



August 5, 2022

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

James P. Sheesley
Assistant Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Benjamin W. McDonough
Chief Counsel
Office of the Comptroller of the Currency
400 7th Street, SW, suite 3E-218
Washington, DC 20219

Re: The Community Reinvestment Act (Docket No. R-1769 and RIN 7100-AG29—FRB; RIN 3064-AF81—FDIC; and Docket ID OCC-2022-0002—OCC)

Ladies and Gentlemen:

PNC Bank, National Association (“PNC”) appreciates the opportunity to comment on the notice of proposed rulemaking (“Proposal”)¹ issued by the Office of the Comptroller of the Currency (“OCC”), the Board of Governors of the Federal Reserve System (“FRB”), and the Federal Deposit Insurance Corporation (“FDIC”) (together, the “Agencies”) to modernize the regulations (“CRA Regulations”)² implementing the Community Reinvestment Act of 1977 (“CRA” or the “Statute”).³ We commend the Agencies for seeking the public’s input on ways to enhance the CRA Regulations, consistent with the Statute, so that insured depository institutions

¹ 87 Fed. Reg. 33884.

² See 12 C.F.R. Parts 25 and 195 (OCC CRA Regulations). The FRB and the FDIC have adopted substantially identical CRA Regulations at 12 C.F.R. Parts 228 and 345, respectively.

³ Public Law 95-128, 91 Stat. 1147 (Oct. 12, 1977), *codified at* 12 U.S.C. § 2901 *et seq.*

may more effectively serve the convenience and credit needs of their entire communities, including low- and moderate-income (“LMI”) individuals and neighborhoods, and other individuals and areas of need throughout the U.S.

PNC is a Main Street regional bank with approximately \$441 billion in deposits and approximately 2,535 branches and 9,500 automated teller machines (“ATMs”) across the eastern, mid-western, and southwest U.S.⁴ PNC offers a wide range of retail banking products and services to consumer and small-business customers, including deposit, lending, brokerage, investment management and cash management products and services. Our customers are serviced through our extensive branch and ATM networks, professionally-staffed customer service centers accessible via toll-free numbers, and customer-friendly online banking and mobile channels. PNC is ranked among the top small-business lenders and is one of the nation’s top retail lenders and servicers of residential mortgage loans nationwide.

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

We engage extensively with local government officials, non-profit and community organizations, and business and civic leaders in all of our major local markets. We do so by utilizing our proven Regional President model, with a Regional President in each of our local markets who is responsible for coordinating our community and civic engagement, as well as for ensuring that the full range of PNC products and services are effectively delivered to meet the deposit, credit, and other financial needs of the community. In 2021, PNC conducted numerous community listening sessions with more than 150 community organizations from across the nation, including member organizations of the National Community Reinvestment Coalition, the National Diversity Coalition, the Greenlining Coalition, the California Reinvestment Coalition, and Faith and Community Empowerment. Using the feedback from these discussions, PNC in 2021 announced a new Community Benefits Plan, through which PNC will provide \$88 billion in loans, investments, and other financial support to bolster economic opportunity for LMI individuals and communities, people and communities of color, and other underserved individuals and communities over a four-year period beginning January 1, 2022. Over this period, PNC expects to:

⁴ As of June 30, 2022, PNC has branches in Pennsylvania, Alabama, Arizona, California, Colorado, Delaware, District of Columbia, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Jersey, New Mexico, New York, North Carolina, Ohio, South Carolina, Tennessee, Texas, Virginia, West Virginia, and Wisconsin.

- Originate at least \$47 billion in residential mortgage and home equity loans to LMI and minority borrowers and in LMI and majority-minority census tracts;
- Originate at least \$26.5 billion in loans to small businesses in LMI communities, majority-minority census tracts, businesses with less than \$1 million in revenue and small farms;
- Provide at least \$14.5 billion in community development loans and investments across all markets, including at least \$400 million for Community Development Financial Institutions (“CDFIs”) that help meet the banking and financial service needs of traditionally underserved communities; and
- Increase to at least \$500 million PNC’s charitable giving, including sponsorships and philanthropic grants.

Under the day-to-day leadership and management of our Community Development Banking (“CDB”) team, PNC engages with consumer advocacy and non-profit organizations, and community development (“CD”) corporations, among others, at a local, regional, and national level to find ways to improve the quality of life for individuals, families and small businesses in LMI communities throughout PNC’s footprint. Committed to making a positive difference, CDB market managers and territory executives have demonstrated leadership through the use of innovative products and capital structures that are responsive to community needs. The following highlights only some of the impactful activities conducted by PNC in recent years:

- PNC provided more than \$21.7 billion in community development financing that benefited LMI families and communities between 2017–2021, including more than \$18 billion in CD loans.
- Access to affordable rental housing is a fundamental need for low-income families and seniors. During the 5-year period from 2017 to 2021, PNC invested \$3.2 billion in equity associated with Low-Income Housing Tax Credits (“LIHTC”). In 2021, PNC was the third-largest LIHTC syndicator/investor.⁵
- In 2003, we pioneered investing in the New Market Tax Credits (“NMTC”) program, providing equity capital to projects that revitalize/stabilize, create jobs and drive investment in some of the country’s most distressed communities. Since then, we have made more than \$775 million in NMTC-qualified equity investments.
- The PNC Foundation provided more than \$204.5 million in CRA-eligible charitable giving between 2017–2021. The grants supported CDFIs and non-profit organizations with a mission to service LMI households.

⁵ National Multifamily Housing Council annual survey. See U.S. National Multifamily Housing Council 10 Largest Apartment Syndicators, available at <https://www.nmhc.org/research-insight/the-nmhc-50/top-50-lists/2022-top-syndicators-list/>.

- PNC has committed \$500 million to Grow Up Great[®], the company's signature multi-year, bilingual initiative in early childhood education. Since the program's launch in 2004, the PNC Foundation has awarded \$207 million in grants to support high quality early education, and more than 8 million individuals—particularly underserved children—throughout 25 states and the District of Columbia have benefited. PNC employees have volunteered over 1 million hours in support of the program

More recently, PNC launched this year a new Minority Business Development Group composed of bankers and advocacy partners to lead a national effort to establish and deepen relationships with minority-owned business clients and prospects. The Minority Business Development Group will work in close collaboration with our CDB team and Regional Presidents to deliver products, solutions, and resources focused on advancing the financial wellness of emerging minority businesses. The financial service solutions that we provide, together with our philanthropic giving and volunteerism, create a series of benefits that strengthen our communities.

I. Executive Summary

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

The CRA was adopted in the late 1970s, and the current CRA Regulations were last comprehensively assessed and updated on an interagency basis more than a decade ago. Since that time, customer banking preferences have changed significantly and they continue to evolve, with more customers, including LMI customers, preferring to interact with their banking provider through non-branch channels, such as online banking, mobile banking, and ATMs. Banks are adapting to these changes in different ways depending on their respective business models.

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

The Proposal includes some of the most significant interagency changes to the CRA Regulations in decades. These changes include new assessment area requirements, four new tests with numerous new bank metrics and benchmarks, and substantial data collection and reporting requirements. The Proposal would significantly impact banks' business models, strategies, products, resources, communities, and CRA evaluations, and thus directly affect future expansion by banks.

We support several key aspects of the Proposal. For example, we support the Agencies' effort to clarify and provide increased transparency and certainty regarding the types of loans, investments, and services that qualify for CRA credit (together, "CRA activities"). We believe that the proposed illustrative list of types of CRA activities will be an effective resource and that the proposed approach for both updating the list and obtaining clarification on whether additional activities qualify for CRA credit is appropriate. In particular, we appreciate the proposed clarification that CD loans, investments, and services supporting naturally-occurring affordable housing would be eligible for CRA credit.

