WOODSTOCK INSTITUTE

Advancing Economic Security and Community Prosperity

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Comment on Interagency Notice of Proposed Rulemaking (NPR) on the Community Reinvestment Act (CRA)
Docket ID OCC-2022-0002; FDIC RIN 3064-AF81; Federal Reserve Docket No. R-1769

Thank you for the opportunity to comment for the 3rd time in 3 years on proposed rules to modernize the regulations implementing the CRA. Unlike the preceding two recent efforts, we commend the agencies for their coordination in releasing an interagency proposal. However, there is a stark difference between the Federal Reserve's 2021 Advanced Notice of Proposed Rulemaking (ANPR) to reform the CRA's implementing regulation, and this proposal. Specifically, the ANPR's second question (of 99) on how the Act can address systemic racism:

> *In considering how the CRA's history and purpose relate to the nation's current challenges, what modifications and approaches would strengthen the CRA regulatory implementation in addressing ongoing systemic inequity in credit access for minority individuals and communities?*

The simple act of asking this question opened the door to a national discussion about race, the law and banking. Throughout the community and economic development industry, hopes ran high that the agencies were finally prepared to explicitly address race in the CRA and incorporate it into the examination process. It was with heartbreaking disappointment that the 678-page NPR made no such pronouncement and offered no suggestions on how to integrate race into the exam process. The furthest that the agencies went was to propose incorporating Home Mortgage Disclosure Act (HMDA) data in published performance evaluations, but without considering the findings of this data in the assessment of an institution's ratings. Using the nomenclature of modern industry, this decision is known as a "nothing burger" and represents where Woodstock Institute's comments will begin.

There are two schools of thought when choosing to interpret the language of a law like the CRA: Home Rule and Dillion's Rule. A town with Home Rule can exercise any power and perform any function unless the law specifically prohibits it. Dillon's Rule takes a narrow approach towards authority. Somewhere in the halls of Washington D.C.'s various bank regulatory agencies, there must be posters, pictures, and maybe the odd tattoo of Iowa Judge John F. Dillon. In 1868, Judge Dillon ruled (twice) that local government's authority is limited only to those activities that are specifically listed and sanctioned by state government. Stated more directly, if it's not listed on paper, you can't do it. Dillon's rule seems to have won the day when the Federal bank regulatory agencies read Section 804 of the Community Reinvestment Act (CRA) of 1977:

"In connection with its examination of a financial institution, the appropriate Federal financial supervisory agency shall – (1) assess the institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods,"

Agency lawyers chose to interpret the word "including" to mean "excluding everything else." This interpretation ignores overwhelming evidence in the commentary, notes and discussion surrounding the drafting and passage of the CRA, its connection to other previously enacted financial service laws targeting race and ethnicity, and the case that this Act was meant to combat the practice of redlining, where financial services were withheld from viable customers in neighborhoods classified as "high risk" based on race, not income.

Let's apply this logic to something many of us can relate to – parenting. You're at the table having dinner with your kids. As with most families, you have one child who eats everything and the other that refuses to put anything in their mouth that isn't Pirate's Booty. As such, you emphasize that eating the vegetables on their plate is a necessity for them to reach adulthood in relatively good shape. Tonight, there's broccoli on their plate, so you tell them, "you will eat all your vegetables, including broccoli." As with most children who are forced to do something they don't want to, your child chooses to interpret your statement as narrowly as possible, meaning that the only vegetable they are forced to eat is broccoli, because the others weren't explicitly mentioned and therefore are not part of the mandate.

The CRA, the laws that preceded it, and the Executive Orders that followed it, all viewed the term "entire community" the same way that a parent views and defines the term "all your vegetables" as implicitly all-inclusive. Additionally, these laws and Executive Orders had in mind the health of our economy and society the same way a parent has in mind the health and well-being of their child.

While many have made the case that there is a legal obligation for the Federal bank regulatory agencies to formally incorporate racial analysis as part of the CRA examination process, we feel it's necessary to take a step back and ask two crucial questions: (1) "Why is low- and moderate-income called out in the CRA?" and (2) "Why does it matter if race is included in the CRA?"

The CRA is one of four anti-discrimination laws targeting the financial industry that passed in a 9-year span. In 1968, Congress passed the Fair Housing Act (FHA), which prohibited discrimination regarding the sale, rental, and financing of housing based on race, religion, national origin, or sex. In 1974, the Equal Credit Opportunity Act (ECOA) was passed, which prohibited lenders from discriminating based on race, color, religion, national origin, sex, marital status, age, or if you get public assistance. The very next year, Congress passed the Home Mortgage Disclosure Act (HMDA) which required all banks to disclose detailed information regarding their mortgage borrowers, including their race, sex, and ethnicity.

Why was "low- and moderate-income" specifically mentioned in the CRA? Because income was not clearly identified in the other three laws. In other words, to close the loop.

The United States has a long tradition of needing to legislate moral behavior, and the financial industry was clearly not immune. One would assume that the regulatory cocktail of the FHA, ECOA, HMDA and CRA would make it nearly impossible for discriminatory practices to exist in the financial sector. But for that to happen, one must assume that those laws are being enforced in a manner that allows them to achieve their objective.

As an example, Woodstock Institute is aware of 84 instances (Calvin Bradford, *The Treatment of Race Discrimination Law Violations in the Community Reinvestment Act Examinations and Ratings*, [August 2022]) where banks received Satisfactory or better ratings on CRA examinations and passed fair lending exams but were found to have violated fair lending laws when brought to court with data provided by 3rd parties. Repeatedly, advocacy groups and other public users have analyzed HMDA data to show constructive redlining, where a lender simply does not take applications or make originations in geographic areas with significant racial or ethnic minority populations, even after regulators have deemed the bank's CRA performance Satisfactory and failed to find fair lending violations. (See https://woodstockinst.org/tag/fair-lending/)

Why does it matter to include race in the CRA? Because the other three laws don't seem to be enough.

The most effective manner from which to ensure appropriate compliance with any law or regulation is to make the punishment associated with non-compliance more expensive than the cost incurred by implementing the policies, procedures, and controls necessary for compliance. Thus far, the two versions of the CRA's implementing regulations have fallen short of this goal. Prior to the most recent revision of the CRA regulation in the mid-1990s, two of the twelve CRA Assessment Factors had a direct connection between Fair Lending and the CRA; Assessment Factor D focusing on practices that may discourage applicants and Assessment Factor F regarding overall lending activity. The revision of the regulation from the twelve assessment factors to the three tests (Lending, Investment and Service) watered down this connection. As it stands today, the federal agencies have set the precedent that a financial institution can be found in violation of either or both the ECOA and FHA, settle with a monetary fine without admitting guilt, and continue to be found "Satisfactory" in its CRA performance.

Woodstock requests the agencies consider five actions to rectify this problem:

1. Add racial demographics to the list of factors to consider when delineating assessment areas;
2. Create benchmarks and metrics to evaluate lending and services to communities of color within the proposed retail lending, retail services, community development financing, and community development services subtests of CRA evaluations;
3. Use HMDA data (and Section 1071 data, when it is available) to do an analysis of lending by race in calculating an institution's CRA performance rating;
4. If a financial institution is found to have violated any civil rights, equal protection, or consumer protection laws, and irrespective of whether the institution settles without admitting guilt or if the violations are dated, the institution should be immediately downgraded to "Needs to Improve" in its current or next CRA assessment; and
5. Should an ongoing investigation related to civil rights, equal protection, or consumer protection laws coincide with an exam, the agencies should note this in the published performance evaluation and take appropriate follow-up and corrective action after the investigation closes.

Of final note about race and the CRA is the curious decision by the agencies to venture away from the law's connection between deposits and lending through the creation of Retail Lending Assessment Areas (RLAAs) while, at the same time, refusing to connect the law to race. As such, we are left to conclude that the agencies are willing to stray from a strict interpretation of the law in some cases, but not in others.

The NPR proposes changes that would result in questionable benefit and/or detrimental effect to low- and moderate-income (LMI) communities or individuals as a result of increased regulatory compliance costs, needlessly complicated ratios or by providing the option to do less. While there are numerous examples to choose from, we will highlight our favorites:

1. We have heard from large financial institutions that the cost of compliance associated with the proposed Retail Lending Assessment Areas (RLAAs) will force them to question whether their origination of those products should be capped internally at a lower threshold so as not to trigger the cost associated with additional compliance requirements. This will result in less mortgage and small business lending in communities where there is a demand for loans. Instead, the agencies should reinforce the core purpose of the statute, tying reinvestment to deposits, by creating Deposit Based Assessment Areas.
2. The proposal to raise the small bank asset threshold would result in hundreds of financial institutions throughout the country that would no longer have community development finance responsibilities. In Chicago alone, Woodstock Institute has identified six such banks with combined assets of just under $3 billion. The elimination of these institutions from the pool of Chicago's community development lenders and investors would be detrimental to the city's LMI population and neighborhoods. The agencies should eliminate the proposal to create 4 bank size categories and revert to a simpler method, categorizing banks as only small or large, with the expectation that no bank will be required to do less reinvestment activity because of this reform proposal.
3. The option for small banks to choose between their existing CRA examination method or the more stringent proposed Retail Lending Test provides a needed nugget of humor in a 700-page regulatory document. The notion that any small institution would voluntarily choose to be held to a tougher standard is absurd. All small and large financial institutions (see #2) should be required to comply with the proposed Retail Lending Test.
4. The proposal to consider a bank's home mortgage, small business, small farm, or auto loans if the lending constitutes 15% of the total dollar amount of loans in an assessment area will create instances where this calculation would exclude important retail lending products from a bank's evaluation. In the case of one massive national financial institution, Woodstock Institute has observed that auto lending would be included while small business lending would not, severely misrepresenting the institution's priorities, focus and business model. As such, the threshold for large banks should be 15% of the bank's loans in the assessment area or 50 loans, whichever is smaller, and the threshold for small banks should be 15% or 30 loans, whichever is smaller. In addition, all consumer loans must be included, not just auto purchase loans.
5. All data used to assess a financial institution's performance should be made publicly available. As discussed previously, because the agencies have not shown themselves to be sufficiently thorough in their investigations, public review and analysis are needed to verify compliance.
6. The proposal to allow an institution to fail CRA requirements in 4 out of every 10 assessment areas and still be found as serving the needs of its community in a Satisfactory

manner is insensitive ... at best. No community should be left behind because of this reform proposal. Banks receiving at least a Satisfactory rating should not be allowed to fail in any of their assessment areas; anything less is a failure in meeting the core intent of the law.

Prior to addressing most of the 180 questions gifted to us in the NPR as a memorable response to "what did you do this summer?" Woodstock Institute has the following over-arching principles and expectations:

- No institution should do less in community reinvestment activities because of this reform effort.
- Broadly speaking, the NPR moves the CRA regulation closer to being as complex and minimally beneficial to the public as the tax code. Every effort should be made to simplify the CRA at all levels: for financial institutions; for regulatory agencies; and for the public.
- While RLAAs are an interesting proposal as it relates to the opportunity to assess lending performance where financial institutions are already lending, Deposit Based Assessment Areas (DBAAs) are better connected to the core purpose of the CRA and must be included in the final rules.
- For the purposes of clarity and simplicity, the agencies should revert to setting CRA performance standards for only small banks and large banks and eliminate the category of intermediate banks. Additional complexity in changing asset thresholds and differentiating between small banks, intermediate banks, large banks with less than $10 billion in assets, and large banks with more than $10 billion in assets adds to an already fragmented and confusing landscape for compliance and public accountability, with little added benefit for LMI communities.
- Direct and indirect consumer lending must be added in the definition of retail lending product, included in the proposed Retail Lending Test, and included in data collection requirements. Personal debt is the fastest-growing type of consumer debt and has spurred many new companies and products to enter the financial industry. As such, if the agencies are serious about adapting to changes in the industry, CRA exams must include personal / consumer loans. Banks partnering with predatory lenders to evade state interest rate caps should receive negative consideration.
- Performance assessments used by examiners for tests and subtests should be quantitative and not in a narrative form.
- Re-introducing the Interagency Advanced CRA Examination Techniques training for examiners to create more consistency between exams.
- A bank should not be allowed to fail CRA in <u>any</u> of its assessment areas and still be deemed as complying in a satisfactory manner overall.
- There must be greater community engagement in the examination process, leveraging of regulatory agency Community Affairs staff to conduct robust performance context analysis, and public disclosure (in plain language) of all factors associated with the analysis and rating of each institution.

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, other essential infrastructure and community facilities), or should partial consideration be limited to only affordable housing?

Answer – The percentage of CRA consideration associated with a community development activity should be tied to the percentage of the funds directly impacting LMI census tracts or individuals with a floor of 10% impact and an assumption of full consideration if over 51% impact.

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 LMI individuals or geographies or small businesses and small farms, such as 25%? 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% to receive full consideration, such as a threshold between 60% and 90%?

Answer – The minimum percentage of activity that serves LMI individuals or geographies or small businesses and farms should be set at 10% in order to capture activities in high-cost, higher income, and more complex development and construction markets.

Question 3 – Is the proposed standard of government programs having a "stated purpose or bona fide intent" of providing affordable housing for LMI (or, under the alternative discussed above, for LMI 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% of 80% AMI? Should these activities be required to include verification that at least a majority of occupants of affordable units are LMI?

