Enterprise

August 5, 2022

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

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

Office of the Comptroller of the Currency
Benjamin W. McDonough, Chief Counsel
Chief Counsel's Office
Attention: Comment Processing
400 7th Street, SW
Suite 3E-218
Washington, D.C. 20219

Re: Community Reinvestment Act
FDIC RIN 3064-AF81
Federal Reserve Docket No. R-1769 and RIN 7100-AG29
OCC Docket ID OCC-2022-0002

To Whom It May Concern:

Enterprise Community Partners (Enterprise) appreciates the opportunity to provide comments to the Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC) and the Office of the Comptroller of the Currency (OCC) on the joint notice of proposed rulemaking to strengthen and modernize the regulations of the *Community Reinvestment Act* (CRA).

Enterprise is a national nonprofit that exists to make a good home possible for the millions of families without one. We support community development organizations on the ground, aggregate and invest capital for impact, advance housing policy at every level of government, and build and manage communities ourselves. Since 1982, we have invested $54 billion in equity, grants and loans to help build or preserve 873,000 affordable homes in diverse, thriving communities. We bring together public and private resources to create strong neighborhoods of opportunity for low- and moderate-income (LMI) people and strive to make home and community places of pride, power and belonging, and platforms for resilience and upward mobility for all.

Enterprise's efforts to connect communities to opportunity have greatly benefited from the CRA. The law has been an important driver of financial institution investments in the Low-Income Housing Tax Credit (Housing Credit), the New Markets Tax Credit (NMTC) and Community Development Financial Institutions (CDFIs). In addition, by incentivizing philanthropic investments and skills-based volunteerism, the CRA has supported high-impact nonprofit organizations in providing critical services that benefit LMI communities and individuals.

The need for affordable housing is higher than ever, with rents rising *nearly 24 percent* over the past two years,[1] well ahead of incomes and overall inflation. Would-be homeowners are also finding themselves increasingly priced out of the market, with the median sales price of existing homes exceeding $400,000 and sales of homes priced between $100,000–$250,000 accounting for less than a fifth of the market.[2] According to Harvard's Joint Center for Housing Studies' *State of the Nation's Housing*, the nationwide share of cost-burdened households—those paying over 30 percent of their income for housing—rose 1.5 percentage points in 2020 to nearly 30 percent. The increase among Black households was disproportionately large at 2.4 percentage points, exceeding that of white (1.6 percent), Asian (0.8 percent) and Hispanic households (0.6 percent).

As demand continues to outstrip supply—increasing cost burdens among renters and vulnerable households, particularly those of color—as housing and utility costs reach record highs; and as climate-driven housing challenges occur with increasing frequency and intensity, we know the need for affordable housing, small business investment, neighborhood stabilization and economic development will likely be of a magnitude not seen in generations, especially in the wake of the pandemic. Equitable and supportive capital deployment will be critical in fostering a fairer economy, and CRA will play an important role in informing banks' decisions in where *and how* to act.

CRA regulations were first promulgated in 1978 and have since been amended twice, in 1995 and 2005. Enterprise recognizes the need for a strong regulatory CRA framework, one that reflects the changes in the financial services industry while better promoting access to responsible banking services for LMI communities. It must also reflect an effort to redress the legacy of redlining and other discriminatory policies and practices that spurred disinvestment in minority communities while also being forward-looking in helping vulnerable people and places become more resilient to ever-present climate-related risk. As CRA regulations change infrequently, it is also important that banks remain subject to CRA requirements in broad and flexible terms so they can act in ways that are most responsive to evolving needs.

Even as bank business models shift as financial conditions change and technology evolves, the regulations must retain the original purpose of the law: to help LMI communities—particularly those still living with the legacy of decades-long race-conscious disinvestment—gain access to financial services, loans, and community development investments that would otherwise be unavailable. Enterprise offers its comments to reinforce the need for a strong framework that properly gives banks credit for sound community development work and the flexibility to partner with nonprofits on impactful and innovative approaches to addressing community needs.

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[1] https://www.realtor.com/research/june-2022-rent/

[2] https://cdn.nar.realtor/sites/default/files/documents/ehs-06-2022-summary-2022-07-20.pdf

Key Recommendations

We would like to again offer our appreciation to the Board, FDIC and OCC for their strong commitment to strengthening and modernizing CRA regulations so that they best benefit LMI communities.

Specifically, we applaud the proposed rule's automatic qualification of Housing Credit investments as CRA-eligible, as well as the allotment of full CRA credit for investments in Treasury-certified CDFIs. The proposed rule also makes valuable changes to the geographic level at which community development (CD) activities are evaluated to help reduce distinctions between so-called "hot spots" and "deserts." We are pleased to see the recognition of the vulnerability of lower-income households and communities to climate-related risks and the express inclusion of support for climate resiliency as CRA-eligible. Likewise, the express inclusion of activities that serve Native Land Areas, broadly defined, recognizing that "tribal communities face significant and unique community development challenges" (p. 96), marks an important step towards addressing critical housing needs and persistently high poverty rates in those communities.

To ensure that the final regulations continue to incentivize investment in critical affordable housing and community development activities, we are proposing several recommendations to banking regulators in response to their request for comments.

Retaining Separate Community Development Investment and Lending Tests

First and foremost, we are greatly concerned by the proposed rule's consolidation of lending and investment into a single community development financing test. Combining debt and equity activities into a single test assumes a false equivalence in the roles the two forms of capital play in community development and the ease with which those seeking to deploy CRA-motivated capital can access them. The current exam structure for large institutions appropriately distinguishes between lending and investment activities and should be retained, even as the tests themselves stand to become more quantitative in nature under the proposed rule.

By consolidating the two tests, equity investment for both the Housing Credit and NMTC programs will be extremely difficult to secure, as banks almost inevitably prefer making loans over equity investments for multiple reasons. The proposed rule suggests that "Combining consideration of community development loans and investments into a single test would allow banks to engage in the activity best suited to their expertise and that is most needed for the community development project that the bank is financing" (p. 307). The factors determining how capital is allocated are more varied and complex than the rule supposes. Compared to community development loans, equity investments are more costly to originate, longer term and less liquid. In addition, because of differences in risk weights under Basel III, banks must hold double the Tier 1 capital for equity investments versus seasoned multifamily loans.

On a regular basis, we *already* encounter severe pressure from banks to maximize their debt opportunities and minimize their equity opportunities, with some operating under guidance to do 5:1 debt-to-equity ratios in their Housing Credit transactions. Housing Credit properties typically cannot carry significant debt because the affordable rents allowed do not offer substantial cash flows to service the debt. The properties financed using 9 percent Housing Credits typically only carry 10–25 percent permanent debt, while those using 4 percent credits typically carry 15–30 percent. The equity investment in Housing Credits, however, usually finances 60–80 percent of the total development costs for 9 percent credits and 30–40 percent in the case of 4 percent credits.

Further, we are concerned that the absence of an equity investment test could cause a reduction in the incentive to invest in the Housing Credit. With reduced equity investment in Housing Credit developments, there will also be fewer opportunities for banks to make CRA-eligible loans for affordable housing, particularly without additional gap financing. An estimated 85 percent of equity investment in the Housing Credit comes from banks; if demand for the Housing Credit drops, pricing will also fall. Preservation equity funds that focus on the unsubsidized affordable stock would be similarly negatively impacted. Moreover, with a long list of worthy, credit-eligible lending activities, the proposed rule makes it likely that CRA-driven capital allocations by banks will shift away from affordable housing.

Given the pervasive shortages of affordable rental housing across the country, we urge the agencies to take the utmost care not to stanch the flow of CRA-motivated equity investment that forms the base of the capital stack for affordable housing upon which millions of families rely.