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

- **Exclude Traditional Banks that Operate Primarily Through a Branch Network from Retail Lending Assessment Areas and the Outside Retail Lending Area.** Retail Lending Assessment Areas ("RLAAs") and Outside Retail Lending Areas (together, the "RLAA framework") are unnecessary for traditional branch-based banks, create incentives that will harm lending in certain areas and further perpetuate an uneven playing field between traditional banks and largely branchless banks. The RLAA framework should only apply to a bank that engages in 50 percent or more of its total retail lending outside of its facility-based assessment areas ("FBAAs"). A bank that is subject to the RLAA framework should then be required to establish a RLAA only in an area where the bank engages in a *significant amount* of retail lending compared to the bank's total retail lending.⁶
- **Revise the Definition of Deposits to Avoid Anomalies.** The proposed definition of "deposits" has the potential to significantly skew the allocation of nationwide corporate deposits to a single assessment area, resulting in inaccurate bank metrics and market-based benchmarks, increased CRA "hot spots" in large metropolitan areas, and decreased CRA activities in underserved rural or nonmetropolitan areas. The Agencies can address this and not competitively disadvantage banks with significant commercial activities by modifying the definition of "deposits" to exclude corporate deposits.
- **Set a Bank's "Major Product Lines" at the Institution Level.** Assigning Major Product Lines at the assessment area level will produce uncertainty and incentivize

⁶ See the comment letter by PNC and other regional and midsize banks addressing the RLAA and Outside Retail Lending Area framework.

banks to potentially limit credit, and it is unfair to evaluate a bank based on product lines that will not be known until after an evaluation period ends. Success under the Retail Lending Test will require new strategies and execution plans, and this is fundamentally impractical to execute when success parameters could vary so significantly by market. A better approach that would provide more certainty, be less susceptible to natural shifts in the economy and consumer demand, and better align with a bank's retail strategies would be for the Agencies to set a bank's Major Product Lines at the institution level.

- **Increase CRA Credit for LIHTC and NMTC Sponsorship and Syndication.** Given the inherent benefits of LIHTC and NMTC fund syndication for the communities and other CRA-credit seeking banks, the efforts involved in syndicating funds, and the expected increase in appeal of lending products over investments as a result of the combined CD Financing Test, we urge the Agencies to provide more quantitative and qualitative consideration of the value of LIHTC and NMTC syndications and sponsorship activities when finalizing the Proposal.
- **Extend the Transition Schedule.** The Agencies drastically underestimate the Proposal's burden on large banks and the time, resources, and execution needed to adjust long-term CRA strategies. The new assessment area, data collection, recordkeeping, and reporting requirements of any final rule should become effective no earlier than two years after the effective date of the final rule. The Retail Lending and CD Financing Tests should not become effective until a bank's first evaluation period that begins at least three years after the Agencies publish the community and market benchmarks necessary to assess compliance with such tests and adjust resources and CRA strategy.

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

- **Indirect Auto Loans.** While indirect loans improve funding availability in communities and help individuals conveniently and expeditiously purchase vehicles, the customer does not have a direct relationship with the funding bank—the dealer interacts almost exclusively with the customer. As a result, the bank has little to no influence over the customers that submit indirect auto loan applications. A bank should not be evaluated under CRA measures for matters it cannot control.
- **Naturally-Occurring Affordable Housing.** The proposed “affordable” rent requirement likely renders the category of naturally-occurring affordable housing under the Proposal as unusable in practice, given rents deemed “affordable” for this purpose would be significantly lower than affordable market rents and even government-subsidized rents. The Agencies should revise the definition of “affordable” to be in line with current standards.

Each of these critical issues are discussed at length below, and we recommend solutions and alternatives to help guide the Agencies. PNC also has actively participated in the development of the comment letter on the Proposal by regional and midsize banks specifically commenting on RLAA and Outside Retail Lending Areas,⁷ and our comments here supplement the comments provided in that letter.

II. Banks Should Not Be Penalized or Disadvantaged Under the CRA Regulations Because of Their Business Model or Activities

PNC is engaged in retail banking, corporate and institutional banking, and asset management through a network of 2,535 branches in 30 states. We are concerned that the Proposal, as drafted, would penalize and disadvantage PNC for its branch-based business model that includes an extensive network of ATMs, including owned and operated ATMs. We are also concerned that PNC's commercial activities will unintentionally skew PNC's performance metrics, and that the Proposal may not appropriately value PNC's LIHTC and NMTC sponsorship and syndication activities.

A. Retail Lending Assessment Areas and Outside Retail Lending Areas

As a Main Street bank, we take pride in how we serve our customers and communities and are committed to making business decisions that positively impact our communities. Through executive leadership, strategic investments, and employee volunteerism, PNC helps build strong communities and create financial opportunities for individuals, families, and businesses throughout PNC's footprint, including in LMI neighborhoods. We achieve this primarily through our traditional bank business model to ensure the full range of PNC products and services are effectively delivered to meet the deposit, credit, and other financial needs of the community. PNC has approximately 2,535 branches⁸ and over 9,500 ATMs. PNC plans to establish at least 20 new branches in LMI communities across PNC's branch footprint, along with 10 mobile banking units primarily dedicated to serving LMI communities and 25 remote ATMs in LMI communities as part of its four-year Community Benefits Plan. These branches, from both a business strategy and historical CRA perspective, form the foundation of PNC's "community."

We appreciate the Agencies' recognition of the importance of traditional bank business models and branches in meeting the credit and convenience needs of communities. We agree with the Agencies that branches "continue to play a critical role in meeting the credit needs of low- and moderate-income individuals and communities."⁹ It is surprising, then, to find the Proposal penalizes and disadvantages the traditional bank business model compared to banks that

⁷ See the comment letter by PNC and other regional and midsize banks addressing the RLAA and Outside Retail Lending Area framework.

⁸ This branch count, as of June 30, 2022, excludes stand-alone mortgage offices and satellite offices (e.g., drive-ups, electronic branches, and retirement centers) providing limited products and/or services.

⁹ 87 Fed. Reg. at 33960. See also, *id.* at 33958 ("Local branches remain important to communities for accessing credit.") and 33964 ("many consumers continue to rely on branches").

operate with a single branch or a handful of branches in a single geography, but market and offer their products and services nationally primarily through online and mobile channels (referred to as “digital” or “branchless” banks).

The Proposal would continue to subject traditional banks to a host of metrics, performance tests, and recordkeeping and reporting requirements applicable only to FBAs largely surrounding branches. These tests include the Retail Lending Volume Screen, which, when combined with the thresholds for an overall “Satisfactory” rating, could prohibit a traditional bank from even being eligible for a “Satisfactory” rating at the institution level; the CD Financing Test; and the branch-related metrics and qualitative evaluations under the Retail Services and Products Test. These evaluations, the burden of meeting the Agencies’ associated benchmarks, and the pitfalls of falling short are largely avoided by banks with few or no branches.

The Proposal would exacerbate the burden on traditional banks by adding the RLAA and Outside Retail Lending Area framework to FBAs for traditional banks that primarily serve their customers through their branch networks. Rather than reflecting a traditional bank’s historical and practical communities, the Proposal attempts to fabricate new communities by delineating a RLAA in any MSA or the combined non-MSA areas of a state in which a bank has an annual lending volume of at least 100 home mortgage or 250 small business originations for two consecutive years. Outside Retail Lending Areas would expand even further and encompass a bank’s lending outside of its FBAs and RLAs.

As proposed, the RLAs would not replace FBAs, but instead create additional assessment areas and obligations for branch-based banks. The Agencies—remarkably—reason that RLAs are “designed to provide a pathway to evaluate banks in a way that provides parity between banks that lend primarily through branches and those banks with different business models.”¹⁰ But layering RLAs and Outside Retail Lending Areas and their associated obligations on top of even more comprehensive obligations largely avoided by digital banks in each FBA only further perpetuates an uneven playing field between traditional banks and digital banks. The Proposal’s RLAs and Outside Retail Lending Areas would add significant coast-to-coast CRA obligations for PNC in addition to PNC’s extensive obligations in its FBAs. PNC expects its total assessments areas would approximately double, spreading CRA-related resources and diluting focus on PNC’s FBAs surrounding its communities.

