August 5, 2022

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Submitted via Rulemaking Portal

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RE: Comment on Interagency NPR re: Community Reinvestment Act; Docket ID OCC-2022-0002; FDIC RIN 3064-AF81; Federal Reserve Docket No. R-1769

To whom it may concern,

Thank you for this opportunity to comment on the proposed rules to modernize Community Reinvestment Act ("CRA") regulation. As the first fintech lending company to acquire a national bank, LendingClub Corporation welcomes this proposal to modernize CRA and harness the ways banking has changed since CRA's last revision in 1995. We hope to share our perspective to support a stronger and more innovative CRA framework.

LendingClub Bank , National Association ("LendingClub") is the leading digital marketplace bank and a wholly-owned subsidiary of LendingClub Corporation (NYSE: LC).[1] We operate almost entirely online and use technology to lower the cost of credit and increase the rewards for saving, helping people reduce the cost of their debt, build a path to savings, and achieve their financial goals every day. Since 2007, LendingClub has facilitated over $70 billion in loans to over 4 million Club members. LendingClub Bank is active in four primary lines of business:

- In consumer credit, LendingClub is a leading provider of unsecured personal loans, bringing lower-rate competition to the credit card market and replacing back-end fees with upfront pricing.
- In deposit accounts, LendingClub charges no overdraft or NSF fees and models a low-fee, Bank On-certified approach to banking for our members, who are often living paycheck-to-paycheck like the majority of Americans.

[1] In February 2021, LendingClub Corporation purchased Radius Bancorp, Inc. and its wholly-owned subsidiary Radius Bank, thereby becoming a bank holding company and forming LendingClub Bank, N.A., as its wholly-owned subsidiary through which it operates the vast majority of its business.

- In auto lending, LendingClub is refinancing consumers' loans into lower rates, delivering average savings of about $4,000, often by eliminating hidden and discriminatory markups.

- In small business lending, LendingClub provides lower-cost, transparent lending in partnership with community development financing institutions ("CDFIs"). LendingClub has also partnered with CDFIs and advocacy groups to help lead a wave of new small business financial protection laws across the country to stem the rise of predatory small business financing.[2]

We hope that our experience as the first fintech lending company to become a national bank can help inform the agencies' efforts to modernize CRA to address the rapid growth of digital and online banking services. Digital banks growing in number, and we believe these banks represent an important part of the future of the banking system, as many traditional banks are incorporating fintech-style offerings and business models. In the following letter, we offer recommendations to strengthen the proposed rule's ability to harness the financial inclusion potential of digital banks.

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[2] This small business financial protection work is conducted through the Responsible Business Lending Coalition which LendingClub co-founded. See Responsible Business Lending Coalition, *Small Business Borrowers' Bill of Rights*, www.borrowersbillofrights.org.

Contents

1. Digital banks can improve financial inclusion in the banking system, which should be harnessed by CRA modernization

We applaud this initiative to modernize CRA.[3] A successfully modernized CRA would harness the potential of the increasingly common digital banking models that can improve credit access and services in low- and moderate-income ("LMI") communities and individuals. In fact, we find that in many cases, digital business models are outperforming the inclusion provided by traditional financial institutions.

For example, LendingClub's online, technology-driven, marketplace business model has enabled us to outperform traditional banking models in lending to small businesses, LMI consumers and communities. LendingClub was founded in 2006 on the conviction that consumers pay too much for credit and that the cost of credit can be lowered by using technology and responsible product design. Over the past 15 years, LendingClub has helped re-popularize the unsecured personal loan, which had fallen out of favor compared to higher-margin credit cards and have been the market leader facilitating over $70 billion of lower-cost personal loans. In doing so, LendingClub has helped increase price competition in personal credit and consumers have saved billions of dollars.