Revising the proposed rule to retain separate evaluations of CD lending and investment would not place an extra burden on either the regulated institutions that are used to making both loans and investments, nor on the examiners who must review the activities. Consolidating the two CD tests does not "simplify the evaluation" (p. 307) in practice. The data necessary for evaluating loans and investments would be the same under the proposed rule as under a revised version that retained separate tests; the key difference is that the formulas would shift to report out the results of lending and investment activities separately rather than jointly:

$$\frac{CD\ loans}{deposits} + \frac{CD\ investments}{deposits}$$

Nevertheless, should the agencies decide to move forward with a consolidated CD Financing Test despite the consequences, it is important that *at the very least* they create a CD Investment subtest within the proposed CD Financing Test, equally weighted alongside the lending activities to ensure that banks continue to maintain a focus on CD investments.

Maintaining a Balance Between Retail and Community Development Activities

We also call for equal weighting of the retail and community development tests for large banks, rather than the 60/40 retail/community development weighting currently proposed. The weighting as proposed will incentivize banks to focus solely on the retail side of the equation and forego efforts to achieve a strong score on the community development side.

In addition, the peer performance–based scoring system embedded into each test would create an unintended negative feedback loop across institutions and exam cycles, as it is unlikely for banks to achieve an "outstanding" rating given the current scoring parameters. Further, most banks will only be motivated to achieve a "satisfactory" rating (with the differentiation between "high satisfactory" and "low satisfactory" essentially moot, given that statue only allows for four categories in the final rating: "outstanding," "satisfactory," "needs to improve," and "substantial noncompliance").

We note that the proposal uses equal weighting for retail and CD activities when evaluating intermediate bank performance.

Strengthening the CD Services Test

As proposed, the CD Services Test is weighted too heavily, accounting for 25 percent of the overall community development score. Moreover, only one of the three primary activities identified as eligible for consideration in the CD Services Test is focused on community development. We recommend that services that are linked to activities considered in the Retail Lending Test, such as financial literacy for consumers and technical assistance to small businesses, be expressly incorporated in the Retail Services and Products Test. To compensate for the reduction in qualifying activities, we propose that the agencies incorporate grant contributions to support the operations of nonprofit community development organizations under this test.

We are concerned that grant making may be less attractive to banks under the new scoring regime because grants will likely be a small portion of the overall bucket of community development activities. Even though grants to nonprofits are small compared to banks' other CD activities, operating grants have an outsized role in the community development funding ecosystem. Separating this activity out from the broader bucket of community development loans and investments and assigning a score to it would encourage more grant making by banks. If grant contributions are included in this category, then the proposed CD Services Test weight of 10 percent is more justifiable. Barring this change, however, the CD Services Test should be reduced to no more than 5 percent of the total exam.

Summarizing these comments, we recommend the following weights for the CRA exam components:

- Retail Lending Test: 35%
- Retail Services and Products Test: 15%
- Community Development Lending Test: 20%
- Community Development Investment Test: 20%
- Community Development Services Test: 10%

Note that even under this proposed weighting, CD investments would be reduced by 20 percent compared to the 25 percent weight for the Investment Test under current regulations.

Should the agencies retain the CD Financing Test as described in the proposed rule, we once again respectfully but emphatically urge the agencies to stand up a CD Investment Test as a subtest inside the proposed CD Financing Test. Under that scenario, we propose that the full CD Financing Test be given a 40 percent weight, within which the investments subtest would be given equal weight alongside the lending subtest. (If grants are not included in the CD Services Test and there is no standalone CD Investment Test, the CD Financing Test should account for 45 percent of the exam score, evenly split between lending and investment subtests.)

Evaluating New Activities in Addition to Those Already on Balance Sheets

We note that as proposed, the rule gives CRA credit for activities that remain on a bank's balance sheet over time. Although these long-term commitments are particularly valuable for CDFIs, Enterprise would also like to stress the importance of additional measurement that evaluates a (net) new financing requirement to encourage additional loans and investments in LMI communities beyond CRA-eligible activities on an institution's balance sheet from prior exam cycles. A significant drop in new lending or investing should be cause for examiner scrutiny and possible downgrade.

Encouraging Meaningful Impact

The proposed rule aims to quantifiably measure CRA activities and seeks to use impact review factors to capture the impact and responsiveness. There is, however, a lack of clarity about how individual activities will be evaluated and whether impact will be adequately captured. As described in the proposed rule, the approach to impact appears to be categorical (i.e., on or off the qualifying activity list) and linked to activity volume ("the percentage of the bank's qualifying activities that meet each impact factor…a more significant volume of activities that align with the impact review factors would positively impact conclusions" pp. 319–320) rather than be a true measure of responsiveness and impact within the qualifying activities.

The terms under which capital flows are incredibly meaningful and can have wildly different impacts on the recipient. The discussion above of the differences between equity and debt for Housing Credit properties is a prime example of this. For this reason, equity investments should always be considered for impact, with investments being considered qualitatively even more impactful if they include:

- A high priority on preservation of affordable housing as an investor with an explicit public purpose
- Waiver of Qualified Contract (QC)
- Fund partnership agreements that explicitly state that a business purpose of the fund is "to identify and implement strategies to maintain...properties as low-income housing subsequent to disposition." Such a statement of purpose directs the general partner of the fund to pursue preservation strategies.
- Requirements that operating partnership agreements for Housing Credit properties in which they invest include provisions intended to protect nonprofit project sponsors from future transfer to parties who may move against their ROFR rights.
- Language in the financing agreement that protects the nonprofit right of first refusal along the lines of language required for all housing tax credit allocations by the New York City agency for Housing Preservation and Development. (We note that many states require Housing Credit recipients to waive their rights to use the Qualified Contract loophole, so those investments would presumptively qualify as more impactful.)

Conversely, activities that are detrimental to community development outcomes should be evaluated negatively, potentially even to the point of triggering a downgrade. This would include partnering in multi-investor funds for Housing Credit investments whose general partner has engaged in a pattern or practice of refusing to recognize the nonprofits' rights of first refusal. These activities directly detract from the stock of affordable homes and should be viewed as negatively impacting low-income families.

As another example, a dollar offered to a CDFI as a market-rate line of credit with short duration is not nearly as valuable or easily deployed as a line extended below-market for a long term. Yet, as laid out in the proposed rule, the determining factor is whether the activity does or does not support a Treasury Department certified CDFI; the quality of the capital is not a focus. To that end, impact factor evaluation of support to CDFIs (along with MDIs, WDIs, and LICUs) should not simply be a question of how much money flowed to this activity but should meaningfully assess the term, structure (lien priority), rate and automatic renewability to truly capture the impact and responsiveness of the funding.

Along the same lines, qualifying grants to nonprofits that provide operating support can have an outsized impact on their capacity to serve their communities despite their relatively small dollar volumes. By incorporating an outcomes-based metric—even if a qualitative one—for these activities, their value to the recipients and support for community development can be reflected in CD Services Test.

Increasing Focus on Serving People and Communities of Color

The CRA was enacted largely as a response to "redlining," a discriminatory practice in which banks would deny loans to residents living in neighborhoods that they deemed hazardous, often solely based on the presence of large minority populations. At the same time, however, in practice, it is a law that is sorely constrained in its ability to directly tackle this legacy head on, as income is an imperfect proxy for race and ethnicity. Addressing the unmet credit needs of LMI communities and individuals, and particularly people of color, must remain central to any strengthened and modernized CRA regulation and should be the standard against which any changes are measured.

This is especially important given the nation's economic challenges due to the consecutive shocks of Covid-19 and generationally high inflation, particularly for communities of color, who have faced historic disinvestment and who have been disproportionately affected by the pandemic and the rising cost of goods, notably housing. The CRA can play a critical role in an equitable recovery by providing accessible and effective financial services to low-income communities of color.

In addition to collecting data on race, the final rule should specifically focus on and give credit to positive *outcomes* in communities of color. To begin to achieve that objective, special purpose credit programs (SPCPs) designed to meet the needs of people and communities of color should be expressly included in the evaluations of retail and community development activities. This approach is wholly consistent with the January 2021 CFPB advisory opinion on ECOA Regulation B[3] and the more recent interagency statement on special purpose credit programs and fair lending.[4] We would further recommend that these SPCPs be considered as particularly responsive and impactful in the context of the Retail Services and Products Test.

Below please find our specific responses to the questions posed in the joint notice for consideration prior to issuing a final CRA rule.