We understand and agree with the Agencies that the CRA framework has not kept pace with technology, changing customer preferences, and the expansion of interstate banking.¹¹ We agree that for some banks’ business models—mainly those banks that primarily operate through digital means with few or no branches—a bank’s “community” is more difficult to define under the current CRA framework.¹² For these banks, where FBAs may be inadequate in defining their communities, RLAs may be a reasonable solution.

¹⁰ 87 Fed. Reg. at 33918.

¹¹ 87 Fed. Reg. at 34009.

¹² *Id.*

But we fundamentally disagree that RLAAAs are necessary or appropriate for traditional banks. The CRA requires banks to demonstrate that they serve the convenience and needs of the communities in which they are “chartered to do business.”¹³ For decades, the Agencies have defined these communities as the areas surrounding a bank’s main office, branches, and deposit-taking ATMs.¹⁴ These are the areas in which traditional banks have connected with community groups with local expertise and found ways to improve the quality of life for individuals, families, and businesses in LMI areas. These relationships in the most practical sense—and not some arbitrary number of largely serendipitous loans—create a true community. It is not clear why the Agencies believe their longstanding interpretation is suddenly inappropriate and too narrow for banks like PNC that continue to primarily serve their communities through their branch network. It also stretches credulity to interpret a bank’s “local communities”¹⁵ where it is “chartered to do business” as potentially encompassing the entire U.S. through the implementation of Outside Retail Lending Areas. In this regard, we separately write and join the regional and midsize bank comment letter discussing why RLAAAs and Outside Retail Lending Areas are inconsistent with the text, purpose, and the Agencies’ well-established understanding of the CRA for banks that continue to primarily serve their communities through their branch networks.

It seems strange that the Proposal would recognize, on one hand, the “critical role”¹⁶ branches play in helping to meet the credit needs of LMI communities, but then penalize banks that maintain branch networks by expanding their CRA obligations to include not only the areas around their branches and deposit-taking ATMs, but also RLAAAs and Outside Retail Lending Areas. It is not clear under the Proposal if there is any advantage or incentive to maintaining branches. FBAAAs bear the full weight of the Proposal’s evaluations. The Proposal would apply RLAAAs and Outside Retail Lending Areas uniformly, without recognition of the meaningful differences in bank business models, the finite resources of banks, or burdens associated with FBAAAs. In this regard, the Proposal fails to reflect the significant benefits—and costs—associated with the maintenance of physical branches in communities. Physical branches provide local communities unique benefits, including the ability to personally interact with bank personnel about the consumer’s banking needs or issues and directly access a broad array of banking products. Branches also are a visible symbol of the bank’s commitment to the community. In many areas, bank branches can also serve as important locations for community meetings and gatherings. Physical branches also entail significant costs, ranging from the need to maintain the “brick and mortar,” to the personnel, security, and compliance costs associated with a physical location. We caution the Agencies against crafting a new assessment area framework that would disadvantage banks based on their branch-based business model, which provide clear benefits to communities.

¹³ 12 U.S.C. § 2901(a)(1).

¹⁴ *See, e.g.*, 12 C.F.R. § 25.41.

¹⁵ Used throughout the Proposal to describe where banks have obligations under the CRA. Emphasis added. *See, e.g.*, 87 Fed. Reg. at 33916 (“Pursuant to the CRA statute, banks have a continuing and affirmative obligation to help meet the credit needs of the local communities in which they are chartered.”).

¹⁶ 87 Fed. Reg. at 33960.

Accordingly, we recommend that the Agencies exempt banks that are primarily branch-based from RLAA and Outside Retail Lending Areas. Under such an exception, a bank would be primarily branch-based if more than 50 percent of its retail lending by dollar volume is within its FBAAAs. This exemption would be consistent with the CRA’s longstanding understanding that one can look to the branch network of a traditional bank to determine where it is “chartered.”¹⁷ It would also create a more even playing field between traditional banks and digital banks and incentivize banks to maintain branches in LMI communities despite the costs and burden associated with them. We do not believe RLAA delineations based on a threshold number of loans would properly account for the differences in bank business models, and they may incentivize traditional banks to limit credit in areas at or near the RLAA loan thresholds, contrary to the purposes of the CRA.

B. Deposits

Under the Proposal, a bank’s deposits in an assessment area factor into numerous metrics, benchmarks, and weighting of conclusions. These include the bank volume metric and market volume benchmark under the Retail Lending Test, the community development financing metric, and both the assessment area and national community development financing benchmarks. The Proposal generally defines deposits for large banks as deposits in domestic offices of individuals, partnerships, and corporations, and of commercial banks and other depository institutions in the U.S. as defined in Schedule RC-E of the Call Report, excluding U.S., state, and local government deposits.¹⁸ The Proposal would have large banks assign deposits to the census tract or county in which a consumer resides or a business is located if it has a local account.¹⁹

Taken together, these provisions have the potential to significantly skew the allocation of deposits among assessment areas for banks with significant corporate deposits that fund, in part, commercial loans.²⁰ This is because it would appear that deposits collected from a corporation would have to be assigned, for CRA evaluation purposes, to the census tract or county that includes a local office of the corporate depositor. Thus, for example, a large bank that provides deposit services to a corporate entity that engages in activities nationwide, and that generates funds across the entire nation, would apparently have to assign *all* of that corporate customer’s deposits to the assessment area (if any) that includes the corporation’s local office. This allocation would overstate the bank’s deposits associated with that assessment area, while understating the bank’s deposits associated with other assessment areas. Moreover, because large corporations tend to have their main offices in metropolitan areas, this methodology has the potential to increase the prevalence of CRA “hot spots” in large metropolitan areas, while discouraging CRA activities in underserved rural or non-metropolitan areas.

¹⁷ 12 U.S.C. § 2901(a)(1).

¹⁸ Proposal § __.12.

¹⁹ *Id.*

²⁰ PNC’s commercial and industrial loans composed 53 percent of our total loan portfolio at December 31, 2021.

This allocation of corporate deposits would disadvantage banks like PNC with significant commercial banking activities²¹ under the Proposal’s metrics, benchmarks, and weighting of conclusions. An increase in deposits as a result of allocating potentially nationwide corporate deposits to a single assessment area would lower the bank metrics and skew both the benchmarks to which other banks’ metrics are compared and the weighting of assessment area conclusions. The Agencies should not disadvantage banks because they have significant commercial banking business.

There is a better way to define deposits. The Agencies already exclude U.S., state, and local government deposits in the Proposal, and a similar approach could be used to exclude corporate deposits. Items 6.a, 6.b, 7.a(1) and 7.b(1) of Call Report Schedule RC-E, in the aggregate, would more accurately reflect a bank’s capacity to engage in qualifying activities for individuals, small businesses and small farms. This is because these items collect information on deposits maintained primarily for personal, household, or family use. Importantly, using these items would also eliminate the potential for large corporate deposits to skew the allocation of deposits across different geographies, thereby better assessing the amount of deposits collected from specific assessment areas. If the Agencies decline to exclude corporate deposits from the definition of “deposits,” then some adjustments to the Proposal’s benchmarks may be necessary.

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

PNC Bank is one of the largest syndicators of LIHTC and NMTC funds for third-party investors, including other bank investors. In this role, PNC Bank engages in a number of activities that are critical to the financing of affordable housing in communities throughout the U.S. These activities include (i) working with the developer to ensure the project qualifies for LIHTC or NMTC; (ii) obtaining and/or providing support for tax credit allocations; (iii) organizing, and offering interests in, LIHTC or NMTC funds that meet the specific geographic and tax-related needs of the investor; (iv) monitoring the funds and their investments for ongoing compliance with applicable tax and other requirements; and (v) preparing and distributing fund information. Many smaller banks that invest in LIHTC or NMTC funds to satisfy their own CRA goals do not have the resources to structure, price, underwrite and manage these investments themselves and, therefore, may not be in a position to identify, source, and finance LIHTC and NMTC investments without the assistance of a fund sponsor and syndicator. Given the inherent benefits of fund syndication for communities and other CRA-credit seeking banks and the efforts involved in syndicating funds,²² we urge the Agencies to provide more quantitative and qualitative consideration of the value of LIHTC and NMTC syndications and sponsorship activities when finalizing the Proposal.

