Line of Credit

PNC's Community Development Banking team provided a $500,000 unsecured line of credit to Madisonville Community Urban Redevelopment in Cincinnati to partially fund the construction of nine single family homes in vacant lots donated by the Land Bank of Cincinnati, Ohio. The City of Cincinnati is providing a $62,000 forgivable loan for this project as well. The community of Madisonville is benefiting from new housing that replaces blighting influences.

REACH – Financial Education and $7,000 Grant
In Lexington, KY, PNC's Homeownership Education Program, in partnership with REACH (Resources Education and Assistance for Community Housing), a HUD certified counseling agency, helps individuals learn about the home buying process from A to Z. PNC provided REACH with a $7,000 grant for the program, which is held two times a year for nine hours over three days. Participants begin the program with pros and cons of homeownership and then begin the process of learning about their income, debt, and capacity to purchase a home. During the program, participants use a NeighborWorks curriculum titled "Realizing the American Dream." Also, various speakers come into the program to discuss other home purchase items such as budgeting/saving, understanding credit, and mortgage applications; and working with a realtor, a home inspector, an insurance agent and a closing attorney. In the two 2019 programs, 32 LMI individuals attended, and 100 percent graduated. At the end of the programs: 15 were pre-approved for a mortgage, 4 had sales contracts and the other 11 were looking for homes. The other 17 individuals were continuing their counseling and financial education while also budgeting and saving so that they would soon be pre-approved.

United Vailsburg Services Organization – Financial Education
In Newark, NJ, PNC conducted a financial education series for youth ages 13 – 18 at the Unified Vailsburg Services Organization Teen Center and After School Program. A total of ten workshops served 84 teens, covering the topics of general banking, saving, budgeting, identity theft, credit, entrepreneurship, and home ownership versus renting. The feedback received from the Program and Executive Directors stated that the seminars were well-received the teens, and they requested a re-launch the series in 2020. Despite the City of Newark's recent extensive revitalization, 29% of the population lives in poverty and 83% of Newark Public Schools students are eligible for free or reduced meals. Financial education workshops such as this play a critical role in positively engaging LMI youth and preparing them for financial wellness in the future.

Hope Haven, Inc. - $539,000 Bridge Loan
In Charlotte, NC, PNC provided Hope Haven, Inc. a $539,000 loan to bridge a FHLB Pittsburgh Affordable Housing Program grant. Proceeds were used to renovate a facility needed for safe and affordable permanent housing for individuals trying to break the cycle of alcohol and drug dependency. The target population is homeless individuals who are permanently disabled or in recovery from substance abuse. The project involved the rehabilitation of 12 units of single room occupancy housing to extend their useful life as affordable housing. Residents have access to a well-balanced set of empowerment initiatives including case management, drug/alcohol counseling, job coaching, life skills training, and personal counseling.

Reinvestment Partners - $400,000 Line of Credit
In Durham, NC, PNC provided a $400,000 line of credit to Reinvestment Partners (RP). This line supports the acquisition, rehabilitation, and eventual resale of affordable residential real estate to LMI individuals. RP sources the properties from the open market, and the average turn time on the properties, from acquisition and rehabilitation to resale, is approximately 18 months. RP was established to advocate for economic justice and opportunity, and has worked to ensure fair lending to underserved communities in order to build and protect wealth. Recently, RP has become increasingly involved with the acquisition and rehabilitation of blighted/foreclosed properties, which are made available for resale to LMI individuals.

Jones Valley Teaching Farm – Grants, Investments, $250,000 Pledge
In Birmingham Alabama, PNC has provided a variety of support to the Jones Valley Teaching Farm (JVTF). Incorporated as a 501(c)(3) non-profit in 2002, JVTF has a 17-year history of successfully serving the Birmingham, AL community. Working in close partnership with Birmingham City Schools, the organization has built vibrant, student-centered Teaching Farms to provide an environment where young people can learn, create, explore, and grow a healthy future for themselves and their community. PNC was an early funder in JVTF's Good School Food program in partnership with Birmingham City Schools. Four years ago, PNC invested in the JVTF vision of providing meaningful employment to young people through the JVTF/ Urban Farm program at Woodlawn High School. This program, which began as a paid internship program, has evolved into a high school apprenticeship program for Woodlawn High School Juniors and Seniors. To date, JVTF has graduated 20 young people from this program. Finally, JVTF's next phase of growth includes a capital campaign to support a Center for Food Education on the organization's downtown teaching farm. This Center will provide JVTF with space to replicate their Good School Food educational model, reach more students across metro Birmingham, and expand their work, which, increasingly has seen a national interest. Nick Willis, PNC's Regional President, is the Co-Chair of this campaign to which PNC has pledged $250,000.