[3] 86 Fed. Reg. at 3765 (https://www.govinfo.gov/content/pkg/FR-2021-01-15/pdf/2020-28596.pdf)
[4] OCC Bulletin 2022-3 (https://www.occ.treas.gov/news-issuances/bulletins/2022/bulletin-2022-3a.pdf)

III. Community Development Definitions

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

Partial consideration should not be considered for other community development activities because the funding is generally very easily deployed, and LMI benefit is little more than an artifact of activities done during the normal course of business, given the fact that approximately one-third of the population meets the definition of low or moderate income. Any percentage for *pro-rata* consideration would have to be substantially higher than the share of the LMI population, at which point the level would approach the existing 50 percent threshold. As such, there is little to be gained and much to be lost in offering partial consideration outside of affordable housing activities, where income mixing is often part of an intentional strategy or necessary condition for creating new affordable homes.

Question 2. If partial consideration is extended to other types of community development activities with a primary purpose of community development, should there be a minimum percentage of the activity that serves low- or moderate-income individuals or geographies or small businesses and small farms, such as 25 percent? If partial consideration is provided for certain types of activities considered to have a primary purpose of community development, should the agencies require a minimum percentage standard greater than 51 percent to receive full consideration, such as a threshold between 60 percent and 90 percent?

Greater than 50 percent—i.e., a majority of beneficiaries are LMI—is an appropriate standard for awarding CRA credit for other community development activities. Again, we do not believe partial consideration is otherwise warranted.

Question 3. Is the proposed standard of government programs having a "stated purpose or bona fide intent" of providing affordable housing for low- or moderate-income (or, under the alternative discussed above, for low-, moderate- or middle-income) individuals appropriate, or is a different standard more appropriate for considering government programs that provide affordable housing? Should these activities be required to meet a specific affordability standard, such as rents not exceeding 30 percent of 80 percent of median income? Should these activities be required to include verification that at least a majority of occupants of affordable units are low- or moderate-income individuals?

We believe applying a consistent, outcomes-based standard to non-Housing Credit properties appropriately focuses on the affordable housing needs of LMI households; there are government programs that target higher income households (or have no income or rent restrictions at all, like FHA multifamily mortgages), and there are mission-driven actors who produce and preserve affordable housing without subsidy. The latter are particularly important for ensuring the ongoing viability of the existing unsubsidized housing stock (often referred to as naturally occurring affordable housing, or NOAH), which is vulnerable to both market pressures (and lost affordability) and deterioration (which removes units from supply and displaces residents).

Irrespective of the presence of a government program, all non–Housing Credit properties should be eligible for CRA credit if they are affordable to households at or below 80 percent of AMI, using a 30 percent of income standard as adjusted for unit size[5] and accounting for utilities. The calculation must be based on any post-construction or post-rehabilitation rents used in underwriting, and the ongoing affordability during the duration of the loan or investment must be demonstrated in each year of the exam period through the provision of rent rolls, which are commonly collected by lenders as a standard business practice.

In addition to meeting rent affordability requirements, properties should also meet one of the following criteria:

1. Location in an LMI census tract, as proposed in the rule and in keeping with current policy as it has been practiced.

2. Location in a census tract where the median renter income meets the LMI definition. As the proposed rule suggests, the occupants of these rental homes are likely to be LMI, and expanding the supply of affordable homes in higher income tracts creates greater opportunities for economic mobility.

3. Nonprofit or CDFI ownership or control. Nonprofits and CDFIs have a demonstrated track record of producing and preserving affordable homes.

4. Documented LMI occupancy. While unsubsidized properties collect income information at the time of application by residents, banks do not typically have access to that data, nor is it collected on an ongoing basis by the building operator. Ongoing income certification, however, is common in many government programs to ensure eligibility and compliance, and in these cases or when an owner opts to ensure eligibility absent a government requirement, the bank can provide evidence of program compliance.

5. Owner commitment to maintain affordability for at least five years or the length of the financing, whichever is longer, an amendment to the proposed rule. (If the proposed language using the shorter of five years or the length of financing is retained, consideration for CRA credit should run concurrently with the affordability commitment. A loan on a bank's balance sheet whose affordability commitment has expired should no longer be eligible for credit if the other criteria listed above are not met or the written commitment to affordability is not renewed.)

In all the above cases, we believe these activities should qualify for full CRA credit if more than 50 percent of the units meet the affordability requirement of no more than 30 percent of income for households at or below 80 AMI, including allowances for utilities. Pro-rata credit should be awarded for properties with 20–50 percent of the units affordable, consistent with the minimum affordable unit share required under the Housing Credit, tax-exempt multifamily bonds, and

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[5] We recommend using the household size inputs for LIHTC rents published by HUD to determine the relevant income limits, i.e., a 2-bedroom unit would use 30 percent of the 80 percent of AMI 3-person household income while a 3-bedroom unit would use the average of the 4- and 5-person incomes.

HOME Investment Partnership program. (Additionally, see the response to this question provided by the National Association of Affordable Housing Lenders (NAAHL), which we incorporate by reference.)

Question 4. In qualifying affordable rental housing activities in conjunction with a government program, should the agencies consider activities that provide affordable housing to middle-income individuals in *high opportunity areas,* in nonmetropolitan counties, or in other geographies?

In geographies where HUD-established Fair Market Rents (FMRs) exceed the 30 percent of income affordability criteria for households earning 80 percent of AMI, the agencies could consider lending and investment activity as CRA eligible according to the criteria laid out in question 3, but substituting FMRs or Small Area FMRs for the 30 percent of 80 AMI standard. In practice, this would support the needs of middle-income renters in very high–cost markets where rent burdens persist even above 80 AMI. (If SAFMRs are used, use of rents rather than incomes could expand the supply of homes in higher-cost submarkets available to holders of tenant-based vouchers, assuming the properties accept vouchers; a written commitment to accept vouchers could be included as an impact review factor.)

Question 5. Are there alternative ways to ensure that naturally occurring affordable housing activities are targeted to properties where rents remain affordable for low- and moderate-income individuals, including properties where a renovation is occurring?

Evaluating eligibility for CRA credit should be based on post-renovation proposed rents. As we proposed in question 3, the use of rent rolls on an annual basis should be used once the property is occupied and will allow for calculating the ongoing affordability of properties with loans made in prior years and previous exam cycles.

Question 6. What approach would appropriately consider activities that support naturally occurring affordable housing that is most beneficial for low- or moderate-income individuals and communities? Should the proposed geographic criterion be expanded to include census tracts in which the median renter is low- or moderate-income, or in distressed and underserved census tracts, in order to encourage affordable housing in a wider range of communities, or would this expanded option risk crediting activities that do not benefit low- or moderate-income renters?

As only about 20 percent of all affordable rental housing is directly government subsidized, it is important for banking regulators to establish clear standards for qualifying NOAH and other non–Housing Credit affordable properties. Enterprise recommends that the agencies maintain the current household income test at 80 percent AMI as the affordability standard to qualify as NOAH (in addition to meeting one of the additional criteria detailed above).

The proposed rule's change of this standard to a rent test at 60 percent AMI would not only offer insufficient opportunity for debt or equity financing, but it would also eliminate a subset of the NOAH inventory currently available for the community development industry to focus on that is vulnerable to lost affordability. In most cases, rents affordable to households at or below 60 percent AMI do not generate significant cash flows after operating expenses to support substantial debt service from a mortgage (a point we note in the context of the crucial role equity investments in Housing Credit properties as well). While we recognize the pervasive need for affordable rental homes for households earning below 60 percent AMI, it is extremely difficult to offer those rents without subsidies in many markets, either because of rising asset prices and operating costs or because of low AMIs. (See also NAAHL's detailed discussion of this question, which we incorporate by reference.)

In addition, we recommend that the agencies treat commitments to longer term affordability tied to NOAH properties as responsive to needs and eligible for impact review factor consideration, so that we better maintain the country's current stock of affordable housing that is not receiving direct government subsidies. Similarly, bank support for deeper affordability of NOAH properties should be positively viewed in the context of the impact review factors.

