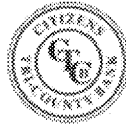

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James P. Sheesley, Assistant Executive Secretary
Attention: Comments RIN 3064¬AF81
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Re: Community Reinvestment Act - Notice of Proposed Rulemaking (NPR)
RIN 3064–AF81

Dear Mr. Sheesley:

We appreciate the opportunity to comment on the proposed CRA rule.

We are a bank currently examined under the existing intermediate bank rules, operating eighteen branches in nine contiguous counties of which three counties are within a Metropolitan Statistical Area. Our footprint is predominately in rural communities. We have achieved an "Outstanding" CRA rating in our previous three CRA examinations, which demonstrates our strong support of the Community Reinvestment Act and proud contributors to the communities in which we operate. Our business focus considers consumer retail lending as a primary product emphasis, a vital and active part of the Bank's business strategy, which includes low-dollar consumer loans.

First, we ask to extend the comment period to provide more analysis of this voluminous rule that contains significant implications. Another concern is that large reliance on metric weights and computations in the performance context will override the flexibility in the evaluation process or the value of subjectivity when warranted. There are issues on which we can comment now, specific questions posed in the Notice of Proposed Rulemaking (NPR), but wish to reserve the ability to comment further if the comment period is extended.

With regard to the specific questions posed in the NPR:

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 only affordable housing?

> We favor consideration of broader types of community development activities other than affordable housing, those that are intended to benefit low- or moderate-income people or communities in both a targeted way or partially. Also, a primary-purpose standard that includes consideration for activities where less than the majority of the entire activity benefits low- or moderate-income individuals or communities promotes appropriate flexibility for an institutions efforts to reach those in need. Financing broadband infrastructure, healthcare facilities or health care efforts, other essential infrastructure and community facilities are good examples. We would not agree that expanding partial consideration of activities would divert limited

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resources from projects specifically targeted to benefit low- or moderate-income people or communities, as we believe examination staff can apportion an appropriate weight to the activities undertaken by an institution that has assessed the needs and opportunities within the communities they operate.

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

Although metrics can be employed in some instances for measuring community development activities (for example, a count of the initial number of occupants in a housing development that targets low income tenants), metrics are unattainable in other activities, such as ones that benefit all income levels in an assessment area (for example, clean-up and restoration needs after natural or weather-related disasters that are disproportionately harmful to lower income households with fewer financial resources or domiciled in older homes more susceptible to damage). Non-metric factors should be included in analysis, for instance if projects to target low- or moderate-income people or communities are infrequent in an assessment area, or competition is robust among multiple institutions competing for limited opportunities within their assessment areas. Another recent example is when community development activities are restrained by a pandemic, which limits community contact and outreach, as well as shifts a community's economic objectives to job-preservation and the distribution of health-care. Taking the above into account, establishing rigid numerical thresholds would not necessarily represent an accurate assessment of an institution's efforts.

Question 27. Should consideration of financial literacy activities expand to include activities that benefit individuals and families of all income levels, including low-and moderate-income, or should consideration be limited to activities that have a primary purpose of benefiting low-or moderate-income individuals or families?

We agree that financial literacy activities should be expanded to include those that benefit individuals and families of all income levels, including low-and moderate-income. As related in the NPR, current rules limit these activities to targeting low-or moderate-income individuals, such as financial education in schools where the majority of students receive free or reduced-price lunches or a housing counseling program in a low-income neighborhood. An expansion of these rules would achieve additional success in reaching lower income individuals by providing services to an entire community. Of course, activities that target only middle- and upper-income individuals would not receive consideration.

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?

Yes, but we also support a publicly available illustrative, non-exhaustive list of activities that are eligible for CRA community development consideration, with specificity and examples to assist in clarifying regulatory criteria. It is preferable that the list provide activities for loans, investments, and services to assure the eligibility of initiatives before the commencement of an examination. We also support that the list be periodically amended when any new activity has been determined by the agencies to be eligible or not eligible for consideration.

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

We suggest that any prospective community development activity that does not conform to the non-exhaustive list of activities be submitted in writing to the institution's primarily regulatory for consideration. Realizing that any response should be vetted among the agencies for consistent treatment by banks, we suggest a reasonable timeline for review, perhaps within 30 days.