Answer – So long as government programs have documented income guidelines that mirror the CRA, those activities should qualify.

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 individual in high opportunity areas, in non-metropolitan counties, or in other geographies?

Answer – No.

Question 6 – What approach would appropriately consider activities that support naturally occurring affordable housing (NOAH) that is most beneficial for LMI individuals and communities? Should the proposed geographic criterion be expanded to include census tracts in which the median renter is LMI, 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 LMI renters?

Answer – As proposed, the agencies have identified a period of 5 years from which affordability must be maintained. This is too short. The standard should match the parameters for other widely utilized programs like the Low-Income Housing Tax Credit (LIHTC), which mandates a 15-year affordability requirement. Of important note would be the inclusion of additional underwriting to ensure that any financing of NOAH prevents support towards abusive property owners, landlords, management companies or investors.

Question 7 – Should the proposed approach to considering NOAH 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?

Answer – CRA consideration of financing affordable rental single-family housing seems more appropriate in the CD financing test than in the retail lending test. Additionally, such financing should be regularly reviewed to ensure that it meets the NOAH criteria and does not support abusive property owners, landlords, management companies or investors.

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

Answer – Only the dollar amount of LMI mortgages within the security and only the initial purchase of that security should be considered.

Question 11 – Would lending to small businesses and small farms that may also support job creation, retention, and improvement for LMI individuals and communities be sufficiently recognized through the analysis of small business and small farm loans and the qualitative review in the Retail Lending Test?

Answer – The collection and reporting of data on job creation, retention, and improvement should be implemented and utilized in the qualitative assessment of retail services and products. This data should be required from all large and intermediate banks. Small banks can have this qualitative assessment included in the retail lending test.

Question 12 – During a transition period, should the agencies continue to evaluate bank loans to small businesses and small farm loans as community development activities until these loans are assessed as reported loans under the proposed Retail Lending Test?

Answer – For loans larger than $1 million, the agencies should view them as community development until Dodd-Frank Section 1071 rules are implemented and data is available for inclusion in the proposed Retail Lending Test.

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)? Is 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?

Answer – As with the federal financial regulatory agencies, not all local governments are created equal. Some may have programs, initiatives or a strategy that is place-based and focused on LMI, others may not, and others may try but get various aspects wrong as it relates to the requirements for bank consideration under the CRA. The agencies should consider assessing this as part of the impact review instead of making it a requirement.

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 LMI residents? How should considerations about whether an activity would displace or exclude LMI residents be reflected in the proposed definitions.

Answer – Most, if not all, place-based activities benefiting LMI residents will be done in partnership with non-profit organizations and/or local agencies. As such, a statement from those partners that clarifies the project's impact on LMI residents should be considered as part of the impact review. Additionally, the bank can provide data on the number of LMI residents that benefit from the activity as part of its community development (CD) data submission.

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 LMI residents in the communities served by these projects?

Answer – Each financial institution should be prepared to explain how a community infrastructure or facility project is both essential and beneficial to LMI residents and communities. The agencies should shy away from trying to define every possibility that may occur in the normal course of a financial institution's support and development of the communities they serve. Doing so could create the unintended consequence of banks limiting their activities based on the contents of a list as opposed to allowing for creativity in responding to local needs and environments. While financial institutions need clarity, they don't need to be coddled.

Question 18 – Should the agencies consider any additional criteria to ensure that recovery of disaster areas benefits LMI individuals and communities?

Answer – Quantitative and qualitative data that is captured and reported by financial institutions on their activities in disaster areas and how they benefit LMI residents should be considered as part of the impact review process.

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 LMI communities and distressed or underserved nonmetropolitan middle-income areas? Are other criteria needed to ensure these activities benefit LMI individuals and communities?

Answer – Each financial institution should show evidence of the infrastructure they have in place to identify and mitigate social and environmental risk. This could be through an expansion of their existing Enterprise-Wide Risk Management (EWRM) program, the creation of a separate risk committee, or another program / body that reviews deals for their benefit or risk and their over-arching portfolio for disparities and trends. Instead of a narrow focus on coastal jumbo mortgage loans, fossil fuel infrastructure or clients in sensitive sectors, there must be evidence of a focus on social and environmental risk posed to LMI individuals and communities. Activities to address or mitigate these identified risks should be considered in a manner similar to essential infrastructure.

Question 20 – Should the agencies consider 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?

Answer – Energy efficiency aspects of small business, home mortgage, or community development lending should be considered within those categories. Energy efficiency activities separate from those specific types of transactions should be considered essential infrastructure.

Question 21 – Should the agencies include other energy-related activities that are distinct from energy-efficient 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?

Answer – Granular definitions of qualifying activities towards compliance with a regulation can unintentionally restrict the ability of financial institutions and communities to be creative in addressing these issues given the local institution, the local economy, and the local climate. Keeping things broadly associated as "essential infrastructure" and allowing the financial institution to make the case by providing data / evidence regarding the benefit to LMI communities and individuals will mitigate potential unintended consequences of creating an exhaustive, but quickly obsolete, list. As with community development activities, a range of partial to full CRA consideration for these activities should be provided based on the portion of funds dedicated towards LMI individuals and communities.

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?

Answer – No.

Question 25 – Should the agencies also include in the MDI definition insured credit unions considered to be MDIs by the NCUA?

Answer – Yes.

Question 26 – Should the agencies consider activities undertaken by an MDI or WDI to promote its own sustainability and profitability? If so, should additional eligibility criteria be considered to ensure investments will more directly benefit LMI and other underserved communities?

Answer – No.

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?

Answer – No.

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

Answer – The list of CRA qualified activities should be dynamic and inclusive. At the community level, annual requests for new CRA qualified activities should be made in a visible and public manner and possibly included as an option in the public announcement of upcoming CRA examinations. At the institution level, financial institutions should work with their primary regulatory agency's central point of contact to provide submissions to this list. At the agency level, examiners and Community Affairs staff should regularly submit activities to this list as a result of outreach and / or the examination process. Once collected, the agency should decide which activities should be added to the list, followed by a request for public comment on those new additions.

Question 33 – Various processes and actions under the proposed rule, such as the process for confirming qualifying community development activities, the designation of census tracts, and, with respect to recovery activities in designated disaster areas, the determination of temporary exception or an extension of the period of eligibility of activities, would involve joint action by the agencies. The agencies invite comment on these proposed joint processes and actions, as well as alternative processes and actions, such as consultation among the agencies, that would be consistent with the purposes of the CRA.

Answer – The reintroduction of FFIEC Advanced CRA Examination Techniques training provides an opportunity for interagency senior level CRA examination management to work together in the creation of curriculum and implementation of this regularly occurring training program. This group should be leveraged to serve as the primary body from which these proposed processes and actions can be drafted.

Impact Review of Community Development Activities

In order to mitigate the risk of continued grade inflation, impact reviews should be quantitative in their assessment and inclusion in the CRA exam. This can be accomplished by creating a point system and weights based on the community development (CD) data provided by banks. The CD data should include, but not be limited to the type of financing (loan, investment or grant), whether the activity was conducted in partnership with a public agency, the number of affordable housing units produced by income category, whether the activity was directed to or through a Community Development Financial Institution (CDFI), and the number and percentage of LMI residents served.

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 CD 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?

Answer – The agencies should include each of these three categories for all geographic designations.

Question 35 – For the proposed factor focused on activities supporting MDIs, WDIs, LICUs and 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?

Answer – Short-term deposits in MDIs, WDIs, LICUs and CDFIs should be excluded from CRA consideration. The type of support (i.e., grants, loans, equity) and terms of support (i.e., long term, below market) should be captured, reported and included in assessment of the impact review.

Question 36 – Which of the thresholds discussed would be appropriate to classify smaller businesses and farms for the impact review factor relating to CD activities that support smaller businesses and farms: the proposed standard of gross annual revenues of $250,000 or less, or an alternative gross annual revenue threshold of $100,000 or less, or $500,000 or less?

Answer – Classifying small businesses and farms for the CD activities impact review process should be in two threshold tiers. The first would be for businesses and farms with revenues of $100,000 or less. The second would be for businesses and farms with revenues between $100,000 and $250,000.

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?

Answer – Yes.

Assessment Areas and Areas Eligible for Community Development Activity
The proposed creation of Retail Lending Assessment Areas (RLAAs) severs the CRA's connection between deposit gathering and reinvestment and will create the unintended consequence of financial institutions capping mortgage and small business lending below the threshold to trigger a new RLAA. RLAAs make more sense for financial institutions with unique business models that are better suited for Strategic Plans. Deposit Based Assessment Areas (DBAAs) would reinforce the regulations' connection with the core purpose of the law and eliminate this potential unintended consequence by setting a 5% local deposit share threshold. DBAAs (and if there is no change, RLAAs) should apply to all institutions regardless of size. If RLAAs are to survive, they must include consumer lending and not be based on a numerical trigger of originations.

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 FBAAs to increase consistency across banks?

Answer - All financial institutions must delineate whole counties as FBAAs to increase consistency among institutions and to prevent redlining that partial county delineation may allow.

Question 40 – Do the proposed definitions of "remote service facility" and "branch" include sufficient specificity for the types of facilities and circumstances under which banks would be required to delineate FBAAs, or are other changes to the CRA regulation necessary to better clarify when the delineation of FBAAs would be required?

Answer – A remote service facility should be defined broadly enough to incorporate innovations in the delivery of products and services that have traditionally been offered through physical branches. While the proposal seems to accomplish this goal, it does not address the growing trend by banks of partnering with 3rd parties in providing some of these products and services via virtual and remote mechanisms. The agencies should clarify that such partnerships would be considered.

Question 41 – How should the agencies treat bank business models where staff assist customers to make deposits on their phone or mobile device where the customer is onsite?

Answer – If the products and services offered by staff at a remote location constitute the same products and services offered by a branch, that location should be considered a branch for FBAA purposes.

Question 42 – Should the proposed "accepts deposits" language be included in the definition of a branch?

Answer – Yes.

Question 43 – If a bank's retail lending assessment area is located in the same MSA where a smaller FBAA is located, should the bank be required to expand its FBAA to the whole MSA or should it have the option to designate the portion of the MSA that excludes the FBAA as a new RLAA?

Answer – The bank must expand the FBAA to encompass the entire MSA.

Question 44 – Should a bank be evaluated for all of its major product lines in each RLAA?

Answer – Yes.

Question 45 – The agencies' proposal for delineating RLAAs 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?

Answer – The creation of RLAAs violates the law's connection between deposit gathering and reinvestment and will create the unintended consequence of financial institutions capping mortgage and small business lending below the threshold from which RLAAs would be triggered. Deposit Based Assessment Areas (DBAAs) are a better solution because they would reinforce the regulations' connection with the core purpose of the law and eliminate this potential unintended consequence by setting a 5% local deposit share threshold. DBAAs (and if there is no change, RLAAs) must apply to all institutions regardless of size.

Question 46 – The proposed approach for delineating RLAAs would apply to all large banks with the goal of providing an equitable framework for banks with different business models. Should a large bank with a significant majority of its retail loans inside of its FBAAs be exempted from delineating RLAAs? If so, how should an exemption be defined for a large bank that lends primarily inside its FBAA?

Answer – No, there should be no exemption threshold. The creation of RLAAs violates the law's connection between deposit gathering and reinvestment and will create the unintended consequence of financial institutions capping mortgage and small business lending below the threshold from which RLAAs would be triggered. Deposit Based Assessment Areas (DBAAs) would reinforce the regulations' connection with the core purpose of the law and eliminate this potential unintended consequence by setting a 5% local deposit share threshold. DBAAs (and if there is no change, RLAAs) should apply to all institutions regardless of size. There should be no exemption from designating DBAAs if the deposit share threshold is crossed.

Question 47 – The agencies propose to give CRA consideration for CD finance activities that are outside of FBAAs. What alternative approaches would encourage banks to choose to do so to conduct effective CD activities outside of their FBAAs? For example, should banks be required to delineate specific geographies where they will focus their outside FBAA CD financing activity?

Answer – As is the case today, financial institutions should focus their CD finance activities within their FBAAs and DBAAs (and if there is no change, RLAAs) before going beyond those markets. However, the competition for CD finance activities in heavily banked assessment areas has forced many financial institutions to negotiate on cost and terms of capital in order to originate a deal within their market solely for CRA compliance purposes. This level of competition brings into question safety, soundness and financial sustainability and reinforces the misconception that CRA-related lending is not good business. As such, financial institutions should provide the agencies with evidence that they have unsuccessfully bid on multiple CD finance activities within their FBAAs and DBAAs (and if there is not change, RLAAs) before garnering consideration for their CD finance activities in neighboring geographies that may be less banked or are banking deserts. This would include rural communities and tribal land. Additionally, the proposed community development finance test must be included in assessments of DBAAs and/or RLAAs.

Question 48 – Should all banks have the option to have CD activities outside of FBAAs considered, including all intermediate banks, small banks, and banks that elected to be evaluated under a strategic plan?

Answer – Optionality is not the friend of LMI communities. The market gravitates to activities and markets that offer the least regulatory burden. As such, all financial institutions should have their CD activities considered.

Performance Tests, Standards, and Ratings in General

Woodstock was glad to see the agencies prioritize combating rating inflation and creating consistency between CRA exams in this new proposed framework. While tailoring exams to bank size is appropriate to a certain extent, we have suggestions for how exams can be more robust for banks of all sizes.