We support the proposal to offer CRA credit to affordable properties located in tracts where the median renter is LMI, as indicated in option 2 under question 3. Simply put, a property with affordable rents in a location where the median renter is LMI is highly likely to predominantly serve LMI households. We also note that higher-income communities are more likely to offer better access to good jobs and schools, along with other community amenities positively correlated with community incomes, so supporting the provision of rental homes affordable to LMI households supports upward mobility and may also advance racial equity. With ongoing reporting of rents, as we suggest above, continued eligibility for CRA credit can be confirmed. Should rents rise beyond the upper bound of affordability, consideration for credit would stop.

Question 7. Should the proposed approach to considering naturally occurring affordable housing be broadened to include single-family rental housing that meets the eligibility criteria proposed for multifamily rental housing? If so, should consideration of single-family rental housing be limited to rural geographies, or eligible in all geographies, provided the eligibility criteria to ensure affordability are met?

Financing for single-family homes to be used for rental should be considered eligible for CRA credit if it meets the criteria laid out in question 3, above. Single-family homes are an important part of the overall rental stock, and when affordable, may be the only way for LMI households to find residence in higher opportunity communities that have excluded multifamily housing. As such, affordable provision of these homes can play an important role in addressing the legacy of redlining and discrimination. In addition, single-family homes have more bedrooms and square footage than homes in multifamily structures, so they can house larger families and multigenerational households without overcrowding.

Smaller-scale owners are more likely to purchase homes using permanent mortgages that may be eligible for consideration under the Retail Financing Test, but banks may be encouraged to lend to small businesses—especially MWBEs—engaged in creating affordable single-family rental housing; financing for affordable rental homes created in this manner could be eligible for consideration under the relevant Retail and CD tests. Impact review factors should be used to evaluate (a) negatively the degree to which the single-family rental acquisitions are crowding out would-be homebuyers and (b) positively if the funds are used to restore properties to productive use when the cost of acquisition and rehabilitation would be prohibitive for an LMI homebuyer and/or unsupported by an appraisal.

Question 8. How should the agencies consider activities that support affordable low- or moderate-income homeownership in order to ensure that qualifying activities are affordable, sustainable, and beneficial for low- or moderate-income individuals and communities?

Financing the construction or rehabilitation of homes designated for owner occupancy should receive CRA consideration if the homes are located in a LMI census tract or a distressed or underserved middle-income non-metropolitan census tract and the sales price does not exceed four times the AMI. Financing the rehabilitation or reconstruction of an already owner-occupied home without sale should qualify if the owner is either LMI or middle-income. We would recommend considering developing products that support the production of accessory dwelling units (ADUs) by LMI homeowners (either through internal conversion of space or construction of an additional structure on the same parcel) as an impactful activity, as ADUs can be an important new source of affordable housing in communities and a provide additional income and wealth-building opportunities for LMI homeowners.[6] Grants for downpayment assistance or property tax abatements to assist existing LMI owners whose property taxes have risen rapidly should also be considered.

Question 9. Should the proposed approach to considering mortgage-backed securities that finance affordable housing be modified to ensure that the activity is aligned with CRA's purpose of strengthening credit access for low- or moderate-income individuals? For example, should the agencies consider only the value of affordable loans in a qualifying mortgage-backed security, rather than the full value of the security? Should only the initial purchase of a mortgage-backed security be considered for affordable housing?

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

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

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

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

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[6] See https://www.enterprisecommunity.org/sites/default/files/2021-06/overcoming-barriers-to-bringing-adu-development-to-scale.pdf for more on the financing needs and benefits ADUs can provide.

However, MBS should not be a primary way for a bank to fulfill its overall CD financing responsibilities at the institution level.

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

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

See our response to question 3, which we believe incorporates these activities (and other complex or novel solutions) by virtue of focusing on affordable outcomes. Particular instances of complexity or innovation should be additionally considered under the impact review factors.

Question 13. Should the agencies retain a separate component for job creation, retention, and improvement for low- and moderate-income individuals under the economic development definition? If so, should activities conducted with businesses or farms of any size and that create or retain jobs for low- or moderate-income individuals be considered? Are there criteria that can be included to demonstrate that the primary purpose of an activity is job creation, retention, or improvement for low- or moderate-income individuals and that ensure activities are not qualified simply because they offer low wage jobs?

In the interest of simplification, we do not believe it is necessary to retain a separate component for job creation and retention under the economic development definition. We are supportive of incorporating the small business/farm lending in the retail lending test and raising the amount to $5 million. Support for CDFIs and other intermediaries that support small businesses and farms with revenues under $5 million and technical assistance to those businesses and farms should be appropriately considered as eligible for consideration under the CD tests as they foster job creation and retention.

Question 14. Should any or all place-based definition activities be required to be conducted in conjunction with a government plan, program, or initiative and include an explicit focus of benefitting the targeted census tract(s)? If so, are there appropriate standards for plans, programs, or initiatives? Are there alternative options for determining whether place-based definition activities meet identified community needs?

The key criteria should be whether the intended beneficiaries are residents of the LMI tract or other LMI individuals. If so, the activity should be considered for CRA credit.

Consider, on the one hand, a private or nonprofit initiative to bring a grocery store into a food desert, taking advantage of a vacant retail space. Consider, on the other hand, a municipal bond–financed parking lot located at a rail station in an LMI tract. The former is clearly designed to benefit the LMI tract and its residents. The latter, arguably does not, at least not primarily. Limiting eligibility to connection to a government plan, program, or initiative would miss the former case and other opportunities to encourage the private sector to directly and meaningfully engage with communities that for too long were subject to disinvestment and discriminatory lending practices. In addition, "government plan, program, or initiative" is insufficiently narrow to capture the agencies' intention to focus on targeted tracts and community needs. Likewise, there is no guarantee that a government plan adequately represents the interests or needs of a particular community. By maintaining a focus on the beneficiaries and being responsive to their demonstrated needs, eligible activities can be considered, with or without a government plan.

Responsiveness to needs can be demonstrated in a number of ways, including providing strong evidence of community input on a project, an executed community benefits agreement, or if a project fits into a neighborhood or city plan with a stated process for community input. Community influence may include both community involvement prior to a project (i.e., cases where the project is the outcome of past engagement or demand), as well as ongoing collaboration during the project design and implementation.

Question 15. How should the proposals for place-based definitions focus on benefitting residents in targeted census tracts and also ensure that the activities benefit low- or moderate-income residents? How should considerations about whether an activity would displace or exclude low- or moderate-income residents be reflected in the proposed definitions?

A distinction should be made between neighborhood-serving community facilities (including community healthcare centers, childcare, libraries, and retail services like groceries, pharmacies, and other neighborhood-scale services) that may be presumed to predominantly serve the LMI residents of the targeted census tract and larger community facilities and infrastructure that may be sited in an LMI tract because of the availability of vacant or low-cost land or proximity to other infrastructure that serves a much larger, predominantly non-LMI population. The former should presumptively be CRA-credit eligible while the latter should not.

We also note that in many cases the legacy of redlining, disinvestment, and past government policies are responsible for the conditions leading to the availability of land for large infrastructure projects in LMI tracts; providing CRA credit for capitalizing on past injustices runs counter to the spirit of CRA.

In all these cases, an illustrative list and clear pre-approval process will be valuable to community stakeholders and lenders as they consider various opportunities and development priorities. Activities with high displacement risk should not be included on the illustrative list and should be subject to detailed scrutiny when submitted for pre-approval.

Question 16. Should the agencies include certain housing activities as eligible revitalization activities? If so, should housing activities be considered in all, or only certain, targeted geographies, and should there be additional eligibility requirements for these activities?

See our response to question 8, above, for a general discussion of eligible single-family activities.

Single family homes comprise the primary land use in most LMI CTs, but many or most existing homes in these neighborhoods are old or in need of improvement, and empty lots (sometimes where dilapidated homes were demolished) are common. These communities typically have relatively low rates of homeownership and little chance of attracting or retaining homeowners unless quality homes can be built or rehabilitated. While many of these prospective homeowners may be middle-income, not LMI, they are important to sustaining the diversity of incomes that neighborhoods need to support retail activity and community institutions ranging from youth sports leagues to churches.