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?

We recommend aggregating closed-end home mortgage loans of all purposes. The type of loan demand and credit needs among consumer's and among communities can vary by factors in any given period and beyond the control of a bank. For instance, one could anticipate that refinancing activity would occur in a higher degree in times of lower interest rates that followed high rates of prior years (further, smaller home improvement loans, consumer loans, or HELOCs, might be more popular when interest rates are higher.) As another example, the age of housing stock could influence consumer decisions on whether to improve their dwellings or not at any given time.

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?

We recommend that home improvement and other purpose closed-end home mortgage loans be included in closed-end home mortgage loan product category. Even if home purchase and refinance mortgages significantly outnumber home improvement mortgages and other purpose closed-end home mortgage loans, removing these mortgages would not always present an accurate picture of institutions' efforts to meet the needs of a community. For example, if an institution emphasizes home improvement originations as a way to improve housing stock and value in older neighborhoods.

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

Yes. Lending on non-owner-occupied housing lending can also facilitate affordable housing in a community, and would not otherwise provide a complete illustration of a bank's lending that benefits low-or moderate-income individuals and within those communities.

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?

We agree that lower lending volumes for open-end home mortgage loans limit the usefulness of market benchmarks under the Retail Lending Test. Further, open-end home mortgages are not reported as prevalently in small and intermediate institutions due to the threshold levels of reporting these loans, rendering inconclusive comparisons to peers.

<u>Question 62</u>. 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?

For both purposes of the Community Reinvestment Act and for Section 1071 Rulemaking, a decision to increase the size standard for small business loans and small farm loans should be based on, on balance, the value and sufficiency of information to be obtained (meaningfulness), if a reliable indicator of performance under the Community Reinvestment Act, the burdensome cost to acquire this information, and the impact to business owners when seeking information that might not be readily available to them. For example, our experience instructs that the complexity of ownership structures increase in proportion to the size of business, making accurate data burdensome to obtain for both the business and the a bank. In our observation, a $5 million threshold would be too large to describe a business as "small" and not indicative of small businesses in our communities. Therefore, we recommend retaining the existing threshold. Of course, the threshold could be revisited after an additional year and the Section 1071 data has been both reported and analyzed. After all, the 2020 *Final Report of the Small Business Review Panel on the CFPB's Proposals Under Consideration for the Small Business Lending Data Collection Rulemaking* stated that market-wide data on loans to small businesses currently is very limited. Currently, analysis of small business and small farms of a similar data-set is restricted to data from mandatory CRA-reporting banks (and voluntarily reporters to a lesser degree). It would seem advantageous to us to wait an additional year until Section 1071 data has been reported at the current threshold, and analyzed to determine if it is sufficiently both meaningful for Section 1071 objectives and predictive under the Community Reinvestment Act.

<u>Question 64</u>. 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?

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<u>Question 65</u>. 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?

We consider that retail loan purchases should not be treated equally to and measured separately from loan originations. However, we also recommend that purchased loans be evaluated with a qualitative component of how the purchase assisted the needs of low-and moderate-income individuals and in low-and moderate-income areas. The NPR relates the market for purchased loans can provide liquidity to banks and other lenders, such as CDFIs, and extend their capability to originate loans. Also, opportunities might arise where lending projects and loan bundles could produce a positive impact to lower-income communities or

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disadvantaged individuals. Opportunities could also occur for institutions that have not been able to penetrate these communities to its satisfaction with retail lending originations in spite of its efforts. In all, any metric measurement of loan purchases should be paired with qualitative judgment based on factors related to an institution's challenges, with complexity and innovativeness included (challenges can include but not limited to size and resources, availability in assessment area, economic conditions, marketability of the loan so additional capital can be used for additional prospects, competitive factors, etc.).

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?

Overall, we are not supportive of adding a required sub-category of automobile lending under consumer loans as a metric in the Retail Lending Test with which to gauge a bank's performance, particularly as a comparative product to a bank's peers under the Retail Lending Test. It is unclear in the NPR if the data-sets within the metrics supporting benchmarks, from which performance would be assigned, is an accurate standard for measuring demand or for deriving what automobile-driving population is eligible for automobile purchases. One should also consider that a bank's automobile lending is largely impacted by the programs and competitive options offered by its nearby automobile dealers to sell a vehicle, the latter being the inherent objective of the dealer (with the dealer's ability to shop third-party loan-providers and options to make that sale). Also, credit unions, who are not covered under the Community Reinvestment Act, have traditionally been active with lower-market rates regarding automobile financing and dealer financing relationships. Instead, we support a qualitied and quantified approach to all consumer lending, plus any sub-categories of consumer lending that a bank may emphasize in it business model or strategy.