²¹ PNC’s Corporate and Institutional Banking business has approximately \$151 billion in deposits and \$165 billion in loans compared to \$241 billion in deposits and \$89 billion in loans for PNC’s Retail business as of December 31, 2021.

²² See GAO-17-285R, Low Income Housing Tax Credits: The Role of Syndicators at 7 (Feb. 16, 2017) (describing the multiple roles of syndicators in developing and monitoring LIHTC projects), available at <https://www.gao.gov/products/gao-17-285r>.

For example, a syndicated fund sponsored by PNC Bank invested \$14.9 million in a 352-unit development with 100 percent of the units set aside for low-income tenants in Bensalem, PA. PNC originated, underwrote, and closed the investment on behalf of the syndicated fund and its 13 investors, is now monitoring construction and leasing of the project, and will manage and report on the investment over the *15-year compliance period*. Under the current CRA Regulations, PNC Bank receives CRA credit in connection with the investments it originates for contribution to the multi-investor fund and for the syndication services it provides to investors in the fund. Under the Proposal, banks would receive CRA credit for the origination value in the year of origination and the annual quarterly average remaining on balance sheet in the subsequent two years. The investments PNC Bank contributed to the multi-investor fund in the example here, however, would not remain on balance sheet and, therefore, PNC Bank would not receive additional credit beyond the origination value of its investment to the fund in the first year. We do not believe this approach appropriately recognizes the significant value provided by LIHTC and NMTC sponsoring and syndication activities, and the critical role that LIHTC and NMTC sponsors and syndicates play in the tax credit ecosystem.

Additionally, a side effect of the combined loan and investment CD Financing Test is that we expect banks will increasingly focus on lending products to meet CD financing goals as they typically have shorter investment duration, preferable risk-based capital treatment, and reduced permissibility and overall risk. This may result in banks opting for construction loans and a reduction in investments to support much needed affordable housing nationally. Accordingly, we urge the Agencies to grant appropriate credit to banks that syndicate funds supporting LIHTC and NMTC projects consistent with the approach the OCC took in its 2020 final CRA rule. The OCC rule provided credit for (i) the total dollar value of the fund in the year of origination and (ii) one half of the total dollar value of the portion of the fund that is sold in the year it is sold.²³ The OCC found that this approach gave appropriate CRA credit to syndication or sponsorship activities supporting LIHTC and NMTC funds.

The Agencies should also expressly recognize in the final rule that syndication or sponsorship activities supporting LIHTC and NMTC funds indicate a high degree of impact on and responsiveness to LMI communities by including these activities in the non-exclusive list of impact review factors under section __.15 of the Proposal. The Proposal already identifies on the list of impact review factors “activities reflecting bank leadership through multifaceted or instrumental support.” The Agencies could clarify that this factor includes the syndication or sponsorship of LIHTC and NMTC funds.

We also urge the Agencies to set separate benchmarks under the CD Finance Test for CD loans and investments. The LIHTC program has been the primary tool for producing and preserving affordable rental housing in the U.S. since its inception in 1986. Most LIHTC investments are motivated by the CRA. Should banks choose to meet their CD Financing Test requirements through CD loans alone, this may have the unintended consequence of undermining the goals of the LIHTC program and, in turn, reduce affordable housing production and preservation in the U.S.

²³ See 85 Fed. Reg. at 34754.

III. Retail Lending Test

The Proposal's Retail Lending Test would subject large banks to a new set of tests and empirical benchmarks applied in each assessment area that are designed to measure the volume of retail lending relative to deposits from the area and the distribution of retail loans to LMI individuals, small farms, small businesses, and LMI geographies. While PNC appreciates the transparency, objectivity, and consistency these tests would bring, we believe their application is too broad and performance requirements too rigid. We urge the Agencies to simplify and tailor the tests to better reflect the limited influence and control banks have in certain areas and with regard to certain of their products.

A. Major Product Lines Should Be Set at the Institution Level

The Proposal's definition of Major Product Lines introduces uncertainty and inconsistency to a bank's performance under the Retail Lending Test. Under the Retail Lending Test, the Proposal would evaluate certain retail products based on the dollar volume of loans in an assessment area over the relevant evaluation period.²⁴ Retail product lines that comprise 15 percent or more of a bank's retail lending in the area over the evaluation period would be deemed "Major Product Lines" evaluated by the Agencies. These Major Product Lines have the potential to vary by assessment area based on a bank's volume of lending in the area.

As proposed, a bank would not know with certainty which retail products the Agencies would evaluate until after the relevant evaluation period. Slight shifts in the economy and consumer demand could easily lead to unanticipated Major Product Lines in different areas. This issue is most acute at the assessment area-level, where small shifts in retail product numbers can significantly move the percentage of loans in a particular retail lending category and potentially change which products qualify as Major Product Lines. It is fundamentally unfair for the Agencies to evaluate long-term CRA strategies and performance based on factors that will not be known until after the evaluation period. Such a framework also incentivizes banks to limit credit products in certain assessment areas so as to avoid evaluations of retail products that are not a significant focus of the bank or part of the bank's long-term CRA strategy, contrary to the purposes of the CRA.

A better approach would be for the Agencies to set a bank's Major Product Lines at the institution level. Building a meaningful CRA strategy and infrastructure takes significant time, resources, and planning. A bank must be able to predict with some level of certainty which products the Agencies will evaluate. While setting the bank's Major Product Lines at the institution level would not eliminate uncertainty regarding Major Product Lines, it would significantly reduce the possibility that regional or even local shifts in the economy and consumer demand result in unanticipated Major Product Lines. This approach would also better align the Retail Lending Test with a bank's focus and retail strategy.

²⁴ Proposal § __.22

B. Major Product Line Categories

The Retail Lending Test would potentially evaluate six categories of retail lending products: closed-end home mortgage loans, open-end home mortgage loans, multifamily loans, small business loans, small farm loans, and automobile loans. Regardless of whether a category of retail lending constituted a Major Product Line, banks would have to collect and report relevant data to enable the Agencies to calculate performance benchmarks for each category under the Retail Lending Test. Certain of these product categories do not reflect a bank's control and influence over the products, and the methods proposed to calculate whether they are Major Product Lines are flawed, resulting in a more complex Retail Lending Test and unnecessary data collection and reporting. The Agencies should streamline the Major Product Line categories as detailed below.

1. Automobile Loans Should Not Include Indirect Auto Loans

We understand the substantial economic benefits that cars can provide to LMI individuals.²⁵ But it is important to appreciate that *indirect* lending can be a significant portion of a bank's consumer lending portfolio, particularly for automobile loans. For example, of PNC's \$16.6 billion auto loan portfolio, \$15.4 billion, or 92 percent, is indirect auto lending.²⁶ These indirect loans improve funding availability in communities and help individuals conveniently and expeditiously purchase vehicles, but the customer often does not have a direct relationship with the funding bank—the dealer interacts almost exclusively with the customer. As a result, the bank has little to no influence over the customers that submit loan applications. A bank should not be evaluated under CRA measures for matters it cannot control.

2. Multifamily Lending Should Be Removed from the Retail Lending Test and Instead Be Evaluated Only under the Community Development Financing Test

The Proposal would evaluate multifamily loans as a separate product line under the Retail Lending Test. The Agencies propose to define a multifamily loan as a loan for a dwelling that contains five or more individual units.²⁷ We believe multifamily lending would be more appropriately considered under the CD Financing Test, which would consider the affordability of the units and the income of the occupants.