In a rural context, it is hard to keep or attract growing businesses because quality affordable homes are simply not available. Revitalizing both urban and rural communities is very difficult unless these problems can be addressed. CRA is needed and well justified to support the construction and rehabilitation of owner-occupied homes.

To avoid providing CRA credit for constructing or rehabilitating expensive homes that could contribute to gentrification and displacement, we recommend limiting CRA credit to homes that sold for a price not exceeding four times the AMI. This limitation would ensure that the homes are broadly affordable to middle-income homebuyers. In cases where an already owner-occupied home is being rehabilitated, the owner should be either LMI or middle-income. This approach is also consistent with requirements of the proposed Neighborhood Homes Investment Act, bipartisan legislation Congress is currently considering with the sponsorship of 22 Senators and 85 Representatives.

Question 17. Should the agencies consider additional requirements for essential community infrastructure projects and essential community facilities to ensure that activities include a benefit to low- or moderate-income residents in the communities served by these projects?

See question 15.

Question 18. Should the agencies consider any additional criteria to ensure that recovery of disaster areas benefits low- or moderate-income individuals and communities?

Currently, and as proposed, recovery activities in designated disaster areas qualify in census tracts of all income levels. As such, they may not serve the purpose of the CRA to target LMI areas. Given the broad geography often encompassed in a Federal Major Disaster Declaration, impacts on LMI individuals and communities will be inevitable, but far too often, they get less than their fair share of recovery funding. Allowing banks to get credit for potentially furthering inequitable recovery by allowing CRA credit for activities outside LMI tracts (or outside underserved non-metropolitan middle-income census tracts) runs counter to the intent of CRA. Without a CRA-motivated reason to fund recovery activities targeted at LMI communities, banks will likely direct capital towards higher-income tracts, running the risk of community services being preferentially rebuilt in higher income sections of the declaration area.

The agencies' approach to disaster-related credit should be highly focused on recovery (and resilience, per below) of LMI people and communities. History shows that government plans and community needs may not be in alignment, so keeping the focus of the eligible activities on places where, but for CRA-motivated capital, little other funding will come to support recovery is critical.[7] In addition to offering credit for activities in LMI tracts within the disaster area, credit should also be available for activities that serve displaced residents forced to migrate as a result of the disaster as well as to census tracts that receive an influx of climate migrants for up to two years after the disaster.

In keeping with the agencies' desire for offering greater certainty to banks about qualifying activities, we suggest that a social vulnerability index–based (SOVI) approach to identifying

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[7] See, for example: https://www.nytimes.com/2021/06/07/climate/FEMA-race-climate.html; https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3396611; https://academic.oup.com/socpro/article-abstract/66/3/448/5074453?redirectedFrom=fulltext

geographies could serve as a method for identifying where activities would be eligible for credit. Because geographies' SOVI rankings are known in advance of any disaster, once a disaster has been declared, banks will be able to rapidly deploy needed funds into eligible communities with the knowledge that eligible activities will receive credit. To support this work, Enterprise developed a tool[8] that would help identify vulnerable communities by looking at social vulnerability and peril risk.

Climate Resilience and Disaster Preparedness

At Enterprise, our work to build climate resilient and disaster prepared communities is directly related to our mission to advance racial equity and build resilience and upward mobility for all. Climate change disproportionately impacts lower-income communities and people of color; the legacy of discriminatory housing policies mean they are likely to be more vulnerable to climate risks and to lack the resources to recover after a disaster. The agencies are in a unique position to protect people and property in LMI communities through final regulations that provide CRA consideration for activities related to disaster preparedness and climate resilience. These types of proactive activities align with the overall mission of the CRA, as investing in the continued success of communities is as, if not more, important than responding to disasters after the fact.

Housing stability in particular is a critical pillar of successful communities, and affordable multifamily housing is especially vulnerable; when disaster strikes, low-income residents have less access to resources to help them recover. Short-term displacement can lead to long-term homelessness, and loss of rental income due to evacuation and property damage can also have a tremendous impact on the ability of housing owners to provide affordable housing. Long-term planning should address the impacts of climate change based on geography and site location, so that buildings and communities can survive storms, flooding, earthquakes, and other natural disasters. With the increasing frequency of storms, floods and other extreme weather events, the costs associated with not investing in resilience are rising rapidly.

Question 19. Does the disaster preparedness and climate resiliency definition appropriately define qualifying activities as those that assist individuals and communities to prepare for, adapt to, and withstand natural disasters, weather-related disasters, or climate-related risks? How should these activities be tailored to directly benefit low- or moderate-income communities and distressed or underserved nonmetropolitan middle-income areas? Are other criteria needed to ensure these activities benefit low- or moderate-income individuals and communities?

Enterprise applauds the agencies' inclusion of a definition and separate category for disaster preparedness and climate resiliency activities. The proposed definition focuses on activities that assist individuals and communities to prepare for, adapt to, and withstand natural disasters, weather-related disasters, or climate-related risks, which we believe is an appropriate range of activity types. As climate risks present new design, construction, and operational challenges—both in retrofitting before a climate event and in recovering afterward—there should be an explicit call out of activities like decarbonization that would specifically assist LMI communities

[8] Available at https://www.enterprisecommunity.org/impact-areas/resilience/building-resilient-futures/portfolio-protect

to deal with ongoing climate risk.[9] This includes investments in affordable housing, community infrastructure, community education and technical assistance programs, and the development of financial resources to provide bridge and gap funding for these activities. CRA eligible activities should not be limited to Hazard Mitigation Assistance being included in a FEMA disaster declaration.

In our Hazard Strategies Guide, which agencies may consider when finalizing the proposed rule, Enterprise has created a list of 68 strategies to help communities reduce risk to climate threats.[10]

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

Strategies that support energy efficiency and renewable energy: a) reduce exposure to climate risk; b) reduce operating costs for LMI households; and c) help improve resiliency of the community grid. Additional benefits include, but are not limited to, reducing energy burden; promoting housing stability; providing healthier homes; increasing health outcomes and lowering medical costs; lowering the strain on the utility grid; reducing emissions on a community level from a source power (e.g. coal-fired power plants); and reducing the strain on water sources that create power.

Strategies that support energy efficiency and renewable energy are critical to any final CRA rule and should be included as both a component of the disaster preparedness and climate resiliency definition and under other definitions, such as affordable housing and community facilities, as applicable in the context of an eligible activity. When conducted in the context of another CRA-eligible activity, these activities should be positively considered as part of the impact review.

Question 21. Should the agencies include other energy-related activities that are distinct from energy-efficiency improvements in the disaster preparedness and climate resiliency definition? If so, what would this category of activities include and what criteria is needed to ensure a direct benefit to the targeted geographies?

The agencies should also include grid infrastructure improvements, microgrids, renewable energy, backup power, and community solar in both the energy efficiency/renewable energy category as well as the affordable housing/community development category. Enterprise also supports CRA credit for activities that support stormwater management, including green infrastructure, as well activities that mitigate the effects of extreme temperatures, both hot *and cold*. The activities identified here are at a scale that the property- or community-level analysis of predominantly LMI beneficiaries as applied elsewhere in the proposed rule may be used.

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[9] See recent testimony before the Senate Committee on Banking, Housing, and Urban Affairs on addressing climate change with energy-efficient and resilient housing (https://www.banking.senate.gov/download/05/17/2022/egger-testimony-5-18-22)
[10] See https://www.climatesafehousing.org/strategies.

Question 22. Should the agencies consider utility-scale projects, such as certain solar projects, that would benefit residents in targeted census tracts as part of a disaster preparedness and climate resiliency definition?

Banking regulators should also consider utility-scale projects, such as certain solar projects, that would predominantly benefit residents in targeted census tracts as part of a disaster preparedness and climate resiliency definition, as these types of utility-scale projects build community-level resilience.

Question 23. Should the agencies include a prong of the disaster preparedness and climate resiliency definition for activities that benefit low- or moderate-income individuals, regardless of whether they reside in one of the targeted geographies? If so, what types of activities should be included under this prong?