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?

We support the agencies adopting a qualitative and quantitative approach to evaluate consumer loans. Further, neither qualitative nor quantitative evaluation should be limited to certain or to sole consumer loan sub-categories or types. The only measurement in the NPR for consumer loans are for specific sub-categories (i.e. credit cards, automobile purchases, or other revolving credit), without considering a bank's overall efforts to provide affordable credit to individuals that request loans for numerous needs and numerous amounts. This limitation does not recognize a bank's efforts to reach and serve low-to moderate income consumers with small-dollar loan programs responsive to their needs, desires, and necessities. Responding to these needs ensues a valuable alternative to any predatory lenders operating in geographic areas where there is less opportunity for consumers to shop for affordable credit; further, it provides alternatives to pay-day lending. Also, it also provides a valued record of payment-reporting to credit bureaus, which some nonbank lenders do not provide. Moreover, attracting low-to moderate income individuals and families with small-dollar loans serves as a good introduction into the banking system where future financial advantages can be developed and realized (whether that be responsive deposit products, business loans, or home loans).

Therefore we recommend the agencies (1) adopt a qualitative approach along with a quantitative approach to evaluate consumer loans as a whole (as a "major product line") and/or any sub-category of consumer loans, (2) do not limit evaluation to only sub-categories of consumer loans, such a automobile loans, and consider a bank's overall business strategy regarding its consumer lending, (3) evaluate all consumer loans or any sub-category of consumer loans based on a bank's option and when such loans are a major product

line or business focus compared to loans within the Lending Test (based on both and either a combination of separate dollar amount and of the number of loans), and (4) because small-dollar loans can have a lower dollar value in regulatory evaluations, compared to other products, include average loan percentages and loan counts along with total dollars amounts in evaluations.

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?

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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?

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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?

Of course, the benchmarks used in examination evaluations, which precedes the final assessment of a bank CRA-related performance, will only be valid to the degree that the underlying and supporting data is valid. All means and methods of choosing a valid data-set listed in the NPR can vary in proportion of validity based on non-static and fluctuating economic and demographic environments existing and pre-existing the time an evaluation period is chosen. Unfortunately, the NPR is substantially changing and codifying a methodology, much different than one in place since 1995, without the ability to test the ramifications of different methodologies to current economic and demographic conditions (and without all the current and/or accessible bank records that are proposed be measured in the NPR). For example, one should consider the dynamic changes in the previous three years where a pandemic upended various sectors of the economy and, most recently, a fundamental and substantive imbalance of supply and demand has created nationwide inflationary pressures and subsequently an increase in interest rates. One should also consider a possible incongruence of comparisons to peer banks if benchmark data and evaluation periods are not similarly timed or applied, which could otherwise create unwarranted conclusions. Therefore we suggest a transition period where a bank may choose to be examined between existing regulations and the NPR so that, even if a bank choses the existing regulation, simultaneous trial testing can be performed so that alternate and multiple benchmarks and data-sets can be assessed (without the speculation in the NPR). In this way, banks and examination staffs will more informed on how to proceed in their assessments if varied and flexible methods are supported.

Also, the NPR states "agencies propose using benchmarks that capture mortgage lending by all reporting lenders, not just mortgage lending by banks. Using HMDA reporter data enables this benchmark to reflect a larger percentage of the mortgage market, including bank and non-bank mortgage lending. The agencies propose to set bank performance expectations relative to all mortgage lending, as captured in HMDA data, in a community, rather than just to mortgage lending by banks. This measure is a more complete reflection of a community's total credit needs than is a measure that only captures those met by bank lenders." We propose that benchmarks of both banks and of all reporting lenders be considered and used in establishing a benchmark, as appropriate on a case-by-case basis. Of the alternate methods, one method could include a review of institutions with 50% to 200% of the number of originations of a bank. Alternative data-sets would allow flexibility and consideration of competitive institutions such as non-profits, credit unions, finance companies, mortgage companies, and other

entities not subject to the CRA, and employ very different underwriting criteria and different business strategies. As an example, non-profits may have on occasion access to attractive terms through government programs that are not accessible to banks.