If multifamily lending were a separate product line under the Retail Lending Test, it would have the potential to skew the assignment of Major Product Lines in assessment areas and the results of the Retail Lending Test. A single large multifamily dwelling loan could qualify as a Major Product Line in an assessment area despite dozens of retail loans from other categories due to the generally larger nature of multifamily loans. This may result in unpredictable Major

²⁵ See, e.g., the Federal Reserve Bank of Chicago, *The Importance of Cars and Car Loans for People with Low and Moderate Incomes*, (Jul. 15, 2022) available at <https://www.chicagofed.org/publications/blogs/cdps/2022/importance-cars-and-car-loans>.

²⁶ As of December 31, 2021.

²⁷ The Proposal refers to 12 C.F.R. § 1003.2(n) for the definition of multifamily.

Product Lines in assessment areas for banks that make relatively few multifamily loans, and potentially result in an insignificant number of loans for statistical analysis under the Retail Lending Test.

C. The Agencies Should Clarify When Purchased Loans Constitute Churning or Inappropriate Influence

PNC supports the Proposal's inclusion of purchased loans in evaluating a bank's record of helping to meet the community credit needs. We agree that purchased loans provide liquidity to banks and other lenders and help support the origination of more loans to LMI individuals and areas.²⁸ And while we agree with the goal of the Agencies to limit CRA credit for loan purchases reflecting loan churning or where the purchase of loans was meant to inappropriately influence a bank's Retail Lending Test,²⁹ we believe it is necessary for the Agencies to articulate more clear standards on what constitutes loan churning and when a bank is inappropriately influencing its performance through purchased loans.

We expect purchases of loans for CRA purposes will become more common if the Agencies finalize the Proposal as written. The Proposal's RLAA and Outside Retail Lending Area framework will drastically increase the number of assessment areas for large banks and the number of loans evaluated under the Retail Lending Test. PNC expects its number of assessment areas would approximately double if RLAA's are inappropriately applied to traditional branch-based banks. A bank's resources are finite, and it may not be possible for a large bank to develop the connections and relationships necessary to originate sufficient loans in every assessment area, coast-to-coast across the U.S. Given the significant weight of the Retail Lending Test and the thresholds necessary to even achieve a bank-level "Satisfactory" rating, banks may look to purchase loans in specific assessment areas to meet community- or market-based benchmarks. The purchasing bank may not know how many times other banks have purchased the loans it buys. In this regard, it is unclear if the Proposal would deem such rational conduct to be churning or an attempt to inappropriately influence the Retail Lending Test scores. We urge the Agencies to formulate more clear criteria for loan churning and inappropriate influence so as to protect reasonable purchases for CRA purposes by banks.

D. Retail Lending Volume Screen

The Proposal's addition of the Retail Lending Volume Screen forces banks, for the first time, to offer certain retail products in their FBAA's. The Proposal's Retail Lending Volume Screen would create a bank volume metric that measures the total dollar volume of a particular subset of a bank's retail lending relative to its deposits in a FBAA. The bank volume metric would be compared to a market volume benchmark, which would measure the dollar amount of retail originations in the assessment area by all large banks that operate a branch in the assessment area divided by the amount of deposits collected by those same banks. If a bank's

²⁸ 87 Fed. Reg. 33930.

²⁹ Proposal § __.22

bank volume metric does not meet 30 percent of the market volume benchmark, the bank would be limited to a “Needs to Improve” or “Substantial Noncompliance” rating in the FBAA.

First, as noted above,³⁰ the inclusion of corporate deposits in the definition of “deposits” would inappropriately and unfairly skew a bank’s performance metrics, including the bank volume metric.

Second, the Retail Lending Volume Screen would also penalize and disadvantage banks with business models that do not focus on the products that would qualify as retail loans under the Proposal. The 30 percent minimum threshold under the Retail Lending Volume Screen would force banks to make a certain dollar amount of a particular subset of retail loans that would qualify as a “retail loan” under the Proposal’s definitions.³¹ This would force banks into providing at least one of six products, even if their business models focused on other categories of retail loans, consumer loans, or commercial loans that help meet the credit needs of their communities. This is contrary to current practice, which takes into account a bank’s business strategy when considering the dollar volume of certain loans in assessment areas³² and may encourage banks to expand lending in ways that are inconsistent with safety and soundness. The Agencies should not use the CRA regulations to dictate a bank’s business model and products.

Third, the Retail Lending Volume Screen does not account for assessment areas with one or few dominant lenders. Certain assessment areas have such dominant lenders that it may be difficult, if not impossible, for other banks to reach the required threshold. While the Agencies’ additional review of specific performance context factors for banks that fail the Retail Lending Volume Screen in a FBAA may help mitigate such circumstances,³³ it would be more appropriate to consider a bank’s dollar volume of retail loan originations in relation to its resources and business model under qualitative performance context.

Finally, the Proposal does not adequately justify the 30 percent threshold for the Retail Lending Volume Screen. The Agencies looked to the results of the Lending Test under the current CRA framework for large banks to estimate a proper threshold and arrived at 30 percent based on the difference in pass rates for certain thresholds between banks receiving a “Satisfactory” or “Outstanding” rating and those receiving a “Needs to Improve” rating on the Lending Test.³⁴ But the current Lending Test does not mandate a similar volume screen metric. It is not clear to what extent each agency currently measures retail lending to deposits in each FBAA, and how such a comparison factors into ratings under the current Lending Test. A bank’s performance under the Lending Test involves numerous factors including, most prominently, a bank’s distribution of home mortgage, small business, and small farms loans. It

³⁰ Section II.B.

³¹ Proposal § __.12.

³² OCC CRA Examination Procedures at 38 (Oct. 1997, revised May 1999), available at <https://www.occ.treas.gov/publications-and-resources/publications/comptrollers-handbook/files/cra-exam-procedures/index-cra-examination-procedures.html>.

³³ See 87 Fed. Reg. at 33935 (potentially taking into account “the presence or lack thereof of other lenders in the geographic area”).

³⁴ *Id.*

is our experience that any review of the dollar amount of retail lending under the current Lending Test focuses only on home mortgage, small business, and small farm loans, and that such a review does not substantially factor into performance relative to other evaluations under the Lending Test. Thus, we believe the Agencies’ proposed threshold is based on faulty, or at least incomplete, data. The Agencies should reevaluate the Retail Lending Volume Screen and, if they decide to move forward with it, repropose the screen with sufficient support rather than declaring that banks that fail to meet the proposed 30 percent threshold are substantially underperforming their peers “[b]arring additional mitigating information.”³⁵

E. Performance Thresholds

PNC strives to receive an “Outstanding” rating in all aspects of its CRA evaluation. PNC has earned the top CRA rating of “Outstanding” in every performance evaluation issued since enactment of the CRA more than 40 years ago. Key to PNC’s performance is its lending performance, which would count for 45 percent of its overall rating under the Retail Lending Test. It is concerning, then, that the Agencies would set such high thresholds that, under the Agencies’ own analysis, no large bank would obtain an “Outstanding” rating under the proposed Retail Lending Test.

The Proposal would grade a bank’s performance under the Retail Lending Test using four thresholds. These thresholds would be set using the lesser of a certain percent of the market or community benchmark:

Rating Threshold	Market Benchmark Threshold		Community Benchmark Threshold
“Needs to Improve”	33% of Market Benchmark	or	33% of Community Benchmark
“Low Satisfactory”	80% of Market Benchmark	or	65% of Community Benchmark
“High Satisfactory”	110% of Market Benchmark	or	90% of Community Benchmark
“Outstanding”	125% of Market Benchmark	or	100% of Community Benchmark

PNC supports using the lesser of the tailored market and community benchmark thresholds, since they prevent the thresholds from becoming too stringent in markets with fewer opportunities to lend to LMI communities and small businesses. However, it appears the Agencies calibrated these thresholds to categorically downgrade current CRA ratings: no large bank would have received an “Outstanding” rating under the Retail Lending Test based on the data used to set the thresholds.³⁶ It is not clear why the changes to performance ratings are necessary or appropriate. There is no evidence that banks currently receiving an “Outstanding” rating on the Lending Test are inappropriately rated. The Agencies should set the performance rating categories to equate to roughly the same distribution of banks across performance ratings as today. By setting such a high threshold for an “Outstanding” rating—especially while drastically increasing the number of assessment areas subject to the Retail Lending Test through RLAAAs—the Agencies risk making the effort for an “Outstanding” rating disproportional to the benefit.