The agencies should include a prong of the disaster preparedness and climate resiliency definition for activities that benefit LMI individuals, regardless of whether they reside in one of the targeted geographies, as not all LMI individuals live in the targeted geographies and they may be subject to additional displacement risk. We believe this definition should be comprehensive and include the aforementioned climate resilience and disaster preparedness activities.

Question 24. Should the agencies qualify activities related to disaster preparedness and climate resiliency in designated disaster areas? If so, are there additional criteria needed to ensure that these activities benefit communities with the fewest resources to address the impacts of future disasters and climate-related risks?

Enterprise recommends the inclusion of areas receiving FEMA Category B assistance be eligible for CRA credit. In addition, emergency protective measures such as roof coverings should be included as additional criteria to address the impacts of future disasters and climate-related risks. Short-term business closures can lead to a neighborhood-level economic downturn, and disruption of community services can lead to an extended loss of service continuity; although emergency protective measures may be considered short term activities, they can be critical to preventing further, long-term damage to communities.

Final CRA regulations should also incentivize banks to provide backing for emergency protective measures that keep residents in their homes and lower the overall cost and time needed for recovery, both of which disproportionately impact LMI communities. As LMI residents are much less likely to have cash-on-hand for the costs to take emergency protective measures, it may be more efficient for localities to obtain funding quickly to provide these mitigation activities and later work with FEMA on a local jurisdiction level for reimbursement (rather than an individual residence level).

Native Land Areas and Tribal Communities and Members

Question 28. To what extent is the proposed definition of Native Land Areas inclusive of geographic areas with Native and tribal community development needs?

Enterprise supports lending and investment in chronically distressed communities, recognizing the incredible impact that CRA can have on low-income, minority populations. In Indian country especially, CRA credit for lending and investment is critical, given the pervasive and historic lack of credit flow among Native Americans. In general, it is imperative that the financial activities of banks in these harder to reach communities are appropriately tailored to the needs of the consumers in these markets.

Enterprise supports the broad proposed definition of Native Land Areas, which includes geographic areas with Native and tribal community development needs. We urge banking regulators to ensure that Hawaiian and Alaskan Natives also be included in the final definition, as generally, "Indian Country" is associated with Bureau of Indian Affairs (BIA) land. It is important to make sure that non-BIA territory—recognized by the states or as defined by the terms of statehood for Alaska and Hawaii—is included.

At the same time, it is important to recognize that not all members of Native and tribal communities live on Native Land Areas, even under the proposed definition. In addition to the geographic approach to addressing Native and tribal CD needs, CD activities that predominantly serve Native communities and peoples and retail products developed with Native needs in mind should be eligible for CRA consideration even when not targeted to Native Land Areas.

Question 29. In addition to the proposed criteria, should the agencies consider additional eligibility requirements for activities in Native Land Areas to ensure a community development activity benefits low- or moderate-income residents who reside in Native Land Areas?

Enterprise also supports a final rule where agencies consider additional eligibility requirements for activities in Native Land Areas, to ensure a community development activity benefits LMI residents who reside in Native Land Areas. Banking regulators should work to ensure that these eligibility requirements do not place more burden on Native communities and projects than on others.

Question 30. Should the agencies also consider activities in Native Land Areas undertaken in conjunction with tribal association or tribal designee plans, programs, or initiatives, in addition to the proposed criteria to consider activities in conjunction with Federal, state, local, or tribal government plans, programs, or initiatives?

Agencies should also consider activities in Native Land Areas undertaken in conjunction with tribal associations or tribal designee plans, programs, or initiatives (in addition to the proposed criteria to consider activities in conjunction with Federal, state, local, or tribal government plans, programs, or initiatives). Consortiums should also be included, as they often play an important role in providing broader capacity and planning for smaller tribes. These activities would help break down additional barriers to utilizing CRA for Native American organizations working to solve housing and community development issues; however, banking regulators must take care to ensure that the tribal designee or association is led by—or working closely with—tribal members.

IV. Qualifying Activities Confirmation and Illustrative List of Activities

Question 31. Should the agencies also maintain a non-exhaustive list of activities that *do not* qualify for CRA consideration as a community development activity?

Regulators may consider using a standard list of "sin businesses" that would not qualify for CRA. These activities are often designed to extract wealth from communities or otherwise negatively impact the quality of life, with concerns for public safety and economic harm. In addition, activities that have a high likelihood of displacement should explicitly not qualify for credit.

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

The agencies should commit to a 30-day review process so as not to unnecessarily delay financing decisions and other steps in the development process.

V. Impact Review of Community Development Activities

As discussed above, we urge the agencies to use the impact review process to account for the quality of the financing being provided by an eligible activity. As demonstrated multiple times, not every dollar has the same impact, and a categorical approach to impact (i.e., is it on a predetermined list of activities) fails to account for the critical distinction across the terms under which capital is provided. A shift to a qualitative (but consistent) approach to measuring impact is wholly in keeping with the intended purpose of CRA and will continue to encourage banks to be responsive to community needs and develop innovative products.

In the case of affordable housing financed in part through equity generated through the Housing Credit, the equity investment made by banks is the foundation upon which any construction or permanent debt stands. Critically, a dollar of equity investment is more impactful and valuable to the affordable property than a dollar of debt. The same can be said for the importance of equity investments in New Markets Tax Credits (NMTC) for the purpose of community development activities and equity-equivalent investments in CDFIs to provide enterprise-level capital to support their activities. In the absence of a standalone CD Investment Test or an explicit subtest within the CD Financing test, equity investments—in Housing Credit properties, NMTCs, CDFIs, etc.—should be the *sine a qua non* of impact factors.

Question 34. For the proposed impact review factors for activities serving geographic areas with high community development needs, should the agencies include persistent poverty counties, high poverty census tracts, or areas with low levels of community development financing? Should all geographic designations be included or some combination? What considerations should the agencies take in defining these categories and updating a list of geographies for these categories?

The most consistent and equitable approach would be to recognize activities serving low-income (as distinguished from moderate-income) tracts. This approach would be consistent with the proposed Impact Factor for activities serving low-income individuals. As with individuals, low-income tracts are far less numerous than their moderate-income counterparts, their needs are more pressing, and meeting these needs is more challenging.

We also prefer an income-based measure to a poverty-based measure because the former is more equitable. Low-income is set relative to the median income of each area, so every MSA and non-metro statewide area should have an equitable share of tracts presenting reinvestment opportunities. However, because poverty is a national standard, areas with lower AMIs will have greater shares of high-poverty tracts than areas with higher AMIs. Because the cost of living varies similarly, the same dollar goes a lot farther in most low-AMI areas than in most high-AMI areas.

We also recommend that activities in all rural areas (as distinguished from non-metro areas) qualify as an impact factor. The disadvantages and challenges facing rural areas are well known, generally including the lower capacity of most rural governments, lower income levels, limited infrastructure, and the difficulty of financing the small-scale properties that many rural areas need and can support. The U.S. Census Bureau explains, "nonmetropolitan is not synonymous with rural and was not designated for that purpose."[11]

Question 35. For the proposed factor focused on activities supporting MDIs, WDIs, LICUs, and Treasury Department-certified CDFIs, should the factor exclude placements of short-term deposits, and should any other activities be excluded? Should the criterion specifically emphasize equity investments, long-term debt financing, donations, and services, and should other activities be emphasized?

Aside from the treatment of equity investments, which we discuss in the introduction to this section, the other activities should be evaluated as a function of their value to recipient, measured as a function of their ability to be deployed. To that end, term, structure (lien priority), rate, and automatic renewal should be the determinants of the impact factor. As such, short-term deposits should not be eligible for consideration, but the long-term loans now eligible for continued consideration should also be evaluated for quality; funds from a below-market, fixed-rate loan are going to be much more deployable than a floating rate line set at market, especially in a rising–interest rate environment.

We also suggest that activities conducted with wholly owned or controlled subsidiaries of CDFIs should be treated as an activity with the parent CDFI for the purpose of CRA consideration. The

[11] See the ACS Rural Handbook at https://www.census.gov/content/dam/Census/library/publications/2019/acs/ACS_rural_handbook_2019_ch01.pdf.

creation of subsidiaries is often driven by other business considerations, and activities with them should not be adversely excluded from CRA credit.