Unsecured personal loans, like those offered by LendingClub, have become a significant part of the consumer loan industry. Across the personal lending industry, these unsecured personal loans are offered with terms of one to five years, fixed rates below 36% annual percentage rate ("APR"), fixed payments, and full amortizations with no balloon.[4]

Personal loans have become a significant alternative to carrying debt on a credit card. In fact, about 80% of these loans through LendingClub are used to refinance credit cards or consolidate debt. Researchers at the Federal Reserve Banks of Philadelphia and Chicago have found that "consumers pay smaller spreads on loans from LendingClub than from credit card borrowing."[5] While the average APR paid on credit cards was 19.8% in 2020 according to the Consumer Financial Protection Bureau ("CFPB"), [6] average APRs on LendingClub personal loans are lower by about one-fifth, or about four percentage points, evidenced by internal data and in a second study by researchers from the St. Louis Federal Reserve Bank.[7] "On average and

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[3] For example, one of the five interagency goals described is "[a]dapt to changes in the banking industry, including internet and mobile banking." by the FDIC, OCC, and Federal Reserve in Community Reinvestment Act Proposal Fact Sheet, (May 2022), https://www.federalreserve.gov/consumerscommunities/files/cra-fact-sheet-20220505.pdf

[4] Unsecured personal loans ("personal loans") are defined further in Section 2.C of this letter.

[5] Federal Reserve Bank of Philadelphia, Working Paper 18-15., *The Roles of Alternative Data and Machine Learning in Fintech Lending: Evidence from the LendingClub Consumer Platform*, (April 2018, revised Jan. 2019), https://www.philadelphiafed.org/consumer-finance/the-roles-of-alternative-data-and-machine-learning-in-fintech-lending.

[6] Consumer Financial Protection Bureau., *The Consumer Credit Card Market*, pg. 48, (2021), https://files.consumerfinance.gov/f/documents/cfpb_consumer-credit-card-market-report_2021.pdf.

[7] Federal Reserve Bank of Philadelphia, Working Paper No. 18-15., *The Roles of Alternative Data and Machine Learning in Fintech Lending: Evidence from the LendingClub Consumer Platform*, (April 2018, revised Jan. 2019), https://www.philadelphiafed.org/consumer-finance/the-roles-of-alternative-data-and-machine-learning-in-fintech-lending.

for every risk level," the St. Louis Federal Reserve researchers found, "fintech lenders offer lower annual percentage rates (APRs) when compared to those of credit card firms."[8]

LendingClub is able to provide these lower prices even while serving communities underserved by the vast majority of credit card banks, according to researchers at the Federal Reserve Bank of Philadelphia and Rutgers University.[9] This study found that LendingClub's borrower population would be seen as risker than the populations served by about 80% of the banks studied. At the same time, the technology-based underwriting utilized by LendingClub was producing exceptionally safe credit outcomes for customers. The research found that LendingClub's default rates were nearly at the "best-practice margin," or the lowest default rates that could reasonably be achieved in the market today given the risk level of the population served.

One of the reasons for this financial inclusion success has been identified by the Federal Reserve researchers. They found that, over time, the correlation between FICO score and LendingClub's credit model risk ratings fell from 80% to 35%, while the model continued to effectively predict credit risk at a high level of performance. This low correlation with FICO indicates that LendingClub's digital credit models identify consumers who would be overlooked or overpriced by traditional FICO-based model. The researchers found that "given the same credit risk (i.e., for borrowers with the same expected delinquency rate), consumers would be able to obtain credit at a lower rate through the LendingClub than through traditional credit card loans offered by banks." The researchers also found that the approach used by LendingClub "has allowed some borrowers who would have been classified as subprime by traditional criteria to be slotted into 'better' loan grades, which allowed them to get lower-priced credit. In addition, for the same risk of default, consumers pay smaller spreads on loans from LendingClub than from credit card borrowing."[10]

Although CRA has historically been structured around banks' facilities, such as offices, branches, and ATM locations, LendingClub's online approach to banking is also improving financial inclusion on a geographic basis. A fourth study, also by researchers at the Federal Reserve, found that "LendingClub's consumer lending activities have penetrated areas that may be underserved by traditional banks, such as in highly concentrated markets and in areas that have fewer bank branches per capita."[11] Our online presence allows us to access customers who

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[8] Federal Reserve Bank of St. Louis., *Unsecured Personal Loans Get a Boost from Fintech Lenders*, (July 2019), https://www.stlouisfed.org/publications/regional-economist/second-quarter-2019/unsecured-personal-loans-fintech#1.

[9] *See,* Federal Reserve Bank of Philadelphia, Working Paper No. 19-22., *Consumer Lending Efficiency: Commercial Banks Versus A Fintech Lender,* (April 2019), https://www.philadelphiafed.org/consumer-finance/consumer-credit/consumer-lending-efficiency-commercial-banks-versus-a-fintech-lender. The study defines a "best-practice ratio" which indicates "what ratio of nonperforming consumer loans to total consumer lending could a bank achieve if it were fully efficient at credit-risk evaluation and loan management?" The research finds LendingClub among the best in the country, with defaults nearly at this best-practice margin — i.e., the defaults are largely the result of the inherent risk in the population served as opposed to inefficiency in underwriting. In contrast, the study finds the underwriting efficiency of some major bank lenders to be 123x and 50x worse.