³⁵ 87 Fed. Reg. at 33935.

³⁶ 87 Fed. Reg. at 33954.

The Proposal also contemplates using a performance context-type review to set higher thresholds where “all lenders, or a significant share of lenders, are underserving the market and failing to meet community credit needs.”³⁷ While we support examiners considering performance context, it is not clear how examiners would determine that lenders are underserving the market or failing to meet community credit needs, when the benchmarks and proposed thresholds above show otherwise. Not only would it be unfair for banks to not be aware of the thresholds they need to meet in advance, but it would be inconsistent with the Agencies only considering performance context information to the extent it is not otherwise considered as part of a proposed performance test—i.e., in metrics and benchmarks.³⁸

IV. Community Development Financing Test

A combination of CD lending and investments can materially improve the lives and financial well-being of LMI individuals and communities. For example, in 2021, PNC provided a \$50 million credit facility coupled with a \$7.2 million equity investment to support the infrastructure of the 53-acre campus of the former Marygrove College along with the rehabilitation of its liberal arts building. The 260,000 square foot liberal arts building will be repurposed into a school operated by the Detroit Public School System and will serve approximately 1,000 students, the majority of which are LMI. Through PNC’s responsiveness to the needs of the community, the rehabilitation of an uninhabited building is contributing to the revitalization of an LMI geography. Examples like this and others included in the attached appendix³⁹ are why we support the ability of banks to continue to receive CRA credit for CD loans and investments in communities across the U.S. and its territories.

As the Agencies are aware, there has been intense competition between banks for limited CRA investment opportunities. For example, the inability to receive automatic CRA credit for CD lending and investment activities responsive to the needs of communities outside of a bank’s assessment areas has resulted in banks “chasing” CD projects in the same metropolitan areas, thus creating so-called CRA “hot spots.” At the same time, there are other areas around the country, particularly in rural areas, that have difficulty attracting CD financing. The Proposal would address these concerns by allowing banks to obtain CRA credit for CD loans and investment anywhere in the U.S. This approach creates the certainty banks need to invest their time and resources to research and fund worthy CD projects in rural areas and other areas of need.

As discussed above,⁴⁰ we urge the Agencies to appropriately value the sponsorship of LIHTC and NMTC investments. We also encourage the Agencies to adopt additional refinements to the proposed CD Financing Test to:

³⁷ *Id.* at 33943.

³⁸ 87 Fed. Reg. at 33927; Proposal § __.21(e).

³⁹ PNC has included in the appendix a list of examples of impactful CD activities financed by loans and investments.

⁴⁰ Section II.C.

- Grant at least equal weight for the CD Financing Test as the Retail Lending Test;
- Appropriately define naturally-occurring affordable housing; and
- Issue for public comment the list of CD activities that qualify for CRA credit, including any material changes thereto over time, and publish information on specific CD loan and investment projects that any Agency has determined qualifies for CRA credit.

A. Equal Weight for CD Financing as Retail Lending

Given the important benefits that CD investments and loans bring to a bank’s communities, including LMI communities and other communities of need, we encourage the Agencies to give at least equal weight to the CD Financing Test as the Retail Lending Test. This is particularly important because the Retail Lending Test’s weight is even greater, from a practical standpoint, than the proposed 45 percent due to the threshold requirements for receiving a bank-level “Satisfactory” rating. While under the current CRA Regulations the Lending Test receives a weighting of 50 percent, it also includes all CD lending and not just retail lending. Removing CD lending from the Retail Lending Test and adding it to the CD Financing Test, as proposed, should commensurately increase the weight of the CD Financing Test and lower the weight of the Retail Lending Test.

B. Naturally-Occurring Affordable Housing

The vast majority of affordable housing in the U.S. is privately-funded: it is not subsidized under Federal, state, or local programs. With rising housing shortages and homelessness, we support recognition of “naturally-occurring affordable housing” as a qualifying CRA activity under the Proposal. However, we urge the Agencies to establish uniform standards for all non-LIHTC affordable multifamily housing, whether naturally-occurring affordable or government-subsidized. Rents should qualify as affordable if set at or below 30 percent of 80 percent of area median income (“AMI”). The Proposal would set a higher bar for affordability for naturally-occurring affordable housing by setting qualifying rents at or below 30 percent of 60 percent of AMI.

To prevent displacement of LMI renters, the Agencies should also require that rents be kept at affordable levels for LMI renters for the life of the commitment. The Proposal currently requires naturally-occurring affordable housing not located in an LMI census tract to meet one of three factors: (i) a non-profit organization with a stated mission of supporting affordable housing is involved in the project; (ii) the property owner pledges in writing to keep the rents affordable for LMI renters *for at least five years*; or (iii) the bank provides documentation that a majority of the housing units are occupied by LMI individuals or families. We suggest the Agencies amend the second criteria to require a pledge in writing by the property owner to keep the rents affordable for LMI renters *for the life of the investment or loan*.

C. Illustrative Activities List

We support the Agencies’ proposal to maintain a publicly-available, illustrative, non-exhaustive list of CD activities that qualify for CRA consideration and a method for confirming eligibility of new investments. We understand that the list would provide examples that help

clarify the regulatory meaning of key community development terms. We encourage the Agencies to include loans in this list in addition to investments given the proposed changes to the CD Financing Test. We believe this list could be an excellent tool for banks, funds, nonprofits and other entities involved in CD financing if the Agencies provide sufficient support and frequent updates. In the past, banks have been hesitant to make investments in, or loans to, certain projects because they do not know whether supervisors will agree that the “primary purpose” of the project is for community development. Maintaining a current list of qualifying CD activities will help address these concerns. Moreover, maintaining a single list among the Agencies will help ensure consistent interpretation of what CD activities qualify for CRA credit by the Agencies.

The Agencies ask whether they should maintain a list of activities that do not qualify for CRA consideration as a CD activity. As a general matter, we do not believe the agencies should maintain a list of activities that do not qualify for CRA consideration given this kind of determination may be dependent on the unique facts and circumstances of the activity. However, if the Agencies, at the request of any bank, evaluate whether a specific CD finance project qualifies for CRA consideration and determines the project so qualifies, we would urge the Agencies to maintain a publicly available database identifying specific, qualifying CD financing projects. This will help provide certainty to other banks evaluating the same financing opportunity and reduce the time and resources dedicated to confirming permissibility of a project. Likewise, should the Agencies determine to depart from the past position taken by any single agency by determining that a CD activity previously approved by such agency for CRA consideration should no longer qualify, we would ask the Agencies to publish the proposed change for public comment.

V. Retail Services and Products Test

As we noted above,⁴¹ the proposed framework to evaluate the distribution of a bank’s branches and remote service facilities only serves to penalize banks that primarily operate through their branch and ATM networks. The Proposal would evaluate branch and ATM distribution against three benchmarks. These tests, and the ramifications of not meeting the Agencies’ standards, appear to be avoided by removing branches and ATMs from assessment areas or operating through a business model with few or no branches. Thus, the Proposal does not appear to provide an incentive to maintain branches and ATMs, despite their “critical role” in meeting the needs of LMI individuals and communities.⁴² We urge the Agencies to reassess the framework for evaluating branch and ATM distribution so as to encourage banks to maintain these networks by providing that such branches and ATMs can only be favorably considered in a bank’s Retail Services and Products Test conclusion.