Question 37. For the proposed factor of activities that support affordable housing in high opportunity areas, is the proposed approach to use the FHFA definition of high opportunity areas appropriate? Are there other options for defining high opportunity areas?

Activities that encourage affordable housing production and preservation in high opportunity areas should be encouraged. To the extent that an existing definition is known and widely accepted, as in the case of the FHFA's definition of high opportunity areas, we see no need to develop an alternative definition.

The impact factor focused on affordable housing in high-opportunity geographies should prioritize homes that are affordable to households at or below 60 percent of AMI with long-term affordability commitments or restrictions in place. Lower-income households in these geographies are more likely to be housing cost burdened, and when taking into account the aggregate housing plus transportation costs of living in these communities, the need for more greater affordability is clearly evident. As such, we suggest that the valuable impact of providing long-term affordability to those with the greatest needs should be recognized in the evaluation.

Question 38. For the proposed factor to designate activities benefitting or serving Native communities, should the factor be defined to include activities benefitting Native and tribal communities that are not located in Native Land Areas? If so, how should the agencies consider defining activities that benefit Native and tribal communities outside of Native Land Areas?

As discussed above, we are supportive of efforts to meet the needs of Native and tribal communities outside of Native Land Areas. As with other CD-related activities, the criteria should be based on the intended beneficiaries of the activities. In this case, activities that primarily benefit LMI Native individuals should be the determining factor.

VI. Assessment Areas and Areas for Eligible Community Development Activity

QUESTION 39. Should both small and intermediate banks continue to have the option of delineating partial counties, or should they be required to delineate whole counties as facility-based assessment areas to increase consistency across banks?

All banks, regardless of size, should be required to delineate whole counties as facility-based assessment areas to both ensure consistency across banks and remove the possibility of redlining certain communities in the process of delineating a partial county. This is helpful for reducing CRA deserts as well.

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

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

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

CD financing activities outside of facility-based assessment areas (FBAAs) should not be subject to further geographic restrictions or require banks to prospectively delineate areas of focus outside their FBAAs. The proposal admirably seeks to mitigate the long-standing problem of CRA "hot spots" and "deserts," and insofar as banks continue to make equity investments in Housing Credit properties, the price differential (estimated by CohnReznick at roughly 20 cents on the dollar) between hot spots and deserts can be reduced.

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

Yes. Communities in all places benefit from bank focus on CD activities, irrespective of the size of the institution. There is no reason to limit non-FBAA activities (particularly equity investments) to large banks.

Community Development Financing by a Consortium or Third Party

The agencies propose to retain the current flexibilities that exist for CD activities by a consortium in which the bank participates or through investments in third parties, including CDFIs and funds created to support investment in Housing Credit properties and the preservation of affordable housing at a regional or national scale. For credit allocation purposes, an activity may not be counted by more than one bank, and no bank may claim more than its share of the sponsor's total activity. Although the proposed rule contains no questions about CD financing by a consortium or third party, we suggest two areas where ambiguity should be resolved.

For the purpose of clarity, agencies should reiterate that banks may continue to rely on the current practice of using "side letters" provided by the CDFI, fund sponsor, or consortium detailing the geographic distribution of activities allocated to the bank. Similarly, preservation funds will often attract a mix of investors, including those not subject to CRA, and agencies should expressly accept side letters allocating the proportion of the fund activities to CRA-eligible activities for those investors seeking credit. (For example, in a nonprofit-controlled preservation fund with 75 percent of the capital deployed in properties with rents below 30 percent of 80 percent of AMI, all participating banks would be eligible for credit on 100 percent of their investment in the fund if they collectively account for no more than 75 percent of the fund capital.)

In addition, the rule should clarify that working capital provided to CDFIs should count as of the point in time at which the commitment of funds to the recipient is made, irrespective of when the funds are deployed. Banks making valuable provisions of working capital through lines of credit, equity or equity equivalent investments, grants, or other forms of financing should have the certainty of knowing their commitment will be considered for CRA credit, as the recipient CDFI should have the flexibility to use funds from various sources and under various terms consistent with the business needs of the CDFI—including holding the funds in reserve—rather than feel pressure from a bank to draw a specific line at a specific time because of a bank's particular CRA needs.

VII. Performance Tests, Standards, and Ratings in General

Question 55. The agencies request feedback on the proposed performance context factors in § __.21(e). Are there other ways to bring greater clarity to the use of performance context factors as applied to different performance tests?

Performance context is an important consideration as examiners consider bank activities and should account for differences in banks and community needs. Taken together, the performance context can be a good indicator of a bank's responsiveness to community when it incorporates specific feedback from the community.

We are pleased that the agencies are considering publicly providing demographic and economic information about localities. This will allow banks and community stakeholders to begin a common data-driven dialog around need. Echoing suggestions made by the National Community Reinvestment Coalition, we recommend including data on housing vacancy, cost burdens, unemployment, poverty rates, levels of segregation, and measures of health and environmental quality. To this, we would also add measures of neighborhood change,[12] social vulnerability, and climate risk.

[12] See https://www.enterprisecommunity.org/resources/gentrification-comparison-tool

VIII. Retail Lending Test Product Categories and Major Product Lines

Question 60. Should multifamily lending be evaluated under the Retail Lending Test and the Community Development Financing Test (or the Community Development Test for Wholesale or Limited Purpose Banks)? Or should multifamily lending be instead evaluated only under the Community Development Financing Test?

Multifamily lending should be evaluated as a community development (lending) activity, as multifamily lending is not a retail lending activity. We believe the retail lending test should appropriately be focused on addressing inequities that have emerged as a result of discrimination and disinvestment through new home mortgage, small business, and small farm loans. Shifting multifamily loans, which have much larger dollar amounts than other loans evaluated under the retail test, to the CD (lending) test will avoid distorting the picture of a bank's performance on retail business line activities.

Moreover, if incorporated as a component of the retail lending test, credit could be given if the property is in an LMI tract, regardless of the rents. As there is no corresponding requirement that the property be affordable, banks could be given credit for displacing activities, counter to the intent of the rule. With affordability firmly embedded in the CD test (as discussed in question 3), multifamily lending should be considered there.

Removing multifamily lending from the retail test adds an additional rationale for rebalancing the Retail and CD Tests to a 50-50 split.

IX. Retail Lending Test Evaluation Framework for Facility-Based Assessment Areas and Retail Lending Assessment Areas

QUESTION 86. Should the agencies consider other factors, such as oral or written comments about a bank's retail lending performance, as well as the bank's responses to those comments, in developing Retail Lending Test conclusions?

Yes. We support incorporating other factors, including written or oral comments about a bank's retail lending performance, when developing Retail Lending Test conclusions. This is an important opportunity for community and other stakeholder voices to be heard and inform examiners' understanding of the impact—positive or negative—bank retail lending has had on the community. It can also be used to provide additional data on the quality of the activities, which, as we have previously suggested, should be a key element of the impact review factors.

X. Retail Lending Test Evaluation Framework for Retail Lending Test Conclusions at the State, Multistate MSAs, and Institution Level

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

We do not believe any exemptions are necessary. Large banks should be evaluated on their full set of retail lending activities at the institution level.

XI. Retail Services and Products Test

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

We strongly support the use of SPCPs to meet the mortgage and consumer lending needs of LMI individuals when they are used as a mechanism to address the ongoing inequities affecting communities of color and other disadvantaged classes. As discussed above, we strongly urge the agencies to include similar credit for SPCPs supporting community development activities in places still suffering from a legacy of discrimination and disinvestment.

XII. Community Development Financing Test

Combined Consideration of Community Development Loans and Investments

For the reasons stated above, we strenuously urge the agencies to evaluate community development loans and investments separately.

To reiterate, combining debt and equity activities into a single test assumes a false equivalence in the roles the two forms of capital play in community development and the ease with which those seeking to deploy CRA-motivated capital can access them. The current exam structure for large institutions appropriately distinguishes between lending and investment activities and should be retained, even as the tests themselves stand to become more quantitative in nature under the proposed rule.