First, we strongly recommend that the agencies do not distinguish between large banks with assets over $10 billion and all other large banks. Creating this extra quasi-category adds to an already fragmented and confusing landscape for compliance and public accountability. The proposed data reporting and exam requirements for banks over $10 billion are in fact appropriate for <u>all</u> large banks. Instead, for the purposes of clarity and simplicity, the agencies should revert to setting CRA performance standards for small banks and large banks.

Similarly, the agencies should eliminate the option for a small bank to choose whether it is evaluated under the current exam procedures or under the new proposed Retail Lending Test. As many advocates have pointed out, the current exam procedures have led to rampant rating inflation. Allowing some banks to continue to operate under current tests will perpetuate that rating inflation and make it impossible to compare the performance of banks of different sizes based on their CRA ratings. Instead, the agencies should outline a transition plan with a specified future date or exam cycle when all banks will be evaluated under the new tests. This will make CRA exams more transparent, consistent, and accessible to community members.

Above all else, this much-needed reform to CRA rules must not result in less community investment and development. Banks have the capacity and resources (human and financial) to withstand increased regulatory burden; LMI communities do not have the capacity to withstand an interruption in the flow of vital capital for mortgage, small business loans, and community development.

Question 49 – The agencies' proposed approach to tailoring the performance tests that pertain to each bank category aims to appropriately balance the objectives of maintaining strong CRA obligations and recognizing differences in bank capacity. What adjustments to the proposed evaluation framework should be considered to better achieve this balance?

Answer – Bank size does not directly correlate with capacity or technological sophistication. There are small banks that have highly sophisticated tools and software for tracking data. Assuming that all small banks have less capacity or would be unduly burdened by updated CRA requirements would be a misconception.

First, the agencies should apply the proposed requirements for banks with more than $10 billion in assets to *all* large banks. The added consistency and transparency would far outweigh any potential compliance burden for the rest of the large banks. Detailed customer data collection is now standard business practice in many industries, and banks are no exception. Banks already capture data about their depositors' locations, automobile loans, and digital delivery systems. The added detail and accuracy that such information will contribute to CRA exams is well worth the cost of compliance.

Second, the agencies should implement a transition plan to bring all banks up to the new proposed exam processes. The proposal to make the new Retail Lending Test optional for small banks and the new Community Development Financing test optional for intermediate banks is inappropriate and is unlikely to be effective. The previous exam procedures are easier for banks to pass as compared to the proposed tests, as evidenced by the dramatic difference in estimated pass rates between small banks and large banks in Table 10 to Section ____.22 in the NPR. It seems highly unlikely that any bank would opt into being evaluated under a more difficult test. This will create confusion and a lack of clarity for community groups when looking at CRA exam scores and will make it nearly impossible to make an accurate comparison between the performance of banks of different sizes. The agencies should instead give intermediate and small banks a grace period, after which they must be examined under the new proposed tests.

Question 50 – The proposed asset thresholds consider the associated burden related to new regulatory changes and their larger impact on smaller banks, and it balances this with their obligations to meet community credit needs. Are there other asset thresholds that should be considered that strike the appropriate balance of these objectives?

Answer – We strongly prefer that the agencies do not raise the asset thresholds for the bank size categories as proposed. Over the years, the agencies have used small, incremental changes to appropriately keep pace with inflation and changes in the market, but the proposed thresholds are a drastic change. Raising the thresholds in this manner moves hundreds of banks into smaller categories than they were previously examined under and increases the likelihood of a bank having fewer CRA obligations and community development requirements. Above all else, this much-needed reform to CRA rules must not result in less community investment and development. Banks have the capacity and resources (human and financial) to withstand increased regulatory burden; LMI communities do not have the capacity to withstand an interruption in the flow of vital capital for mortgage, small business loans, and community development.

It is especially important for smaller metropolitan areas and rural areas that intermediate and small banks have strong CRA requirements. Banks have closed in record numbers in recent years – a trend that was further accelerated by the pandemic (National Community Reinvestment Coalition, *Branch Closure Rate Doubled During the Pandemic*, [Feb. 2022]). Branch closures disproportionately affected rural areas, smaller metropolitan areas, and low-income urban areas. Many of these communities were left with very little or no presence from the largest banks, making intermediate and small banks even more important.

We also suggest that the agencies consider allowing small banks to include their community development finance and investments in their Retail Lending Test evaluation. The examiner would also consider whether the bank did this under previous exam procedures. If the bank previously did so but stops under the new exam procedures, they must provide a viable business reason to explain the change, and the examiner should give negative consideration to any bank that cannot provide a viable business reason.

Question 51 – Should the agencies adopt an asset threshold for small banks that differs from the SBA's size standards of $750 million for purposes of CRA regulations? Is the proposed asset threshold of $600 million appropriate?

Answer – We strongly prefer that the agencies do not raise the asset size thresholds. The agencies have used small, incremental changes to appropriately keep pace with inflation, but the proposed thresholds are a drastic change. Raising the thresholds in this manner moves hundreds of banks into smaller categories than they were previously examined under and increases the likelihood of a bank having fewer CRA obligations and community development requirements. This much needed reform and update to the CRA rules must not result in less community development activity.

Question 52 – The agencies propose to require that the activities of a bank's operations and operating subsidiaries be included as part of its CRA evaluation, as banks exercise a high level of ownership, control, and management of their subsidiaries, such that the activities of these subsidiaries could reasonably be attributable directly to the bank. What, if any, other factors should be taken into account with regard to this requirement?

Answer – We strongly agree with this proposal. Affiliates, subsidiaries, and partners are essentially operating on behalf of the bank, and banks do have considerable control over the activities associated with these entities or partnerships. Loans made or purchased via a bank's affiliates or subsidiaries should automatically count towards the major product line calculations and towards the creation of any retail lending assessment areas.

We also urge the agencies to expressly include bank-nonbank lending partnerships a.k.a. "rent-a-banks" in this requirement. There is a growing practice by banks of partnering with financial technology companies (aka, "fintechs") and other non-bank entities to make loans. The non-bank partner does most of the work, such as marketing, customer acquisition, processing applications, underwriting and servicing, while the bank's only function is to essentially put the loan on the bank's letterhead. Oftentimes, these partnerships are predatory and structured to evade state usury caps and consumer protection laws, offering high-cost products that burden consumers with unsustainable debt loads. This is a form of "indirect" bank lending, and these predatory loans must receive negative consideration on a bank's CRA exam because the bank is empowering the predatory lender to evade state laws, take advantage of consumers, and strip wealth from communities.

Question 53 – As discussed above, what factors and criteria should the agencies consider in adopting definitions of "operating subsidiary" for state non-member banks and state savings associations, and "operations subsidiary" for state member banks, for purposes of this proposed requirement?

Answer – We also urge the agencies to expressly include bank-nonbank lending partnerships a.k.a. "rent-a-banks" in this requirement. There is a growing practice by banks of partnering with fintechs and other non-bank entities to make loans. The non-bank partner does most of the work, such as marketing, customer acquisition, processing applications, underwriting and servicing, while the bank's only function is to essentially put the loan on the bank's letterhead. Oftentimes, these partnerships are predatory and structured to evade state usury caps and consumer protection laws, offering high-cost products that burden consumers with unsustainable debt loads. This is a form of "indirect" bank lending, and these predatory loans must receive negative consideration on a bank's CRA exam because the bank is empowering the predatory lender to evade state laws, take advantage of consumers, and strip wealth from communities.

(See the National Consumer Law Center's High-Cost Rent-a-Bank Watchlist for examples of rent-a-banks.) We urge the agencies to explicitly include bank-nonbank partnerships in their definitions of "operating subsidiary" and "operations subsidiary."

Question 54 – When a bank chooses to have the agencies consider retail loans within a retail loan category that are made or purchased by one or more of the bank's affiliates in a particular assessment area, should the agencies consider all of the retail loans within that retail loan category made by all of the bank's affiliates only in that particular assessment area, or should the agencies then consider all of the retail loans made by all of the bank's affiliates within that retail loan category in all of the bank's assessment areas?

Answer – It should be mandatory for all loans originated or purchased by one or more of a bank's affiliates to be considered on that bank's CRA exam. This should be the case for all assessment areas. Allowing a bank to choose which loans will be evaluated could lead to bad actors using affiliates as a CRA loophole. A bank's affiliates are working on its behalf, so the affiliates' loans should be considered on CRA exams just as the bank's loans are. Likewise, loans originated or purchased by an affiliate should be included when determining where a bank's assessment areas are.

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?

Answer – We know that some agencies have tested models to measure a community's capacity and demand for investment, financial services, and financial products. This kind of information would be immensely useful for all CRA stakeholders and would add valuable detail to CRA exams. From experience on the ground in communities, advocates know that there is demand for banking services in many LMI communities and communities of color, and yet banks are not meeting that demand sufficiently. The agencies should implement such models and include results in the published CRA exams that are released for the public.

Retail Lending Test Product Categories and Major Product Lines

Question 56 – Should the agencies aggregate closed-end home mortgage loans of all purposes? Or should the agencies evaluate loans with different purposes separately given that the factors driving demand for home purchase, home refinance, and other purpose home mortgage loans vary over time and meet different credit needs?

Answer – The agencies should disaggregate home purchase and home refinance loans in CRA exams and in performance evaluations. As the agencies acknowledge in the NPR, purchase and refinance loans serve different purposes and their usage changes according to shifts in market conditions. To provide more detail and accuracy to CRA exams, banks should be evaluated on their performance on home purchase loans and refinances individually.

Question 57 – Should the agencies exclude home improvement and other purpose closed-end home mortgage loans from the closed-end home mortgage loan product category to emphasize home purchase and refinance lending? If so, should home improvement and other purpose closed-end home mortgage loans be evaluated under the Retail Lending Test as a distinct product category or qualitatively under the Retail Services and Products Test?

Answer – The agencies should consider home improvement and other purpose closed-end home mortgage loans under both the Retail Lending Test and under the Retail Services and Products Test. Both quantitative and qualitative analyses are important for these types of loans. For example, many LMI communities that have suffered from systemic disinvestment for decades now have aging housing stock in need of updates or deferred maintenance. Home improvement and other products like purchase-rehab loans are crucial to promoting sustainable homeownership in these communities. Banks should be evaluated quantitatively on how well they serve LMI communities with these loans as compared to all borrowers, and they should be evaluated qualitatively on whether they offer home improvement and rehab loans that are responsive to the unique needs of LMI communities.

Question 58 – Should the agencies include closed-end non-owner-occupied housing lending in the closed-end home mortgage loan product category?

Answer – No. If the agencies must keep closed-end non-owner-occupied home loans in CRA exam procedures, they should be evaluated under the Retail Products and Services Test only.

Question 59 – Should open-end home mortgage loans be evaluated qualitatively under the Retail Services and Products Test rather than with metrics under the Retail Lending Test?

Answer – Open-end home mortgage loans should be evaluated both quantitatively and qualitatively. The regulators should examine the distribution of a bank's open-end mortgage loans under the Retail Lending Test, and whether those open-end mortgage loans have features that are responsive to LMI community needs under the Retail Products & Services Test.

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?

Answer – Multifamily lending should be evaluated under both the Retail Lending Test and the Community Development Financing Test.

Question 61 – Should banks that are primarily multifamily lenders be designated as limited purpose banks and have their multifamily lending evaluated only under the Community Development Financing Test?

Answer – No, banks that are primarily multifamily lenders should be examined under the regular proposed exam procedures, not as limited purpose banks.

Question 62 – Should the agencies adopt a size standard for small business loans and small farm loans that differs from the SBA's size standards for purposes of the CRA? Is the proposed size standard of gross annual revenues of $5 million or less, which is consistent with the size standard proposed by the CFPB in its Section 1071 Rulemaking, appropriate? Should the CRA compliance date for updated "small business," "small business loan," "small farm," and "small farm loan" definitions be directly aligned with a future compliance date in the CFPB's Section 1071

Rulemaking, or should the agencies provide an additional year after the proposed updated CRA definitions become effective?

Answer – The Section 1071 definitions for small business and small farm loans are appropriate and we strongly support consistency between CRA rules and the CFPB's Section 1071 rules. Defining small business and small farm loans by the revenue size of the business receiving the loan rather than the dollar amount of the loan will be much more accurate in capturing lending to small businesses. Small dollar-value business loans made to large businesses do not serve the goals of reinvesting in communities that have suffered from redlining and cycles of disinvestment.

Question 64 – Should retail loan purchases be treated as equivalent to loan originations? If so, should consideration be limited to certain purchases – such as from a CDFI or directly from the originator? What, if any, other restrictions should be placed on the consideration of purchased loans?

Answer – Retail loan purchases and loan originations should be disaggregated in CRA exams and should be treated differently. We appreciate the agencies' attention to preventing "loan churn." Woodstock and many advocates have raised the issue of loan churn over the years, as this practice contributes to rating inflation and does not generate ongoing, new investments in communities. We support limiting loans that are considered in a CRA exam to only those originated by the bank itself or purchased from the originator. This will ensure that originators who do not generally keep loans in their portfolios for long periods of time, including CDFIs, will have the necessary secondary market liquidity to originate new loans, while also incentivizing ongoing new originations in LMI communities.