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?

Yes we support the agencies providing more specific guidance regarding what credit products and programs may be considered especially responsive, with a stipulation that a bank may pursue other impactful and/or responsive activities that might deviate from or not be among the list of the specific examples.

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?

Yes, as individuals of low- and moderate-income or who reside in low- and moderate-income geographies can be positively affected by initiatives brought about within special purpose credit programs.

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?

We prefer that examiner judgment and performance context determine the relative weighting to impart flexibility with regard to a bank's business model, assessment area characteristics, and product demand.

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?

We suggest the weighting vary by a bank's business model and other performance context to allot for flexibility, plus for changes in banking and economic environments.

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

As an intermediate bank that maintains branch retail operations in a nonmetropolitan areas, we support the consideration of volunteer activities unrelated to the provision of financial services be considered in nonmetropolitan areas, as we have fewer opportunities to provide community development services only related to financial services that would otherwise benefit the community.

Question 144. The agencies propose to provide continued flexibility for the consideration of community development activities conducted by intermediate banks both under the status-quo community development test and the proposed Community Development Financing Test. Specifically, intermediate banks' retail loans such as small business, small farm,

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and home mortgage loans may be considered as community development loans, provided those loans have a primary purpose of community development and the bank is not required to report those loans. Should the agencies provide consideration for those loans under the Community Development Financing Test?

> Because of the flexibility to intermediate banks, we support the consideration of community development activities conducted by intermediate banks either under the status-quo community development test and the proposed Community Development Financing Test, provided intermediate banks are not required to report those loans. This option could assist in qualitatively assessing the impact of a bank's small dollar activities that benefit the community.

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 community development, under the applicable community development evaluation, regardless of the reporting status of these loans? Should the same approach be applied for the intermediate bank community development performance standards in § __.29(b) and for intermediate banks that decide to opt into the Community Development Financing Test in § __.24?

> Yes, we agree that intermediate banks should be able to choose whether a small business or small farm loan is considered under the Retail Lending Test or under the applicable community development evaluation, Community Development Financing Test, regardless if small business or small farm loans are reported or not.

Question 169. Should large banks with assets of $10 billion or less be required to collect community development 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? Under this alternative, should large banks with assets of $10 billion or less have the option of using a standardized template or collecting and maintaining the data in their own format? If large banks with assets of $10 billion or less are required to collect and maintain community development services data, would a longer transition period for these banks to begin to collect and maintain deposits data (such as an additional 12 or 24 months beyond the transition period for large banks with assets of over $10 billion) make this alternative more feasible? Does the added value from being able to use this data in the construction of a metric outweigh the burden involved in requiring data collection by these banks?

> With regard to an intermediate bank's data collection (which will not include the number of full-time equivalent employees, services hours performed, and other data required of large banks), we support the option to collect and maintain data in our own format or use a template provided by the agencies.

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 additional 12 months after the CFPB finalizes its proposed rule? What are the advantages and disadvantages of each option?

> It would more advantageous to provide an additional 12 months after the CFPB finalizes its proposed rule. An additional period of data-validation and analysis using a consistent definition would promote accurate metrics for both regulations. Compliance with Section 1071 will consume considerable compliance resources in addressing and developing recordkeeping data systems, testing, forms, procedures, and training. Experience instructs that regulatory initiatives of this magnitude generate unintended issues, challenges, and adjustments after implementation. From our past experience, we can also anticipate delays from software vendors when modifying, enhancing, and testing their systems. Further, it would be advantageous during a

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transition period if the regulatory agencies live-test a sample of banks of different sizes, making adjustments via interim rulemaking and clarifications through FAQs as appropriate when needed.

Again, we appreciate the opportunity to provide comments. We hope that our comments are helpful in efforts to enhance the Community Reinvestment Act process.

Sincerely,

Tammy M. Kidwell
Compliance & Community Reinvestment Officer
CITIZENS TRI-COUNTY BANK

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