The Retail Services and Products Test also contemplates a review of fees and costs of certain deposit products.⁴³ The Proposal would require a review of, among other things, deposit

⁴¹ Section II.A.

⁴² 87 Fed. Reg. at 33960.

⁴³ *Id.* at 33967.

products with “low-cost features.”⁴⁴ These “low-cost” features may include, for example, accounts with no overdraft or insufficient fund fees, no opening balance, no or low monthly maintenance fees, and free or low-cost checking and bill payment services. PNC is committed to helping our customers stay in the mainstream banking system by offering unique products and services with low-cost features. In 2021, we introduced Low Cash Mode[®], built on patent-pending technology, which helps our Virtual Wallet[®] customers avoid overdraft fees through unprecedented account transparency and control. With this tool, customers have the power to prioritize by determining when certain payments are processed that might otherwise result in overdrafts. The features of Low Cash Mode have reduced customer overdraft fees and related complaints by nearly half. In addition to giving customers the ability to manage overdrafts through Low Cash Mode, we offer two Bank On–certified products, PNC Foundation Checking and PNC SmartAccess[®] Prepaid Visa[®] Card, that allow customers to avoid overdrafts altogether. Nevertheless, we are concerned that the Agencies’ analysis of low-cost features could force banks to offer certain products at particular prices and fees. Banks must be able to charge fees for products consistent with their safe and sound operation, including to LMI individuals. We urge the Agencies to implement safeguards to prevent the Retail Services and Products Test from dictating specific products and prices.

VI. Community Development Services Test

The Community Development Services Test would generally retain the current definition of community development services that have the “primary purpose of community development and are related to the provision of financial services.”⁴⁵ This definition appears to include volunteer activities in areas of expertise by bank employees, such as human resources, information technology, and legal services.⁴⁶ The Agencies propose, in nonmetropolitan areas, for banks to receive consideration for volunteer activities that meet an identified community development need, even if unrelated to the provision of financial services. PNC supports this extension of volunteer activities but we believe banks should receive favorable consideration for *any* volunteer activity in *any* geographic location even if unrelated to financial services, such as work by bank employees to help the unbanked obtain identification cards. Volunteer activities by their nature help communities, build relationships between bank employees and the communities in which they work, and help banks understand community needs.

VII. Performance and Ratings

A. Benchmarks

The Proposal would compare bank metrics to community- and market-based benchmarks across geographic areas to derive a bank’s performance conclusions under certain evaluations. The Proposal contemplates generating these benchmarks using data reported during a bank’s

⁴⁴ *Id.*

⁴⁵ *Id.* at 33981.

⁴⁶ *Id.*

evaluation period, which means a bank may not be aware of the Agencies' CRA expectations at the onset of an evaluation period. We understand the Agencies' goal of using the most recent data available, but we believe it is fundamentally unfair for the Agencies to create a principally metrics-based performance evaluation, with the intent to provide "greater certainty about CRA performance expectations,"⁴⁷ without informing banks in advance of an evaluation period what the benchmarks will be. As we have repeatedly said, bank resources and CRA expertise are finite, and building a meaningful CRA strategy and infrastructure takes significant time, resources, and planning. It is impractical to execute CRA strategies when success parameters are unknown.

A better alternative would be to adopt the suggestion in the Proposal that sets benchmarks at the outset of the evaluation period using data available then, but also let the benchmark decrease if data collected during the evaluation period would lead to a lower benchmark. This approach would give clear performance expectations to banks while also providing leniency if lending opportunities worsen during their evaluation periods. A good example of the need to set expectations at the beginning of an evaluation period and allow them to decrease is the Covid pandemic, which caused a surge in deposits and significant population migration. If a bank were subject to the proposed rule and the beginning of its evaluation period included the pandemic, the bank could have lower deposit-based bank metrics due to the surge in deposits and would have to potentially meet higher community-based benchmarks in certain areas, unless the benchmarks could decrease during the evaluation period to reflect normal conditions. We believe this approach should be applied to both community- and market-based benchmarks.

B. Threshold Requirements to Be Eligible for a Bank-Level "Satisfactory" Rating

The Agencies propose a new requirement that a large bank with ten or more assessment areas (FBAs and RLAs combined) at the relevant level would not be eligible to receive a "Satisfactory" or higher rating at that level unless it achieved an overall performance of "Low Satisfactory" or better in at least 60 percent of its assessment areas.⁴⁸ This requirement is in addition to a bank's Retail Lending Test conclusion needing to be at least "Low Satisfactory" in order for the bank's overall rating to be "Satisfactory" or higher. We believe the new 60 percent requirement for a "Satisfactory" is unnecessary and creates incentives to decrease credit availability.

Under the new 60 percent requirement, overall performance in FBAs would be calculated by combining the four proposed performance tests in a weighted manner, but for RLAs, the overall performance would be equivalent to the Retail Lending Test conclusion. The Proposal's addition of RLAs, if implemented for traditional banks, would drastically increase the number of assessment areas subject to only the Retail Lending Test. For example, PNC expects its number of assessment areas would approximately double, leaving roughly half of its assessment areas as RLAs subject to only the Retail Lending Test. The 60 percent requirement, in combination with the increase in assessment areas, incentivizes banks to limit

⁴⁷ *Id.* at 33939.

⁴⁸ *Id.* at 33989.

credit in areas nearing the thresholds for a RLAA, especially if the bank does not have the resources, relationships, or expertise to meet CRA “Low Satisfactory” expectations in the RLAA.

C. Performance Context

We strongly support the continued consideration of performance context as part of the CRA evaluation process. The Proposal’s drastic increase in the number of assessment areas and new metrics-based focus will spread limited CRA resources thin and have the potential to overlook and underestimate a bank’s efforts to meet the needs of its communities. While we have proposed ways to improve the Proposal’s framework, even a modified Proposal may not recognize the considerable infrastructure, systems, people, and time devoted to CRA activities. Moreover, CRA opportunities may differ significantly between assessment areas, even those that appear similar from a population, economic, demographic, or other metric perspective. This is why it is critical that performance context continue to play a meaningful role in CRA performance evaluations.

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

VIII. Data Collection and Reporting

It is clear the Proposal would radically increase a bank’s data collection and reporting requirements. The Proposal would add data collection and reporting obligations for deposits, hundreds of new assessment areas, six categories of retail lending data, community financing data, retail services and products data, and community development services data. We appreciate the Agencies recognizing the importance of using existing data sources to reduce burden, but we believe the Agencies underestimate the costs involved in obtaining and verifying the data required under the Proposal. It is paramount that the Agencies minimize data collection, recordkeeping, and reporting obligations to only those absolutely necessary to effectuate the Proposal. We expect the new data collection requirements to require costly and burdensome compliance systems, both from a CRA resources and cost perspective, which could come at the expense of engaging in CRA activities.

IX. Transition Matters

Under the Proposal, banks would have only one year after the rule's effective date to comply with, among other provisions, four new performance tests, standards, and ratings; RLAAAs; data collection and reporting requirements; and new definitions for CRA-qualifying activities. We appreciate that the Agencies have recognized that banks will need a transition period in order to adjust their CRA strategies to the new framework contemplated by the Proposal and develop the systems, policies, procedures, and resources to implement the associated data collection and reporting requirements. But the one-year transition period shows the Agencies drastically underestimate the burden for large banks to comply with the Proposal. We believe that certain modifications to the Proposal's transition periods are necessary, particularly in light of the substantial changes the Proposal would make to the current CRA framework and the new data that banks would be required to collect.

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

In addition, we believe any Retail Lending Test or CD Financing Test included in the final rule should not become effective until a large bank's first evaluation period that begins at least three years after the Agencies publish the benchmarks and data necessary to assess compliance with such tests. Even after the rule's reporting requirements take effect, it will likely take the Agencies a period of time to compile, verify and publish the data to be used by banks in assessing their performance under the tests. It would be unfair to evaluate a large bank under these tests until the Agencies publish the data necessary for a bank to evaluate itself against the community and market benchmark data for its assessment areas *and* the bank is given time to make any adjustments to its CRA and lending strategies as may be necessary or appropriate in light of that newly published data.