Furthermore, we propose that purchased loans be treated differently depending on whether the originator had access to the GSEs' secondary market. Loans purchased from an originator that did not have access to the GSEs' secondary market should be weighted equally to loans originated by the bank being examined, while loans purchased from an originator who did have access should be weighted less than loans originated by the bank being examined. This will incentivize banks to originate more loans themselves, thereby forming stronger relationships with LMI communities. Those stronger relationships can also serve to restore some trust in the financial services system and improve financial health in communities that have experienced systemic disinvestment.

Question 65 – Would it be appropriate to consider information indicating that retail loan purchases were made for the sole or primary purpose of inappropriately influencing the bank's retail lending performance evaluation as an additional factor in considering the bank's performance under the metrics or should such purchased loans be removed from the bank's metrics?

Answer – Yes, this is appropriate information to consider in an exam. Loans that were purchased to inappropriately influence the bank's retail lending performance evaluation should be removed from the bank's metrics and the bank should receive negative consideration for engaging in this activity.

Question 66 – Do the benefits of evaluating automobile lending under the metrics-based Retail Lending Test outweigh the potential downsides, particularly related to data collection and reporting burden? In the alternative, should the agencies adopt a qualitative approach to evaluate automobile lending for all banks under the proposed Retail Lending Test?

Answer – All types of direct and indirect consumer loans, including credit cards and secured and unsecured installment loans, should be evaluated both quantitatively and qualitatively, not just automobile purchase loans. The benefits of evaluating consumer lending both quantitatively and qualitatively will be enormous. Predatory consumer lending has exacted a heavy toll on Black, Brown, and LMI communities (Zimmerman, "High-interest loans in Chicago target Black neighborhoods," *Chicago Sun-Times* [Nov. 2021]; Center for Responsible Lending, "Payday and Car-Title Lenders Drain Nearly $8 Billion in Fees Every Year" [updated Aug. 2019]). In Illinois, the average gross income of borrowers who turned to payday, auto title, and other high-cost loans from January 2012 through December 2020 was $33,542. In 2019, the total principal amount borrowed in Illinois from non-bank high-cost lenders was over $1 billion (IL Dept. of Fin. and Professional Regulation, *Illinois Trends Report Through Dec. 2020* [updated Nov. 2021]).

Access to safe and affordable consumer loan products is extremely important for the financial health of underserved communities. Historic redlining and patterns of disinvestment have left many communities with weak relationships with traditional financial institutions. Unfortunately, predatory financial service providers have stepped in to fill that gap and they specifically target and extract wealth from LMI communities. By offering safe, affordable small-dollar loan products, banks can help interrupt the cycle of predatory debt that traps so many consumers, particularly LMI consumers. Where predatory lenders once extracted wealth, banks can instead help consumers and communities build wealth. We have been pleased by a growing trend of banks offering affordable, small-dollar loan products (WeProsper Illinois, *Resource Guide: Affordable Alternatives to Predatory Loans*, p. 10 [updated July 2022]).

Consumer loans must be evaluated quantitatively under the Retail Lending Test and qualitatively under the Retail Products and Services Test. A quantitative analysis will help determine whether a bank is making consumer loans equitably in terms of geography and borrower income level. A qualitative analysis will reveal whether the bank offers consumer loans that are accessible and affordable to LMI borrowers and responsive to their unique needs. An analysis of the annual percentage rate (APR) is especially important because an exorbitant APR is the hallmark of many predatory consumer loans. The threshold widely accepted as predatory is no more than 36% APR. The federal Military Lending Act protects active duty servicemembers and their dependents with a 36% APR cap, and 19 states plus the District of Columbia have established state caps of 36% APR or less. Another approach would be to determine an average APR for the market and evaluate a bank on the price of its products relative to that average. Another quantitative measure could be default/repayment rates. We support the agencies' suggestion to qualitatively evaluate underwriting and "safeguards that minimize adverse borrower outcomes."

Similarly, CRA exams must evaluate both direct and indirect lending. Direct lending by banks only represents a portion of the market for automobile purchase loans and other consumer loans. Particularly in the auto purchase loan market, many banks who do not make high-interest auto loans directly purchase asset-backed securities that contain loans with predatory interest rates (a.k.a. "indirect auto finance"). In the course of our research on this topic, a large national bank stated that it adhered to an internal cap of 36% APR with respect to the auto loans that it would purchase. Upon further investigation, however, it became apparent that their so-called "all-in" cap was exclusive of the wide array of ancillary products, charges and fees that get bundled into the financing of an automobile.

Giving an auto dealer/lender the liquidity to issue predatory loans is just as bad as originating the predatory loan directly, and banks should receive negative consideration on their CRA exams for engaging in either activity. Likewise, rent-a-banks that partner with predatory lenders, allowing them to use the bank's charter to evade state interest rate cap laws, should receive negative consideration on its CRA exam.

Question 67 – Should credit cards be included in CRA evaluations? If so, when credit card loans constitute a major project line, should they be evaluated quantitatively under the proposed Retail Lending Test or qualitatively under the proposed Retail Services and Products Test?

Answer – Yes, credit cards should be included in CRA evaluations as consumer loans and small business loans, depending on the purpose of the particular credit card. They should be evaluated quantitatively under the Retail Lending Test and qualitatively under the Retail Services and Products Test.

Question 69 – Should the agencies adopt a qualitative approach to evaluate consumer loans? Should qualitative evaluation be limited to certain consumer loan categories or types?

Answer – The agencies should evaluate consumer loans both quantitatively and qualitatively. A quantitative analysis will help determine whether a bank is making consumer loans equitably in terms of geography and borrower income level. A qualitative analysis will reveal whether the bank offers consumer loans that are accessible and affordable to LMI borrowers and responsive to their unique needs. An analysis of the annual percentage rate (APR) is an especially useful representation of cost and affordability. The threshold widely accepted as predatory is no more than 36% APR. The federal Military Lending Act protects active duty servicemembers and their dependents with a 36% APR cap, and 19 states plus the District of Columbia have established state caps of 36% APR or less. Another approach would be to determine an average APR for the market and evaluate a bank on the price of its products relative to that average. Another quantitative measure could be default/repayment rates. We support the agencies' suggestion to qualitatively evaluate underwriting and "safeguards that minimize adverse borrower outcomes."

Question 70 – Should the agencies use a different standard for determining when to evaluate closed-end home mortgage, open-end home mortgage, multifamily, small business, and small farm lending? If so, what methodology should the agencies use and why? Should the agencies use a different standard for determining when to evaluate automobile loans?

Answer – Instead of the proposed 15% of the dollar volume of a bank's assessment area lending activity trigger for major product lines, the agencies should use a flat number of loans tailored by bank size. The different proposed product line categories can differ widely by dollar volume in a way that does not correlate with their importance to the individual bank's activity in the assessment area or with the total bank activity in the assessment area. We are especially concerned that an approach based purely on dollar volume could severely diminish the importance of small business loans, which are often low dollar-value loans relative to mortgages. In the case of one massive national financial institution, Woodstock Institute has observed that auto lending would be included as a major product line under the proposed method, while small business lending would not, severely misrepresenting the institution's priorities, focus and business model.

We recommend that the agencies use a combination of a percentage of a bank's loans in an assessment area and a flat number of loans to determine major product lines. For large banks, the threshold for each assessment area should be 15% of the bank's loans or 50 loans, whichever is smaller. This combination will ensure that the importance of less frequent products, such as small business loans, is not diminished by the more frequent products, such as mortgages. For the smaller asset size category or categories, the threshold for each assessment area should be 15% of the bank's loans or 30 loans, whichever is smaller.

The agencies should use the same method for all product line types, including consumer lending. In the NPR, the agencies had proposed a unique method for automobile lending in recognition that these loans are often smaller dollar amounts compared to the other product line types. As stated throughout this comment, we urge the agencies to consider all consumer lending in CRA exams, and the same concern would apply to other kinds of consumer loans, which are usually much smaller than mortgages, for example. We believe that our recommended approach based on the number of loans rather than dollar volume addresses this concern sufficiently, for automobile lending and all other consumer lending. Using the same method for all product line types will also create more consistency and transparency in CRA exams.

Question 71 – Should the agencies use a different standard for determining when to evaluate multifamily loans under the Retail Lending Test? If so, should the standard be dependent on whether the lender is a monoline multifamily lender or is predominantly a multifamily lender within the geographic area? Relatedly, what should a "predominantly" standard be for determining whether multifamily loans constitute a major product line entail?

Answer – No, the agencies should use the same standard for multifamily loans as the other product line types. Using the same standard will create more consistency and transparency in CRA exams.

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

Question 72 – For calculating the bank volume metric, what alternatives should the agencies consider to the proposed approach of using collected deposits data for large banks with assets of over $10 billion and for other banks that elect to collect this data, and using the FDIC's Summary of Deposits data for other banks that do not collect this data? For calculating the market volume benchmark, what alternatives should the agencies consider to the proposed approach of using reported deposits data for large banks with assets of over $10 billion, and using the FDIC's Summary of Deposits data for large banks with assets of $10 billion or less?

Answer – The same infrastructure required for financial institutions to collect and report data for the FDIC Summary of Deposits gets the industry 80% of the way towards reporting detailed deposit data for the purposes of CRA exams. The compliance burden will be relatively minimal, and the collection of this data will provide many benefits, including: allowing for the creation of Deposit Based Assessment Areas; reinforcing of the core purpose of the CRA - to identify those markets where deposits are taken and how they are reinvested into those communities; and making the bank volume metric and market benchmarks more accurate. All large financial institutions (including intermediate banks) should be required to report this data.

Question 73 – Should large banks receive a recommended Retail Lending Test conclusion of "Substantial Noncompliance" for performance below a threshold lower than 30 percent (e.g., 15 percent of the market volume benchmark) on the retail lending volume screen?

Answer – No, 30% is too low of a threshold for passing the retail lending screen. The agencies' approach to setting this threshold based on a historical analysis of CRA exam results is misguided. The rate of banks passing CRA exams in the past has been exceptionally high. The persistent wealth gap, as well as on-the-ground experience from community groups and practitioners, confirms that this high pass rate does not accurately reflect how well banks have met community reinvestment needs.

We strongly urge the agencies to raise this threshold to 50%. 50% is a more appropriate threshold to pass the screen and it is consistent with existing banking regulations. The Riegle-Neal Interstate Banking and Branching Efficiency Act, Section 109 established a 50% loan-to-deposits ratio for interstate banks. This threshold was set to prevent a bank with branches outside of its headquarters' home state from generating deposits without lending in other states. This goal runs parallel to and is very compatible with the goals of the CRA, so extending this 50% threshold to the retail lending screen in CRA exams is a natural fit.

Question 74 – Should the geographic distribution evaluations of banks with few or no low- and moderate-income census tracts in their assessment areas include the distribution of lending to distressed and underserved census tracts? Alternatively, should the distribution of lending in distressed and underserved census tracts be considered qualitatively?

Answer – If an assessment area contains few or no LMI tracts, the examiner should look at the assessment area's median income compared to the state median income to determine if the assessment area is distressed or underserved compared to other markets in the state.

Question 75 – Is the choice of $250,000 gross annual revenue an appropriate threshold to distinguish whether a business or farm may be particularly likely to have unmet credit needs, or should the threshold be lower (e.g., $100,000) or higher (e.g., $500,000)?

Answer – Yes, $250,000 or less is an appropriate threshold for indicating that a small business or farm may have unmet credit needs. We also urge the agencies to consider a third category of $100,000 gross annual revenue or less to target their analysis further for very small businesses, new businesses, and minority- and women-owned businesses, which may be even more likely to have unmet credit needs.

Question 76 – Should the community benchmarks be set using the most recent data available at the time of the examination? Would an alternative method that establishes benchmarks earlier be preferable?

Answer – We recommend that the agencies average data for the exam period to best reflect any market shifts or changing circumstances over the entire exam period.

Question 77 – Should the bank volume metric and distribution bank metrics use all data from the bank's evaluation period, while the market volume benchmark and distribution market benchmarks use only reported data available at the time of the exam? Would an alternative in which the bank volume metrics and distribution bank metrics were calculated from bank data covering only the same years for which that reported data was available be preferable?

Answer – The agencies should use the maximum amount of data in CRA exams whenever possible. This will make CRA exams more detailed, thorough, and accurate. As such, the agencies should use all the bank's reported data for the exam period, even if the available market data does not match up perfectly in terms of availability at the time the exam is being conducted.

Question 78 – Are the proposed community benchmarks appropriate, including the use of low-income and moderate-income family counts for the borrower distribution of home mortgage lending? Would alternative benchmarks be preferable? If so, which ones?

Answer – The proposed community benchmarks are appropriate, with one recommended change. We recommend that the agencies use household-level data rather than family-level data. Household-level data will more accurately reflect the diversity of living situations, such as unmarried people who live together, etc.

Question 79 – Should automobile lending for all banks be evaluated using benchmarks developed only from the lending of banks with assets of over $10 billion?

Answer – We strongly urge the agencies to eliminate the distinction between large banks over and under $10 billion in assets, and instead require all large banks to report data on all consumer lending, direct and indirect. Access to safe and affordable consumer loan products is extremely important for the financial health of LMI communities. Historic redlining and patterns of disinvestment have left many communities with weak relationships with traditional financial institutions. Unfortunately, predatory financial service providers have stepped in to fill that gap and they specifically target and extract wealth from LMI communities. By offering safe, affordable small-dollar loan products, banks can help interrupt the cycle of predatory debt that traps so many consumers, particularly LMI consumers.