By consolidating the two tests, equity investment for both the Housing Credit and NMTC programs will be extremely difficult to secure, as banks almost inevitably prefer making loans over equity investments for multiple reasons. The proposed rule suggests that "Combining consideration of community development loans and investments into a single test would allow banks to engage in the activity best suited to their expertise and that is most needed for the community development project that the bank is financing" (p. 307). The factors determining how capital is allocated are more varied and complex than the rule supposes. Compared to community development loans, equity investments are more costly to originate, longer term, and less liquid. In addition, because of differences in risk weights under Basel III, banks must hold double the Tier 1 capital for equity investments versus seasoned multifamily loans.

Retaining separate evaluations of CD lending (as currently proposed for the CD Financing Test) and CD investments (by using a parallel formula) is critical to ensure bank commitments to investing in communities, rather than just lending to them, is maintained. In the event that the agencies decide to consolidate lending and investment under a single evaluation, we respectfully but emphatically urge the agencies to stand up a CD Investment Test as a subtest inside the proposed CD Financing Test.

Assuming rebalancing of the Retail Tests and the CD Tests to carry equal weight, we believe the appropriate weights (as a share of the total exam) for the CD components are 25 percent for lending, 15 percent for investment, and 10 percent for services. If the final rule includes a subtest for investments rather than a standalone test, the full CD Financing Test should be given a 40 percent weight, within which the investments subtest would be given a 40 percent weight.

Question 118. What methodology should be used to allocate the dollar value of activities to specific counties for activities that serve multiple counties? For example, should the agencies use the distribution of all low- and moderate-income families across the applicable counties? Or, should the agencies use an alternative approach, such as the distribution of the total population across the applicable counties? Should the agencies consider other measures that would reflect economic development activities that benefit small businesses and small farms or use a standardized approach to allocate activities?

Since the presumptive beneficiaries of the CD activities are LMI individuals and communities, where activities cross county boundaries and cannot be readily tied to particular tracts within the counties, the distribution of LMI population across the counties is preferred.

Question 119. The agencies are seeking feedback on alternatives to determining the denominator of the bank assessment area community development financing metric. What are the benefits and drawbacks, including data challenges, of implementing an alternative approach that bases the denominator of the metric on the share of bank depositors residing in the assessment area (described above) in contrast to the proposed approach of relying on dollar amounts of deposits?

A survey of banks should be conducted to determine whether calculations based on the share of bank depositors in an assessment area is substantially different than using the dollar amounts of deposits. The ease of data collection should be weighed against the presumptive reduction in CRA hot spots.

Question 122. What other considerations should the agencies take to ensure greater clarity and consistency regarding the calculation of benchmarks? Should the benchmarks be calculated from data that is available prior to the end of the evaluation period, or is it preferable to align the benchmark data with the beginning and end of the evaluation period?

Clarity and consistency with respect to the benchmarks is valuable not only to banks but to community stakeholders partnering with banks as they make investment and lending decisions.

Using data available by the start of every year is likely the best way to offer that clarity, even if it means the data is lagged. Annual updates of the dashboards are a valuable addition to CRA.

QUESTION 125. Considering current data limitations, what approaches would further enhance the clarity and consistency of the proposed approach for assigning community development financing conclusions, such as assigning separate conclusions for the metric and benchmarks component and the impact review component? To calculate an average of the conclusions on the two components, what would be the appropriate weighting for the metric and benchmarks component, and for the impact review component? For instance, should both components be weighted equally, or should the metric and benchmarks be weighted more than impact review component?

The impact review factors should be given significant weight. As we have suggested, the impact review factors should expressly incorporate measures of the quality of the capital being provided rather than a simple categorical assessment. The impact review factors should also serve to uplift impactful and innovative smaller dollar activities that would otherwise be dwarfed by more routine CRA-eligible activities. Without the offsetting impact factors, these activities might be perceived as too risky, too complex, or simply too small to be worth a bank's commitment of time and staff to bring these activities to fruition, to the detriment of the would-be beneficiaries in communities. But for CRA motivations, these activities likely would not happen.

Question 126. How can the agencies encourage greater consistency and clarity for the impact review of bank activities? Should the agencies consider publishing standard metrics in performance evaluations, such as the percentage of a bank's activities that meet one or more impact criteria?

Yes. Considering the uncertainty surrounding how the impact review factors will be incorporated into the exams and how they may shift the relative value of different activities, providing data on how banks leveraged various impact criteria will be helpful for stakeholder feedback on responsiveness and future revisions to the rule.

XIII. Community Development Services Test

As detailed in our introduction to the comments, we recommend that services that are linked to activities considered in the Retail Lending Test, such as financial literacy for consumers and technical assistance to small businesses, be expressly incorporated in the Retail Services and Products Test. To compensate for the reduction in qualifying activities, we propose that the agencies incorporate grant contributions to support the operations of nonprofit community development organizations under this test.

We are concerned that grant making may be less attractive to banks under the new scoring regime because grants will likely be a small portion of the overall bucket of community development activities. Even though grants to nonprofits are small compared to banks' other CD activities, operating grants have an outsized role in the community development funding ecosystem. Separating this activity out from the broader bucket of community development loans and investments and assigning a score to it would encourage more grant making by banks. If grant contributions are included in this category, then the CD Services Test weight of 10 percent is more justifiable.

Similarly, credit for the provision of technical assistance to community development nonprofits would align with this approach, with the calculation driven by the value of the in-kind donation (rather than necessitating a complicated calculation of bank employee hours and rates).

XVI. Assigned Conclusions and Ratings

Question 139. The agencies request feedback on whether it would be more appropriate to weight retail lending activity 60 percent and community development activity 40 percent in deriving the overall rating at the state, multistate MSA or institution level for an intermediate bank in order to maintain the CRA's focus on meeting community credit needs through small business loans, small farm loans, and home mortgage loans.

We support the current proposed weighting for intermediate banks and once again suggest that the equal weighting for retail and community development activities be extended to large banks.

Small and Intermediate Banks

We share the concerns raised by NCRC, HAC, and others that banks with assets between $346 million and $600 million will no longer be subject to any community development test. This definitional change to small banks would have an outsized impact on rural and small-town communities, as the lenders with the greatest physical presence—a key factor in community development, along with branch and relationship-driven lending to small businesses and homeowners—would no longer be evaluated for their community development activities. We concur with those who argue in favor of maintaining the asset threshold for small banks at $346 million.

XIX. Data Collection, Reporting, and Disclosure

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

Yes. Retaining a focus on racial disparities in lending so that banks can improve their performance is an important aspect of CRA. Making it easier for the public and policymakers to track those outcomes and identify any fair lending concerns is an appropriate activity for the agencies to undertake and should remain a key element of the CRA exam.

Conclusion

For nearly the past 45 years, the CRA has been a critical tool to direct private-sector lending and investment to LMI individuals and communities that would otherwise be poorly served by the banking system.

Enterprise commends the agencies for jointly attempting to tackle the challenge of strengthening and modernizing the CRA. We believe that there are a number of important changes that have been included in the proposed rule, including automatic consideration of Housing Credit investment and lending, automatic credit for activities supporting or done in conjunction with CDFIs, a more encompassing definition of Native and tribal communities, explicit recognition of the needs to support climate resilience in LMI communities, and greater flexibility around the geography of CD activities to reduce hot spots and deserts.

Nevertheless, our concern that the proposed new exam structure will significantly depress CRA-driven equity investment, particularly for affordable housing dependent on the Housing Credit, gives us tremendous pause.

We look forward to working with the agencies and other stakeholders to address this concern and the others identified in our comments so that CRA can even more meaningfully support the financing and community development needs of low- and moderate-income individuals and communities today and into a stronger, more equitable and resilient future.

Thank you for your consideration of these comments. If you have any questions, please do not hesitate to reach out to Andrew Jakabovics (ajakabovics@enterprisecommunity.org) or Krista D'Alessandro (kdalessandro@enterprisecommunity.org).

Sincerely,

[redacted]

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