Regardless, any final rule should only apply to a bank's evaluation period that *begins* after the last applicability date for provisions of the final rule. It is not fair to subject a bank to unknown "modified procedures"⁴⁹ and change the applicable performance tests and benchmarks to which a bank is subject midway through an evaluation period.

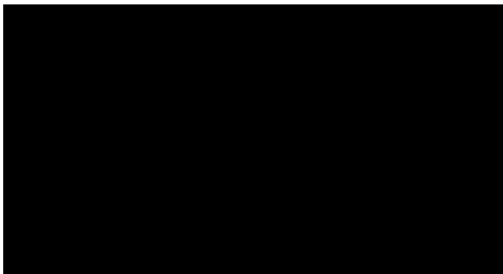
⁴⁹ 87 Fed. Reg. at 34006.

X. Conclusion

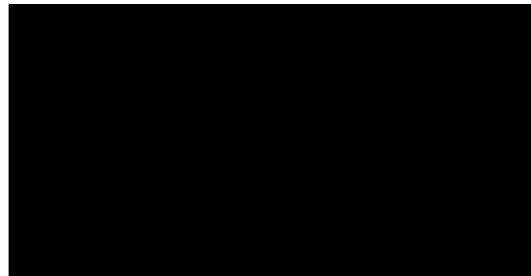
Thank you for the opportunity to comment on the Proposal. We share the Agencies' view that there are opportunities to modernize and enhance the CRA framework that would continue to encourage banks to help meet the credit needs of their communities in a safe and sound manner. At the same time, there are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

If you have any questions regarding the content of this letter or would like more information on the same, please do not hesitate to contact us.

Sincerely,



Alex Overstrom
Executive Vice President
Head of Retail Banking
PNC Bank, National Association



Richard Bynum
Executive Vice President
Chief Corporate Responsibility Officer
PNC Bank, National Association

Appendix — Examples of Impactful CD Activities Financed by Loans and Investments

<p><i>Uptown Gateway Investment Fund, LLC (Uptown Innovation Gateway)</i> Cincinnati OH-KY-IN MMSA</p> <p>In 2020, PNC helped fund the construction of a 189,000 SF building in a highly distressed, high poverty, and high unemployment census tract in the Avondale neighborhood of Cincinnati, Ohio. PNC’s creative financing structure consisted of \$3.5 million in NMTC allocation, \$9.9 million in the form of a NMTC equity investment, and \$51.2 million in loans. This building is to be leased to the University of Cincinnati to allow students and faculty the opportunity to engage with industry and the community to address opportunities and challenges in a digital future. It is anticipated that this project will catalyze the creation of an “Innovation Corridor” as a part of a comprehensive, neighborhood redevelopment led by a consortium of community partners.</p>
<p><i>BH Services Investment Fund LLC (Bethany House Services)</i> Cincinnati, OH-KY-IN MMSA</p> <p>In 2017, PNC provided \$4.4 million in the form of a NMTC equity investment coupled with \$2.3 million in bridged equity as a part of a complex financing structure to fund the construction of a 58,842 SF family shelter and comprehensive service center. This investment allowed the community to consolidate five deficient shelters into a single facility and increase the shelter’s capacity by 30 percent, which will accommodate an additional 100 families annually. Bethany House Services, which is the largest provider of emergency shelter and HUD housing programs for homeless families in Hamilton County, Ohio, will also be able to expand their onsite service offerings, including healthcare, employment services, and literacy tutoring for children and adults.</p>
<p><i>Marygrove Conservancy/Marygrove LA Owner, LLC</i> Detroit-Warren-Dearborn, MI MSA</p> <p>In 2021, PNC provided a \$50 million credit facility coupled with a \$7.2 million equity investment to support the revitalization of the 53-acre campus of the former Marygrove College along with the rehabilitation of its 265,000 SF, previously uninhabited Liberal Arts Building. The Liberal Arts Building will be repurposed into a school operated by the Detroit Public School System and will serve approximately 1,000 students who are a majority LMI.</p>
<p><i>Westlawn Renaissance IV, LLC and Westlawn Renaissance VI, LLC</i> Milwaukee-Waukesha, WI MSA</p> <p>PNC has invested over \$90 million in affordable housing and revitalization in a new mixed-use, mixed-income community—known as Westlawn Renaissance IV and VI—developed through a master planned revitalization project of the Housing Authority of the City of Milwaukee and the City of Milwaukee. These revitalization efforts transformed the community and offered supportive case management services to residents.</p>

OZ 306 MLK Blvd Urban Renewal, LLC – Newark Arts Commons
New York–Newark–Jersey City, NY-NJ-PA MSA

In 2019, PNC provided \$12.9 million in debt and equity funding to support the construction and development of the Newark Arts Commons project located in a low-income census tract in an Opportunity Zone. The project supports the economic revitalization and development needs of the University Heights neighborhood in the City of Newark, consistent with the Broad Street Station District Redevelopment Plan. The project offers a commercial leasing space at 60 percent below the market rate for commercial rents and will generate employment with an expected retention of 30 jobs and creation of 4 new jobs. Additionally, the project preserves and restores a historic structure in the University Heights neighborhood that has been vacant and deteriorating for over a decade.

Skyland Leverage Lender, LLC (Skyland Town Center Phase B-1)
Washington-Arlington-Alexandria, DC-MD-VA-WV MMSA

In 2019, PNC provided \$4 million in equity and \$9 million in debt financing to support the development and construction of Skyland Town Center, a 41,000 SF grocery-anchored retail center. This project will bring a medium-scale grocery store to a vulnerable community to address a shortage of healthy food options and create 73 new permanent jobs, with more job opportunities for community residents expected once more retailers become tenants.

Academy of Hope
Washington-Arlington-Alexandria, DC-MD-VA-WV MMSA

Academy of Hope is an adult public charter school with campuses located in two of the District of Columbia’s most “under-educated” communities (5th Ward and 8th Ward). Its mission is to create a lasting impact in the community by offering educational services for adult students who are not able to find or retain living-wage employment and thus are trapped in a cycle of poverty (96 percent have incomes at or below 50 percent AMI). PNC has provided a variety of support to the organization including working capital loans and mortgage financing.

Harlem Clubhouse Investment Fund / Madison Square Boys & Girls Club
New York-Newark-Jersey City, NY-NJ-PA MMSA

In 2017, PNC provided \$12.9 million in the form of a NMTC equity investment coupled with \$4.9 million in bridged equity as a part of a highly complex financing structure to fund the construction of a 45,000 SF facility for the Madison Square Boys & Girls Club located in central Harlem (New York City). This multi-purpose facility is projected to serve up to 450 youth daily that live in the surrounding neighborhoods, including four large urban housing projects and one of the most underprivileged and underserved neighborhoods in the city.

Greater Pittsburgh Community Food Bank
Pittsburgh, PA MSA

Greater Pittsburgh Community Food Bank (GPCFB) is a non-profit organization having a distribution center that provides the means to collect, sort and distribute food with a focus on serving vulnerable populations in Allegheny and surrounding counties. PNC has been responsive to community needs as a provider of debt and equity capital, among other things, to

GPCFB to support working capital during the COVID-19 pandemic and to fund the expansion and renovation of an existing food bank location in the City of Duquesne, expanding their reach out into the community.

Bridgeway Capital, Inc.

Pittsburgh, PA MSA

In 2021, PNC provided Bridgeway Capital with a total of \$9 million in debt and equity capital to fund loans that will create meaningful impact on small businesses and real estate developments in LMI areas. As a certified CDFI, Bridgeway Capital provides capital and educational opportunities to entrepreneurs and small businesses to create new businesses and new jobs; to nonprofits to help sustain and expand the services they provide; and to community development organizations working to revitalize distressed communities.