Question 81 – How should the agencies use the calibrated market benchmark and calibrated community benchmark to set performance thresholds? Should the agencies set thresholds based on the lower of the calibrate market benchmark or calibrated community benchmark?

Answer – To avoid perpetuating CRA rating inflation and to create incentives for strong performance based on community needs as well as peer performance, we recommend that the agencies implement a weighted average of the community benchmark and market benchmark to set performance thresholds. In markets where all lenders are not sufficiently meeting community needs, the proposed approach outlined in the NPR would set performance thresholds too low and community benchmarks would be severely underutilized. Using the community benchmark to measure the level of need or demand for loans is a valuable addition to the CRA exam framework, and it would be much better leveraged through a weighted average approach.

We would also like to note that we were very glad to see that the agencies plan to use data from all mortgage originators, including nonbank lenders, in setting the market benchmark for mortgage lending. In markets where banks have largely ceded mortgage lending to LMI borrowers to mortgage companies, this approach to calculating the benchmark will hold banks accountable for reinvestment. This is a positive step towards preventing rating inflation and combined with our recommendations above will create strong incentives for banks to achieve Satisfactory or Outstanding performance on these benchmarks. The agencies should also consider implementing a longitudinal analysis of a bank's lending to assess whether there is a long-term pattern of disinvestment from LMI communities and give appropriate negative consideration where necessary. A longer-term analysis may reveal patterns that would be too incremental to raise red flags within the much shorter exam period.

Question 82 – How should the agencies address the potential concern that the proposed approach may set performance expectations too low in places where all lenders, or a significant share of lenders, are underserving the market and failing to meet community credit needs? Should the agencies consider an alternative approach to setting the performance thresholds that would use a weighted average of the calibrated market benchmark and calibrated community benchmark?

Answer – As stated above, we recommend that the agencies implement a weighted average of the community benchmark and market benchmark to set performance thresholds. Using the community benchmark to measure the level of need or demand for loans is a valuable addition to the CRA exam framework, and it would be much better leveraged through a weighted average approach. We recommend that the agencies set a default weight for each component rather than leaving it up to examiner discretion.

Question 83 – Should the agencies weight the two distribution results equally? Should the borrower distribution conclusion be weighted more heavily than the geographic distribution conclusion to provide an additional incentive for lending to low- and moderate-income borrowers in certain areas? Are there circumstances under which the geographic distribution conclusion should be weighed less heavily, such as in rural areas with few low- and moderate-income census tracts or where the number of investor loans is increasing rapidly?

Answer – We are concerned that if the geographic distribution is weighted too heavily, it will create the perverse incentive to gentrify LMI tracts for CRA credit. In this scenario, a bank could receive CRA credit for lending to higher income borrowers in LMI census tracts, which, over time, would price out and displace the LMI residents from that tract. However, reinvestment in community requires taking a more collective approach at times. Historic patterns of disinvestment have impacted entire communities as well as individuals. Therefore, we recommend that the agencies weight the borrower distribution more heavily in a 60/40 split. This approach will appropriately reflect the importance of lending to LMI individuals as well as to LMI geographies, while limiting the potential unintended consequences of gentrification and displacement.

Question 84 – Should the agencies use loan count in conjunction with, or in place of, dollar volume in weighting product line conclusions to determine the overall Retail Lending Test conclusion in an assessment area?

Answer – The agencies should use loan count in conjunction with dollar volume in weighting product line conclusions in an assessment area. A weighted average would be appropriate here. As stated throughout this letter, we urge the agencies to consider all consumer loans, direct and indirect, rather than just automobile purchase lending. Access to safe and affordable consumer loan products is extremely important for the financial health of LMI communities. Historic redlining and patterns of disinvestment have left many communities with weak relationships with traditional financial institutions. Unfortunately, predatory financial service providers have stepped in to fill that gap and they specifically target and extract wealth from LMI communities. By offering safe, affordable small-dollar loan products, banks can help interrupt the cycle of predatory debt that traps so many consumers, particularly LMI consumers.

Combining the loan count and dollar volume in determining the Retail Lending Test conclusion will capture the impact of consumer loans, which will likely be more numerous, while still emphasizing the importance of mortgage loans, which will likely have much higher dollar values.

Question 85 – Would identifying underperforming markets appropriately counter the possibility that the market benchmarks might be set too low in some assessment areas? If so, what data points should be used to set expectations for the market benchmark? How far below this expectation should an observed market benchmark be allowed to fall before the market is designated as underperforming?

Answer – We recommend that the agencies implement statistical models to calculate the predicted market benchmark, and then use the higher of the predicted benchmark and the actual market benchmark. This would create an incentive for strong performance, even in markets where lenders overall are underperforming.

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?

Answer – Yes, the agencies should use such information under the Retail Lending Test. Each agency's community affairs team should oversee the collection of oral and written comments as well as other research (e.g., data publications, news articles) to inform examiners in determining Retail Lending Test conclusions. The agencies must be explicit and transparent about how adjustments will be made to the Retail Lending Test conclusion in response to these other data sources and factors.

Retail Lending Test: Evaluation Framework for Retail Lending Test Conclusions at the State, Multistate MSA, 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?

Answer – Yes, all large banks should have their retail lending in outside retail lending areas evaluated on CRA exams. There should be no percentage threshold for exemption.

Question 88 – Does the tailored benchmark method proposed above for setting performance ranges for outside retail lending areas achieve a balance between matching expectations to a bank's lending opportunities, limiting complexity, and setting appropriate performance standards? Should the agencies instead use less tailored benchmarks by setting a uniform outside retail lending areas benchmarks for every bank? Or should the agencies use a more tailored benchmarks by setting weights on geographies by individual product line?

Answer – We support the proposed method outlined in the NPR.

Question 89 – Should assessment area and outside retail lending area conclusions be weighted by the average of a bank's percentage of loans and deposits there? Is the proposed approach for using FDIC's Summary of Deposits data for banks that do not collect and maintain deposits data appropriate? Should the agencies use another method for choosing weights?

Answer – Yes, using a weighted average based on percentages of loans and of deposits would be appropriate. As stated throughout this comment letter, we urge the agencies to eliminate the distinction between large banks over and under $10 billion in assets and instead require all large banks to report deposits data.

Retail Services and Products Test

The Retail Services and Products Test is a crucial component of CRA exams. As such, all banks should be examined under this test, not just large banks. Small and mid-sized banks can be very innovative and responsive to community needs as they are more likely to be regional or local banks. They may have more of a stake in their community's financial health and be more attuned to unique needs of the LMI communities that they serve. On the other hand, we have seen an alarming trend of certain state-chartered banks partnering with predatory nonbank lenders, allowing them to use the bank's charter and preemption privileges to evade state consumer protection laws and interest rate caps (National Consumer Law Center, *High-Cost Rent-a-Bank Watchlist*). All banks must be evaluated under the full Retail Services and Products Test and given positive consideration for responsive activities or negative consideration for predatory activities as appropriate.

The evaluation of a bank's branch operations and distribution is another critical component to ensuring that banks are serving LMI communities. Branches continue to be important to LMI communities. Many consumers, particularly in LMI communities, still prefer to bank through a local branch office rather than online, and a bank's physical presence in a community facilitates deeper, more meaningful, and more frequent connections with community-based organizations, local small businesses, and residents. Relatedly, the agencies propose to consider remote service facilities, which should also include partnerships with community-based facilities and CDFIs. These kinds of partnerships can enhance access to banking services in LMI communities by meeting consumers in the spaces that they already frequent.

It is not clear in the NPR how a bank's record of branch openings and closures will affect their conclusion under this test. If banks are to receive positive consideration for opening or operating branches in LMI communities and communities of color, they must also receive negative consideration for closing branches in those same communities. The agencies should also include a longitudinal analysis of branch closures over a longer period of time than the exam period under this test. A longer-term analysis may detect a pattern of branch closures that harms LMI communities and communities of color that would not be evident from just the exam period. A bank should receive negative consideration if they are found to be gradually closing branches in LMI areas and communities of color over a longer period of time.

Question 90 – Should the agencies use the percentage of families and total population in an assessment area by census tract income level in addition to the other comparators listed (i.e., census tracts, households, and businesses) for the assessment of branches and remote service facilities?

Answer – No; we believe the comparators as proposed are appropriate.

Question 91 – Are there other alternative approaches or definitions the agencies should consider in designating places with limited branch access for communities, such as branch distance thresholds determined by census tract population densities, commuting patterns or some other metric? For example, should the agencies not divide geographies and use the more flexible, second alternative approach?

Question 92 – How should geographies be divided to appropriately identify different distance thresholds? Should they be divided according to those in the proposed approach of urban, suburban, and rural areas; those in the alternative approach of central counties, outlying counties, and nonmetropolitan counties; or some other delineation?

Question 93 – How narrowly should designations of low branch access and very low branch access be tailored so that banks may target additional retail services appropriately?

Question 94 – Is a fixed distance standard that allows the concentration of low and very low branch access areas to vary across regions, such as that in the proposed approach, or a locally determined distance threshold that identifies a similar concentration of low and very low branch access areas within each local area, such as that in the alternative approach, most appropriate when identifying areas with limited branch access?

Answer (responding to parts of questions 91-94) – We are glad that the agencies are dedicating specific attention to areas with low access to bank branches. Branches continue to be important to LMI communities and communities of color. Many consumers, particularly in these communities, still prefer to bank through a local branch office rather than online, and a bank's physical presence in a community facilitates deeper, more meaningful, and more frequent connections with community-based organizations, local small businesses, and residents. However, the NPR is not entirely clear on how an analysis of branching patterns will impact a bank's CRA rating. We support the National Community Reinvestment Coalition's (NCRC) recommendation that the agencies refine this aspect of the proposed rules further and implement quantitative performance metrics. For example, regulators could evaluate how a bank's branch distribution compares to its peers. In terms of identifying areas with low access to bank branches, we prefer the proposed local approach because it is more tailored to local conditions.

Question 95 – Should the agencies take into consideration credit union locations in any of the proposed approaches, or should the analysis be based solely on the distribution of bank branches? For example, in the proposed or local approach, having a credit union within the relevant distance of a census tract population center would mean that the census tract would not be a very low branch access census tract (if there were no bank branch present).

Answer – No, the agencies should not consider credit union locations in identifying low bank branch access census tracts. Credit unions are membership-based and can only serve those within the parameters of their charter. Whereas a bank branch can provide services to individuals who are not account holders with that bank, credit unions are not accessible to every person who might walk in the door. Having a credit union within the relevant distance of a census tract population center does not necessarily mean that the population of the tract can utilize it, so it does not necessarily change the level of access to banking services in that tract. The agencies should only consider bank branches in these calculations.

Question 96 – If the local approach were adopted, how frequently should the local distances be updated?

Answer – They should be updated annually. CRA exams consider activities by year, so annual updates to this metric of branch access would be appropriate.

Question 97 – What other branch-based services could be considered as responsive to low and moderate-income needs?

Answer – The agencies might consider responsive branch-based hybrid delivery systems. For example, allowing a consumer to go to their local branch and meet virtually with a loan officer based in that region who knows that market. The bank might also provide branch-based virtual meetings with bank staff that can help walk a customer through an application process or help them understand the difference between two of the bank's products and how they work. These types of offerings would be especially responsive to LMI community needs in areas with low access to broadband internet or where a significant portion of the population does not have home internet access or a computer. Consumers could still access the benefits of virtual services through their local bank branch.

Question 98 – Should branches in distressed or underserved middle-income nonmetropolitan census tracts receive qualitative consideration, without documenting that the branch provides services to low- or moderate-income individuals?

Answer – Without documenting that the branch serves LMI individuals, no, it should not receive consideration on a CRA exam. However, this would be an opportunity to leverage reported deposits data. By reporting data on the locations of depositors, a bank could demonstrate that a branch in a distressed or underserved middle-income nonmetropolitan tract is serving local LMI depositors. As stated throughout this comment letter, we strongly urge the agencies to require all large banks to report deposits data, not just banks with assets over $10 billion.

Question 99 – Should the agencies provide favorable qualitative consideration for retail branching in middle-income and upper-income census tracts if a bank can demonstrate that branch locations in these geographies deliver services to low- or moderate-income individuals? What information should banks provide to demonstrate such service to low- or moderate-income individuals?

Answer – This is an opportunity to leverage deposits data. By reporting data on the locations of depositors, a bank could demonstrate that a branch in a distressed or underserved middle-income nonmetropolitan tract is serving local LMI depositors. As stated throughout this comment letter, we strongly urge the agencies to require all large banks to report deposits data, not just banks with assets over $10 billion.

Question 100 – How could the agencies further define ways to evaluate the digital activity by individuals in low-, moderate-, middle-, and upper-income census tracts, as part of a bank's digital and other delivery systems evaluation?

Answer – We strongly recommend that the agencies apply the proposed additional data reporting requirements for banks with assets over $10 billion to all large banks. Among many other benefits, this change would allow examiners to draw on a wealth of data to compare digital activity by depositor location between different peer banks. The agencies should also develop quantitative metrics on digital activity to improve consistency and transparency in CRA exams. A narrative evaluation of a bank's digital activity and accessibility is not sufficient here and could lead to rating inflation on exams.

Question 101 – Should affordability be one of the factors in evaluating digital and other delivery systems? If so, what data should the agencies consider?

Answer – Yes, affordability is a critical factor to evaluate under the Retail Products & Services Test. Wherever possible, the agencies should consider how fees attached to deposit or credit products and delivery systems may impact LMI borrowers at each stage of the process in accessing those services. For example, the agencies could consider whether digital applications require different fees than applications submitted in person, whether accounts with fees allow a different level of access to digital systems compared to free or low-cost accounts, etc.

Question 102 – Are there comparators that the agencies should consider to assess the degree to which a bank is reaching individuals in low- or moderate-income census tracts through digital and other delivery systems?

Answer – We strongly recommend that the agencies apply the proposed additional data reporting requirements for banks with assets over $10 billion to all large banks. Among many other benefits, this change would allow examiners to draw on a wealth of data to compare digital activity by depositor location between different peer banks. The agencies should also develop quantitative metrics on digital activity to improve consistency and transparency in CRA exams. A narrative evaluation of a bank's digital activity and accessibility is not sufficient here and could lead to rating inflation on exams.

Question 103 – Should the evaluation of digital and other delivery systems be optional for banks with assets of $10 billion or less as proposed, or should this component be required for these banks? Alternatively, should the agencies maintain current evaluation standards for alternative delivery systems for banks within this tier?

Answer – No, all large banks should be evaluated on their digital and other delivery systems. As stated throughout this comment letter, we urge the agencies to eliminate the distinction between large banks with assets over $10 billion and all other large banks. The proposed additional requirements for large banks over $10 billion are in fact appropriate for all large banks, including reporting data on digital delivery systems. As the banking industry has evolved with the growth of the internet, banks of all sizes have started using digital systems to deliver banking services to customers. Customers have come to expect these features, so providing digital delivery systems has become necessary to compete for customers in the industry. As with all industries that use digital customer service systems, banks maintain detailed data on how customers use their platforms to inform ways that they can upgrade their systems to improve the user experience. Banks should be able to adapt this information for the purposes of CRA exams. Evaluating all large banks on their digital delivery systems will add invaluable depth and detail to exams, making it well worth the cost of compliance with this data reporting requirement.

Question 104 – Are there additional categories of responsive credit products and programs that should be included in the regulation for qualitative consideration?

Answer – Yes. In terms of consumer loans, the agencies should give positive consideration to banks that provide small-dollar, short-term loans at affordable rates – well under 36% APR. Access to safe and affordable consumer loan products is extremely important for the financial health of LMI communities. Historic redlining and patterns of disinvestment have left many communities with weak relationships with traditional financial institutions. Unfortunately, predatory financial service providers have stepped in to fill that gap and they specifically target and extract wealth from LMI communities. By offering safe, affordable, and short-term small-dollar loan products, banks can help interrupt the cycle of predatory debt that traps so many consumers, particularly LMI consumers. Where predatory lenders once extracted wealth, banks can instead help consumers and communities build wealth.

Additionally, the regulators should give positive consideration to account features that provide transparency around an expected overdraft. PNC's "low-cash mode" impressed us, and we believe such a feature could also be useful for accounts without overdraft protection. Many consumers do not know exactly when an overdraft fee will be assessed or how they can prevent an incoming overdraft situation, so it is extremely helpful to provide an account feature that alerts a consumer to an impending overdraft, discloses when the overdraft fee will be assessed, and provides ways that the consumer can fund the account or reject charges to avoid the overdraft situation altogether.

Question 105 – Should the agencies provide more specific guidance regarding what credit products and programs may be considered especially responsive, or is it preferable to provide general criteria so as not to discourage a bank from pursuing impactful and responsive activities that may deviate from the specific examples?

Answer – General criteria would be preferable. If the agencies do provide more specific guidance, they must emphasize that they are only guidelines, not an exhaustive list, and that banks are encouraged to offer unique and responsive products for LMI consumers and communities.

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?

Answer – As stated in the introduction of this comment letter, we urge the agencies to consider racial demographics in CRA exams. The CRA statute states that banks shall be evaluated on their "*record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods.*" Agency lawyers chose to interpret the word "including" to mean "excluding everything else." This interpretation ignores overwhelming evidence in the commentary, notes and discussion surrounding the drafting and passage of the CRA, its connection to other recently enacted financial service laws targeting race and ethnicity, and the case that this Act was meant to combat the practice of redlining, where financial services were withheld from viable customers in neighborhoods classified as "high risk" based on race, not income. A much more reasonable and logical interpretation of the word "including" in this case would be "including but not limited to."

To that end, we recommend that the agencies consider special purpose credit programs (SPCPs) as one method of addressing the legacy of redlining. Although they are not a cure-all, SPCPs are one of many valuable tools for achieving this goal. The NPR mentions SPCPs targeted to LMI borrowers, but the agencies should also explicitly include SPCPs that serve communities of color as well, and should state that SPCPs can include mortgage programs, small business loans, consumer lending, or deposit products. Currently, SPCPs are underutilized in the banking industry, but specific recognition under CRA exams could lead to more robust SPCP offerings across financial services.

Question 107 – Are the features of cost, functionality, and inclusion of access appropriate for establishing whether a deposit product is responsive to the needs of low- and moderate-income individuals? What other features or characteristics should be considered? Should a minimum number of features be met in order to be considered 'responsive'?

Answer – Yes, those features are appropriate for evaluating the responsiveness of deposit products. The FDIC's Survey of Household Use of Banking and Financial Services provides useful detail on the features that would be particularly useful or have been particularly harmful to unbanked households.[4] For example, unbanked respondents cited minimum balance requirements and account fees as two common barriers to opening a bank account. We do not believe that a minimum number of features is necessary, but we do urge the agencies to compare a bank's products to their peers' offerings.

Question 108 – The agencies wish to encourage retail banking activities that may increase access to credit. Aside from deposit accounts, are there other products or services that may increase credit access?

Answer – Yes, the agencies should also consider technical assistance programs, clear communications with customers, and introductory credit products. Technical assistance programs like homeownership counseling and financial counseling provided by a bank can help restore trust in the financial system in communities that have been harmed by cycles of disinvestment and can help get prospective borrowers ready for a credit product. Accounts with features that communicate clearly with customers about potential problems or fees and how they can remedy the situation to avoid the fee can likewise restore trust in financial service providers and are positive influences on LMI individuals' financial health, putting them in a better position should they need access to credit. Finally, the agencies should also evaluate whether banks provide introductory credit products like safe and affordable small-dollar loans. Access to such products can help prevent an individual from resorting to a high-cost loan in an emergency and can interrupt the cycle of debt that traps many payday and title loan borrowers.

Question 109 – Are the proposed usage factors appropriate for an evaluation of responsive deposit products? Should the agencies consider the total number of active responsive deposit products relative to all active consumer deposit accounts offered by the bank?

Answer – Assessing usage of responsive deposit products is crucial. It makes no difference that a bank offers a responsive product if consumers do not know about it or cannot access it. The agencies should examine how banks market these products or how they inform consumers of them, how customers can open a responsive deposit account, and what other features are included. Yes, the total number of active responsive deposit products relative to all active deposit accounts is an appropriate metric to evaluate on this point, and it must also be compared to the performance of peer banks.

Question 110 – Should the agencies take other information into consideration when evaluating the responsiveness of a bank's deposit products, such as the location where the responsive deposit products are made available?

Answer – Yes. A bank should make responsive deposit products available through whatever channels their other deposit products are available. The agencies should especially consider whether there are additional hurdles to opening a responsive deposit product that would create barriers to access for LMI individuals and communities.

Question 111 – Should large banks with assets of $10 billion or less have the option of a responsive deposit products evaluation, as proposed, or should this component be required, as it is for large banks with assets of over $10 billion?

Answer – This component should be required of all large banks.

Question 112 – For all large banks, the agencies propose to evaluate the bank's delivery systems (branches and remote service facilities) at the assessment area level, and the digital and other delivery systems at the institution level. Is this appropriate, or should both subcomponents be evaluated at the same level, and if so, which level?

Answer – Digital, physical, and other delivery systems are equally important at the assessment area level and the institution level. They should be evaluated at both levels.

Question 113 – The agencies propose weighting the digital and other delivery systems component relative to the physical delivery systems according to the bank's business model, as demonstrated by the share of consumer accounts opened digitally. Is this an appropriate approach, or is there an alternative that could be implemented consistently? Or, should the weighting be determined based on performance context?

Answer – Branches continue to be important to LMI communities and communities of color, so the physical delivery systems component should be weighted more heavily. Many consumers, particularly in these communities, still prefer to bank through a local branch office rather than online, and a bank's physical presence in a community facilitates deeper, more meaningful, and more frequent connections with community-based organizations, local small businesses, and residents. However, given that online banking has given banks access to customers independent of branches, the business model of the bank is relevant here. For example, a bank that has few or no branches or physical facilities should not have a high weight on their physical delivery systems component.

We recommend that a bank that gathers 50% or more of its deposits from physical delivery systems should have a weight for the physical delivery systems component that is approximately two-thirds and one third for digital delivery systems. Banks that gather 30-50% of their deposits from branches should have a weight of 50-67% for their physical delivery systems component. Finally, banks that gather less than 30% of their deposits from branches should have less than 50% weight for their physical delivery systems component. Agencies should set these weights rather than leaving it up to examiner discretion.

Finally, we recommend that the agencies encourage banks to seek out other kinds of community partners to establish a physical presence and delivery systems for LMI communities and communities of color. For example, banks could partner with local CDFIs, community centers, local businesses like supermarkets, or government buildings like city halls. This would help to facilitate physical access to the bank's services for these communities by meeting those customers at locations that they already frequent in their communities.

Question 114 – How should the agencies weight the two subcomponents of the credit and deposit products evaluation? Should the two subcomponents receive equal weighting, or should examiner judgment and performance context determine the relative weighting?

Answer – The two subcomponents should receive equal weight by default.

Question 115 – Should the credit and deposit products evaluation receive its own conclusion that is combined with the delivery systems evaluation for an overall institution conclusion? Or should favorable performance on the credit and deposit products evaluation be used solely to upgrade the delivery systems conclusion? For large banks with assets of $10 billion or less that elect to be evaluated on their digital delivery systems and deposit products, how should their performance in these areas be considered when determining the bank's overall Retail Services and Products Test conclusion?

Answer – The credit and deposit products evaluation should receive its own conclusion separately from the delivery systems conclusion. As stated throughout this comment letter, we urge the agencies to require all large banks to be evaluated on their digital delivery systems, which should be part of the delivery systems evaluation conclusion.

Question 116 – Should each part of the Retail Services and Products Test receive equal weighting to derive the institution conclusion, or should the weighting vary by a bank's business model and other performance context?

Answer – Each part should receive equal weight by default for all large banks.

Community Development Financing Test

The Community Development Financing Test should be applied across retail lending assessment areas and our proposed deposit-based assessment areas, in addition to facility-based assessment areas. Banks should be engaging in community development (CD) in all communities they serve, not just where they have physical facilities.

In terms of the activities that will be considered under the Community Development Finance Test, we support the agencies considering past CD loans to encourage long-term investments and patient capital, but the agencies must clearly define this term. "Past CD loans" should be clearly defined to mean loans originated during a previous exam cycle. The same loan cannot count as an originated CD loan and a past CD loan within the same exam period. Similarly, the agencies must ensure that banks do not get positive consideration for activities that generate displacement. Determining whether an activity causes displacement will require qualitative research by the agencies' community affairs teams.

We appreciate the special attention to ensuring that community development activities have a strong positive impact in LMI communities, but the Impact Review as proposed is not detailed enough. In order to mitigate the risk of continued grade inflation, impact reviews should be quantitative in their assessment and inclusion in the CRA exam. The impact review should have its own score and weight separate from the community development metric score.

Question 117 – Should activities that cannot be allocated to a specific county or state be considered at the highest level (at the state or institution level, as appropriate) instead of allocated to multiple counties or states based upon the distribution of all low- and moderate-income families across the counties or states?

Answer – No, we recommend that the agencies allocate such activities to multiple counties and/or states based on the distribution of LMI households.

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?

Answer – We recommend that the agencies allocate such activities to multiple counties and/or states based on the distribution of LMI households.

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?

Answer – The agencies should keep their proposal of using the dollar value of deposits.

Question 120 – For large banks with assets of $10 billion or less, under the proposed Community Development Financing Test, is it appropriate to use the FDIC's Summary of Deposits data instead of deposits data that is required to be collected and maintained by the bank to tailor new data requirements, or would it be preferable to require collected deposits data for all large banks?

Answer – As stated throughout this comment letter, we urge the agencies to apply the proposed additional data reporting requirements for large banks with assets over $10 billion to all large banks instead.

Question 121 – What is the appropriate method to using the local and nationwide benchmarks to assess performance? Should the agencies rely on examiner judgment on how to weigh the comparison of the two benchmarks, or should there be additional structure, such as calculating an average of the two benchmarks, or taking the minimum, or the maximum, of the two benchmarks?

Answer – The agencies should not leave this weighting decision to examiner judgment. Instead, we recommend the following:

- In facility-based assessment areas where the local ratio is lower than the national ratio, the national ratio should have a weight of 60% and the local ratio should have a weight of 40%.
- In facility-based assessment areas where the local ratio is higher than the national ratio, the local ratio should have a weight of 60% and the national ratio should have a weight of 40%.

This framework would encourage more community development activity in markets that may be experiencing a dearth of such investment and incentivize strong performance on this test.

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?

Answer – We recommend that the agencies average data for the exam period when calculating benchmarks to best reflect any market shifts or changing circumstances over the entire exam period. The agencies should use the maximum amount of data in CRA exams whenever possible. This will make CRA exams more detailed, thorough, and accurate. As such, the agencies should use all the bank's reported data for the exam period, even if the available market data does not match up perfectly in terms of availability at the time the exam is being conducted.

Question 123 – When calculating the weighted average of facility-based assessment area conclusions and assessment area community development financing benchmarks, is it appropriate to weight assessment area metrics and benchmarks by the average share of loans and deposits, as proposed?

Answer – The agencies' proposed approach is appropriate. However, if a bank fails any of its assessment areas, it should receive a rating of Needs to Improve or below. This would ensure that small assessment areas with a low average share of loans and deposits still receive adequate attention and CRA activity, despite their smaller weight in calculating the Test conclusions.

Question 124 – Is the proposed use of the FDIC's Summary of Deposits data for banks that do not collect and maintain deposits data appropriate, or should all large banks be required to collect and maintain deposits data, which would enable the metrics and benchmarks to be based on collected deposits data for all large banks?

Answer – All large banks should be required to report deposits data.

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?

Answer – We recommend that the community development metrics and impact review components each receive their own conclusion. In calculating the test conclusion, the CD metrics score should have a weight of 60% and the impact review should have a weight of 40%. This would emphasize the importance of community development activities that have a strong, positive impact on and are particularly responsive to the needs of LMI communities, while still maintaining the focus on robust investment and metrics that create more transparency and consistency in CRA exams.

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?

Answer – Yes, the agencies should develop and publish standard metrics to create more transparency and consistency in impact review evaluations.

Community Development Services Test

Question 127 – Should volunteer activities unrelated to the provision of financial services be considered in all areas or just in nonmetropolitan areas?

Answer – CRA exams should only consider volunteer activities related to the provision of financial services.

Question 128 – For large banks with average assets of over $10 billion, does the benefit of using a metric of community development service hours per full time employee outweigh the burden of collecting and reporting additional data points? Should the agencies consider other quantitative measures? Should the agencies consider using this metric for all large banks, including those with average assets of $10 billion or less, which would require that all large banks collect and report these data?

Answer – All large banks should be required to report this information. The benefit of this added detail and transparency far outweighs the potential burden. This is already standard information that banks maintain internally, so converting it into a reportable format would not be a burdensome change for compliance.

Question 129 – How should the agencies define a full-time equivalent employee? Should this include bank executives and staff? For banks with average assets of over $10 billion, should the agencies consider an additional metric of community development service hours per executive to provide greater clarity in the evaluation of community development services?

Answer – The agencies should use the standard definition of full-time equivalent employee based on all people employed by the bank.

Question 130 – Once community development services data is available, should benchmarks and thresholds for the bank assessment area community development services hours metric be developed? Under such an approach, how should the metric and qualitative components be combined to derive Community Development Services Test conclusions?

Answer – Yes, the agencies should develop benchmarks once such data is available. Whatever benchmarks are developed, they must be quantitative, measurable, and compared to peers' performance wherever possible. Narrative representation alone is not sufficient for developing benchmarks. This may take time to develop, but it will be well worth it. In the interest of transparency and accountability, we also encourage the agencies to set a deadline at which they will review what data has become available and either begin developing metrics or set another review deadline.

Wholesale and Limited Purpose Test

The agencies must assess whether large banks that offer credit cards are responsibly meeting credit needs of LMI communities. Designating them as Wholesale or Limited Purpose institutions creates a gap in oversight for an important financial product.

Question 131 – How could the agencies provide more certainty in the evaluation of CD financing at the FBAA level? Should a bank assessment area CD financing metric be used to measure the amount of CD financing activities relative to a bank's capacity? If so, what is the appropriate denominator?

Answer – A model currently exists within the CRA examination process whereby a percentage of an institution's Tier 1 capital that is dedicated towards CD investment activity is used as a benchmark for performance. Adding CD lending activity to this existing procedure and creating a new FBAA benchmark with it would not be complicated.

Question 132 – Should a benchmark be established to evaluate CD financing performance for wholesale and limited purpose banks at the institution level? If so, should the nationwide CD financing benchmark for all large banks be used, or should the benchmark be tailored specifically to wholesale and limited purpose banks?

Answer – Woodstock's suggestion is to develop an answer to this question over time by initially using peer comparisons among wholesale and limited purpose banks while, at the same time, conducting analysis between the performance benchmarks of large banks and whether they differ significantly from those of wholesale or limited purpose banks. Ideally, a benchmark should be established based on the financial capacity of an institution rather than its charter.

Question 133 – For wholesale and limited purpose banks that wish to receive consideration for CD services, should these banks be required to opt into the proposed CD Services Test, or should they have the option to submit services to be reviewed on a qualitative basis at the institution level, without have to opt into the CD Services Test?

Answer – Optionality is not the friend of LMI communities. The market gravitates to activities and markets that offer the least regulatory burden. As such, all financial institutions should have their CD services considered as part of the CD exam.

Strategic Plans

Question 134 – Should the strategic plan option continue to be available to all banks, or do changes in the proposed regulation's assessment area provisions and the metrics approach reduce the need for the strategic plan option for banks with specialized business strategies?

Answer – The strategic plan option should only be available to those institutions that provide evidence that they would fail the "traditional" examination process through no fault of their own. Considerable community / public engagement would be required as part of the regulatory review process to make a determination whether the strategic plan option is justified and, if so, the requirements for compliance must follow the model for community benefit agreements that are locally negotiated, approved, and implemented. The strategic plan option must not be used for institutions that do not wish to make the effort or investment in complying with the "traditional" examination process.

Question 135 – Large banks electing to be evaluated under a strategic plan would have activities outside of FBAAs considered through RLAAs and then outside RLAAs. Should small and intermediate banks elected to be evaluated under a strategic plan be allowed to delineate the same types of assessment areas? What criteria should there be for choosing additional assessment areas? Could such banks have the ability to incorporate goals for FBAAs and goals for outside of assessment areas?

Answer – The category referred to as "intermediate bank" needs to be folded back into the "large bank" category. Additionally, Woodstock would prefer the existence of Deposit-Based Assessment Areas (DBAAs) over the existence of RLAAs because it would eliminate the unintended consequence of financial institutions capping mortgage and small business lending below the threshold for triggering RLAAs. Institutions that qualify for a strategic plan option that originate loans outside of their headquarters or FBAA locations and do not have deposit activities should be required to create RLAAs based on their concentration of lending market-by-market, and not set by any particular numerical threshold that can be strategically avoided.

Question 136 – In assessing performance under a strategic plan, the agencies determine whether a bank has "substantially met" its plan goals. Should the agencies continue to maintain the substantially met criteria? If so, should it be defined and how? For example, as a percentage of each measurable goal included in the plan, the percentage of goals met, or a combination of how many goals were not met and by how much?

Answer – Keeping this simple and recognizable is always the best option, so Woodstock Institute's suggestion is to emulate the letter grading system that is likely familiar to bank employees: 95%+ is Outstanding ("met") performance; 85-95% is High Satisfactory ("substantially met") performance; 75-85% is Low Satisfactory ("marginally met"); 65-75% is Needs to Improve ("did not meet") performance but will be eligible for a performance improvement plan (aka, "probation"); 65% and below is Substantial Non-Compliance ("didn't even try").

Question 137 – The agencies are considering announcing pending strategic plans using the same means used to announce upcoming examination scheduled or completed CRA examinations and CRA ratings. What are the potential advantages or disadvantages to making the draft plans available on the regulators' websites?

Answer – First, the existing mechanism by which the agencies announce upcoming examination schedules and completed CRA examinations has enormous room for improvement. Leveraging the network and distribution list of agency Community Affairs staff, the distribution list of community and consumer protection associations, and various industry listservs would enhance community engagement in the CRA examination, mergers & acquisition, and strategic plan review processes. Within the body of the announcement itself should be a link from which virtual comments can be made specific to an upcoming exam, an application, or a proposed strategic plan.

Question 138 – In addition to posting draft plans on a bank's website and the appropriate Federal bank agency's website, should approved strategic plans also be posted on a bank's website and the appropriate Federal banking agency's website?

Answer – Yes. In addition, the mechanism by which the agencies announce upcoming examinations of banks using a strategic plan should include a link to the full strategic plan and a link from which community input can be virtually submitted.

Assigned Conclusions and Ratings

The focus of the CRA is on the lending activity of each institution where it gathers deposits. While retail lending has traditionally been the dominant focus, the impact and importance of CD finance has shown a tremendous return on investment in LMI communities. As such, we propose that the Retail Lending Test and CD Finance Test be weighted equally at 35% each, with Retail Services and CD Services equally weighted at 15% each. This ensures the continued importance on retail lending and an incentive for CD finance.

Question 139 – The agencies request feedback on whether it would be more appropriate to weight retail lending activity 60% and CD activity 40% in deriving the overall rating at the state, multi-state MSA or institutions 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.

Answer – The intermediate bank classification should be eliminated and folded into the large bank category, so that there are only small banks and large banks. Absent that, intermediate banks should be required to comply with the CD services test. As such, and assuming that CD services is part of the CD test for intermediate banks, a 50/50 ratio between retail lending and CD is justified.

Question 140 – What are the advantages and disadvantages of the proposal to limit the state, multistate MSA, and institution-level ratings to at most a "Needs to Improve" for large banks with 10 or more assessment areas unless 60% or more of the bank's assessment areas at that level have an overall performance of at least "Low Satisfactory"? Should this limitation apply to all assessment areas, or only FBAAs? Is 10 assessment areas the right threshold number to prompt this limitation, and is 60% the right threshold number to pass it? If not, what should that number be? Importantly, what impact would this have on branch closures?

Answer – Successfully serving the financial service needs of LMI communities and individuals should not be an issue of math; we are talking about the economic foundation from which communities, families and individuals thrive. As such, an institution cannot be found as serving the needs of its community in a Satisfactory manner if they have failed one of them. The idea of having a threshold of a certain number of assessment areas or setting a threshold of communities the institution is allowed to fail is insensitive ... at best. Again, no bank should be asked to do less, and no community should be left behind because of this reform proposal. Anything less is a failure in meeting the core intent of the law.

Performance Standards for Small Banks and Intermediate Banks

Question 141 – The agencies propose to continue to evaluate small banks under the current framework in order to tailor the evaluation approach according to a bank's size and business model. What are other ways of tailoring the performance evaluation for small banks?

Answer – Optionality is the enemy of LMI communities and individuals when it comes to the provision of financial services. Giving small banks the option of the minimal CRA obligations associated with the current small bank exam versus the higher bar set by the retail lending test is an option in name only. No bank, in their right mind, would opt into the more stringent requirements. As such, it shouldn't be an option. After an appropriate transition period of 2 – 3 years, all small banks should be mandated to comply with the requirements of the proposed Retail Lending Test.

Question 142 – Should additional consideration be provided to small banks that conduct activities that would be considered under the Retail Services and Products Test, Community Development Financing Test, or Community Development Services Test when determining the bank's overall institution rating?

Answer – Consideration of activities beyond the scope of the Retail Lending Test should be limited to those institutions that have already achieved a Satisfactory or higher rating, and only for the purposes of achieving an Outstanding rating.

Question 143 – The agencies' proposal to require intermediate banks to be evaluated under the proposed Retail Lending Test is intended to provide intermediate banks with increased clarity and transparency of supervisory expectations and standards for evaluating their retail lending products. The agencies propose tailoring the application of this test by limiting data reporting requirements for intermediate banks. Are there other ways of tailoring the Retail Lending Test for intermediate banks that should be considered?

Answer – The intermediate bank designation should be eliminated, folded into the large banks, and subject to the full glory of the proposed Retail Lending Test.

Question 144 – The agencies propose to provide continued flexibility for the consideration of CD activities conducted by intermediate banks both under the status-quo CD test and the proposed CD Finance Test. Specifically, intermediate banks' retail loans such as small business, small farm, and home mortgage loans may be considered as CD loans, provided those loans have a primary purpose of CD and the bank is not required to report those loans. Should the agencies provide consideration for those loans under the CD Financing Test?

Answer – The intermediate bank designation should be eliminated and combined with that of large banks, thus eliminating the need for this level of flexibility.

Question 145 – Should intermediate banks be able to choose whether a small business or small farm loan is considered under the Retail Lending Test or, if it has a primary purpose of CD, under the applicable CD evaluation, regardless of the reporting status of these loans? Should the same approach be applied for the intermediate bank CD performance standards and for intermediate banks that decide to opt into the CD Financing Test?

Answer – The intermediate bank designation should be eliminated and combined with that of large banks, thus making this pursuit of regulatory flexibility unnecessary.

Effect of CRA Performance on Applications

Question 146 – Are the agencies' current policies for CRA performance on applications sufficient? If not, what changes would make the process more effective?

Answer – The track record of review and approval of bank applications indicates that the focus is on what is best for the industry rather than the community. As has been written and reinforced in a number of laws and regulations governing mergers and acquisitions, the primary purpose of government oversight on these transactions is to protect individual consumers, not the corporations involved. As such, the agencies have given woefully insufficient focus to the demonstrated benefit to vulnerable communities and individuals provided by these transactions / applications. At the very least, industry competitiveness and community benefit should be equal in their focus and importance.

Data Collection, Reporting, and Disclosure

Question 147 – What are the potential benefits and downsides of the proposed approach to require deposits data collection, maintenance, and reporting only for large banks with assets over $10 billion? Does the proposed approach create an appropriate balance between tailoring data requirements and ensuring accuracy of the proposed metrics? Should the agencies consider an alternative approach of requiring, rather than allowing the option for, large banks with assets of $10 billion or less to collect and maintain deposits data? If so, would a longer transition period for large banks with assets of $10 billion or less to begin to collect and maintain deposits data (such as an additional 12 – 24 months beyond the transition period for large banks with assets of over $10 billion) make this alternative more feasible?

Answer – The same infrastructure required for financial institutions to collect and report data for the FDIC Summary of Deposits gets the industry 80% of the way towards reporting detailed deposit data that will benefit communities through the creation of Deposit Based Assessment Areas and the reinforcement of the core purpose of the CRA: to identify where banks take deposits and how they are reinvested into those communities. All large financial institutions (including banks falling under the proposed intermediate category) should be required to report this data. Acknowledging that not all banks have the immediate capacity to comply, it would be reasonable to allow financial institutions a 3-year transition period during which software and application providers can build and implement appropriate systems that can be integrated into existing back-office data reporting infrastructure.

Question 148 – Should large banks with assets of $10 billion or less that elect to collect and maintain deposits data also be required to report deposits data? Under an alternative approach in which all large banks with assets of $10 billion or less are required to collect and maintain deposits data, should these banks also be required to report the data, or would it be appropriate to limit new data burden for these banks by no requiring them to report the data?

Answer – All large banks (including banks falling under the proposed intermediate category) should be required to collect and report deposit data.

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

Answer – The agencies would be well served to work with the financial industry to determine the best balance between accuracy and data as it relates to collection and calculations. Outside of that, the balance should be more on minimizing the economic burden of LMI communities than on the little effort it will take financial institutions to transition their FDIC Summary of Deposits data collection and reporting process towards this proposal.

Question 150 – Should deposits sourced from commercial banks or other depository institutions be excluded from deposits data that is reported or optionally maintained by banks? Should other categories of deposits be included in this deposits data?

Answer – Deposits reflect the foundation from which communities and financial institutions can invest. Irrespective of whether the deposits are retail, commercial or municipal, they are the foundation of existing safety & soundness, compliance, and financial capacity benchmarks. As such, ALL deposits should be included in the definition of deposits.

Question 151 – For what types of deposit accounts, such as pre-paid debit card accounts, and Health Savings Accounts, might depositor location be unavailable to the bank? For these account types, is it appropriate to require the data to be reported at the institution level? Should brokered deposits be reported at the institution level as well?

Answer – There is sufficient data associated with various accounts from which to ascertain the geographic location of the deposit customer, ranging from location of sale to the location of the employer. As such, the agencies would be well served to investigate available data on these types of products to see if a more specific geography can be attributed to the products than at the broader institution level.

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

Answer – Internal and external (Bank On) systems exist that permit the collection of deposit information at the county-level. This should not be burdensome or costly for financial institutions who don't already utilize these systems.

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

Answer – Provide sufficient time for existing financial services data systems providers that currently collect, geocode, validate and report data for Fair Lending and CRA purposes to create deposit-based data collection, validation and reporting applications. As an "add on" function to existing platforms, this solution should not be particularly expensive.

Question 155 – Should the agencies consider an alternative approach of publishing a data set containing county-level deposits data in order to provide greater insight into bank performance?

Answer – The data set should be reported at the smallest geographic level (ideally, census tracts). Data that cannot be reported at that level should be available by county or zip code.

Question 156 – Should banks collect and report an indicator for whether the loan was made to a business or farm with gross annual revenues of $250,000 or less or another gross annual revenue threshold that better represents lending to the smallest businesses or farms during the interim period the CFPB Section 1071 Rulemaking is in effect?

Answer – The agencies should have two fields indicating if the business or farm has revenues under $100,000 or between $100,000 and $250,000.

Question 157 – Would the benefits of requirement home mortgage data collection by non-HMDA reporter large banks that engage in a minimum volume of mortgage lending outweigh the burden associated with such data collection? Does the further benefit of requiring this data to be reported outweigh the additional burden of reporting?

Answer – The agencies must get the CFPB to lower the threshold for HMDA reporting to the previous threshold of 25. This would promote agency consistency and allow organizations like Woodstock Institute to study fair lending activities in non-metropolitan and rural markets where lenders often originate below the current 100 mortgage threshold. This void of data creates a vacuum of accountability and must be rectified.

Question 158 – Should large banks with assets of $10 billion or less be required to collect, maintain, and report automobile lending data? If so, would a longer transition period for large banks with assets of $10 billion or less to begin to collect, maintain, and report automobile lender data make this alternative more feasible? Does the added value from being able to use these data in the construction of metrics and benchmarks outweigh the burden involved in requiring data collection and reporting by these banks?

Answer – Woodstock Institute believes that all large banks (including banks falling under the proposed intermediate category) should report all consumer loans, including those originated by non-bank entities using the institutions' charter, and any investments made in securities backed by consumer loans. A 3-year transition period to build, test and implement the data collection, validation, and reporting infrastructure would be a reasonable amount of time.

Question 159 – Should the agencies streamline any of the proposed data fields for collecting and reporting automobile data? If so, would it still allow for constructing comprehensive automobile lending metrics?

Answer - Given how few fields are involved in the origination of consumer loans, there isn't much room for streamlining or any significant burden to lessen.

Question 160 – Should the agencies consider publishing county-level automobile lending data in the form of a data set?

Answer – Data for all consumer lending (direct and indirect) must be made publicly available for additional analysis and discussion by advocates, community leaders and community members. The data should be provided at the smallest geographic level (ideally, census tracts).

Question 161 – How might the format and level of data required to be reported affect the burden on those banks required to report CD financing activity data, as well as the usefulness of the data?

Answer – Agencies can choose to geocode the addresses provided by all large banks (including intermediate banks) on their CD financing activity data to minimize the burden on the bank. All CD financing activity data should be reported at the individual activity level.

Question 162 – What other steps can the agencies take, or what procedures can the agencies develop, to reduce the burden of collection of additional CD financing data fields while still ensuring adequate data to inform the evaluation of performance? How could a data template be designed to promote consistency and reduce burden?

Answer – The agencies can develop a mutually agreed-upon template in conjunction with the banking industry, develop training materials and programs, and provide sufficient time from which the industry can implement the reporting process.

Question 163 – Should the agencies require the collection and maintenance of branch and remote service availability data as proposed, or alternatively, should the agencies continue with the current practice of reviewing this data from the bank's public file?

Answer – The agencies should require the collection, maintenance and reporting of branch and remote service availability and utilize this information towards the creation of industry and market benchmarks.

Question 164 – Should the agencies determine which data points a bank should collect and maintain to demonstrate responsiveness to LMI individuals via the bank's digital and other delivery systems such as usage? Alternatively, should the agencies grant banks the flexibility to determine which data points to collect and maintain for evaluation?

Answer – The agencies should identify best practice products and services that capture this type of data (Bank On) and build off that to avoid duplication of effort.

Question 165 – Are the proposed data collection elements for responsive deposit products appropriate, or are there alternatives to the proposed approach that more efficiently facilitate the evaluation of responsive deposit products? Should the agencies require collection and maintenance of specific data elements for the evaluation of responsive deposit products? Alternatively, should the agencies grant banks the flexibility to determine which data points to collect and maintain for evaluation?

Answer – Collecting and reviewing the number and percentage of responsive deposit products and the number of those products opened and closed on an annual basis by income is appropriate and an important tool for analysis at the local and policy level.

Question 166 – Does the proposed retail services data exist in a format that is feasibly transferable to data collection, or would a required template provided by the agencies be sufficient in the collection of retail services and products information?

Answer – Working in tandem with financial industry representatives towards the creation of a workable template is encouraged. Prior to implementation, that template should be released for public input.

Question 167 – What steps can the agencies take to reduce burden of the proposed information collection requirements while still ensuring adequate information to inform the evaluation of services?

Answer – The agencies should coordinate among financial institution representatives, back-office service providers and community organizations toward the creation of templates, desktop guides / manuals, and training programs for all stakeholders.

Question 168 – Should large banks with assets of $10 billion or less be required to collect and maintain data on deposit product responsiveness and/or digital and other delivery systems?

Answer – All large banks (including banks falling under the proposed intermediate category) should be required to collect and maintain data on deposit product responsiveness and/or digital and other delivery systems. A 3-year transition period from which to develop the necessary infrastructure (or to identify an appropriate 3rd party vendor) to collect, validate and report the data is reasonable.

Question 169 – Should large banks with assets of $10 billion or less be required to collect CD services data in a machine-readable form, as prescribed by the agencies, equivalent to the data required to be collected and maintained by large banks with assets of over $10 billion?

Answer - All large banks (including banks falling under the proposed intermediate category) should be required to collect and maintain data on CD services in a machine-readable form. A 3-year transition period from which to develop the necessary infrastructure (or to identify an appropriate 3rd party vendor) to collect, validate and report the data is reasonable.

Question 170 – Should large bank with assets of over $10 billion be required to collect, maintain, and report data on the number of FTE at the assessment area, state, multistate MSA and institution level in order to develop a standardized metric to evaluate CD service performance for these banks?

Answer - All large banks (including banks falling under the proposed intermediate category) should be required to collect and maintain the data. Additionally, the performance evaluation should include a copy of the institution's most recent EEO-1 Component Data report to evaluate the level of each institution's diversity and inclusion.

Content and Availability of Public File, Public Notice by Banks, Publication of Planned Examination Schedule, and Public Engagement

Question 171 – Should small banks that opt to be evaluated under the metrics-based Retail Lending Test be required to collect, maintain, and report related data or is it appropriate to use data that a small bank maintains in its own format or by sampling the bank's loan files?

Answer – Given the important role that small banks play in non-metropolitan and rural communities, and their growing partnerships with non-bank lenders who need to rent a charter from which to originate loans, small banks must be held to the highest regulatory oversight standard possible. As such, all small banks should be required to transition from the current small bank exam to the Retail Lending Test within 3 years.

Question 172 – Would a tool to identify retail lending assessment areas based on report data be useful?

Answer - The creation of RLAAs violate the law's connection between deposit gathering and reinvestment and will create the unintended consequence of financial institutions capping mortgage and small business lending below the threshold from which RLAAs would be triggered. Creating a tool enabling institutions to identify which communities should have internal caps on mortgage and small business lending would be counterproductive and actively harmful.

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

Answer – The agencies should disclose HMDA data by race and ethnicity in large bank CRA performance evaluations if it includes an appropriate summary of the institution's fair lending performance and a description of how the two are interconnected.

Content and Availability of Public File, Public Notice by Banks, Publication of Planned Examination Schedule, and Public Engagement

Question 174 – Are there other ways the agencies could encourage public comments related to CRA examinations?

Answer – (1) Use existing large distribution networks to announce upcoming CRA exams; (2) include a link in the announcement for people to submit comments; and (3) create an open database for individuals and organizations interested in providing comments.

Question 175 – Is there additional data the agencies should provide the public and what would that be?

Answer – Create a new summary of fair lending exam outcomes to accompany the HMDA data and include a narrative that connects the data and fair lending exam to the CRA outcome. In addition, all research or performance context information applicable to the business model of the bank and its assessment areas, as well as lending, investment and service data that is available prior the state of the exam.

Question 176- Should the agencies publish bank-related data, such as retail lending and CD financing metrics, in advance of an examination to provide additional information to the public?

Answer – In order to maximize both the opportunity and the effectiveness of public comments in advance of CRA examinations, the agencies should publish as much data as possible.

Transition

Question 178 - The agencies ask for comment on the proposed effective date and the applicability dates for the various provisions of the proposed rule, including the proposed start date for CRA examinations under the new tests.

Answer – The process by which financial institutions would create the infrastructure for data collection / reporting and for on-the-ground compliance requires more than a 60-day transition. The definitions, tests and data collection requirements should take at least 2 years to set up effectively, with data collection beginning the following year. Keep in mind that this is not the only high-maintenance data and banking platform initiative at these institutions, and the calendars for major IT initiatives are usually full 2 years out. As such, new CRA exams should start a minimum of 3 years after the publication of a final rule but should be determined by proactive engagement with the banking industry and community stakeholders.

Question 179 – Would it be better to tie the timing of a change to the proposed small business and small farm definitions to when the CFPB finalizes its Section 1071 Rulemaking or to provide an addition year after the CFPB finalizes its proposed rule?

Answer – It would be best to time the change to the proposed small business and small farm definitions to when the CFPB finalizes its Section 1071 rulemaking process.

Question 180 – When should the agencies sunset the agencies' small business loan and small farm loan definitions?

Answer – Coordination between the agencies and CFPB would ensure a smooth transition for both reporting and CRA exam cycles.

We appreciate the opportunity to comment on this important rule change. If you have any question, please don't hesitate to reach to me at hmendez@woodstockinst.org, Brent Adams, SVP of Policy and Communication at badams@woodstockinst.org, or Jane Doyle, Policy and Communication Associate at jdoyle@woodstockinst.org.

Sincerely,

[redacted]

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