[10] Federal Reserve Bank of Philadelphia Working Papers No. 18-15., *The Roles of Alternative Data and Machine Learning in Fintech Lending: Evidence from the LendingClub Consumer Platform,* (April 2018), https://www.philadelphiafed.org/consumer-finance/the-roles-of-alternative-data-and-machine-learning-in-fintech-lending.

[11] Federal Reserve Bank of Philadelphia, Working Paper No. 18-13., *Do Fintech Lenders Penetrate Areas that are Underserved by Traditional Banks,* (March 2018), https://www.philadelphiafed.org/consumer-finance/consumer-credit/do-fintech-lenders-penetrate-areas-that-are-underserved-by-traditional-banks.

may live in areas with low access or very low access to banking, providing access to credit that they may not have received otherwise.

A fifth study from the Federal Reserve utilizing LendingClub data looked at small business lending. It determined that "fintech lenders have been able to expand credit access to those underserved small business owners who are not likely to receive funding from traditional lenders…and those in areas that face a higher local unemployment rate."[12]

Our online small business lending program is designed to serve entrepreneurs underserved by traditional banks. It is operated in close partnership with Accion Opportunity Fund, the largest nonprofit CDFI small business lender, and we believe it is a model fintech/CDFI community development partnership. In comparison to bank conventional lending, LendingClub's online small business lending program has seen over five times the representation of minority-owned businesses, and over four times the representation of women-owned businesses, while providing credit priced at a fraction of the costs APRs small businesses may often pay other online lenders.[13] We were honored that Federal Reserve Bank of San Francisco highlighted this partnership as the focus of a chapter in its publication, entitled "Fintech, Racial Equity, and an Inclusive Financial System."[14]

LendingClub has also begun helping members refinance their auto loans, reducing the APRs members pay by an average of over five percentage points and saving an average of about $4,000 over the life of the loan.[15] Much of this savings may be the result of reducing the impact of markups added by auto dealers when a consumer finances the purchase of a vehicle at a dealership. According to research by the National Consumer Law Center, auto dealers are twice as likely to add these markups to loans of Black borrowers than to White borrowers, and those markups are routinely two-to-four times higher for Black people.[16] Our auto loans see about 12% greater savings for Black borrowers than White, because our Black members were more likely to be overcharged by their previous lender. Again, LendingClub has found a business incentive to provide fair access to lower cost credit by implementing a non-traditional business model for borrowers.

As these examples illustrate, digital banks can excel at financial inclusion and make valuable contributions to LMI people and neighborhoods. To successfully modernize CRA, it is

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[12] Federal Reserve Bank of Philadelphia, Working Paper No. 22-14., *The Impact of Fintech Lending on Credit Access for U.S. Small Businesses*, (April 2022), https://ssrn.com/abstract=4093443.

[13] Benchmarked by dollar to bank conventional loan programs cited in U.S. Senate Committee on Small Business and Entrepreneurship, *21st Century Barriers to Women's Entrepreneurship*, (July 2014), and Temkin, Kenneth, *Competitive and Special Competitive Opportunity Gap Analysis of the 7(a) and 504 Programs*, Urban Institute, (Jan. 2008). Although this may be the most relevant data available, it is aged. Analysis draws on SSBF data from 2003. Implementation of Section 1071, discussed below, would provide more current data.

[14] Federal Reserve Bank of San Francisco, Community Development Innovation Review Series 15(2), 117–123., *Fintech, Racial Equity, and an Inclusive Financial System*, (2021), https://doi.org/10.24148/cdir2021-02.

[15] LendingClub, *LendingClub Auto Refinance Loans Now Cover 94 Percent of U.S. Population,* (Nov. 2021), *https://ir.lendingclub.com/news/news-details/2021/LendingClub-Auto-Refinance-Loans-Now-Cover-94-Percent-of-U.S.-Population/default.aspx*.

[16] Rossman, Stuart, *The Data Is Clear: Auto Lenders Discriminate,* US News & World Report, (Nov. 2015), http://www.usnews.com/opinion/economic-intelligence/2015/11/17/dont-let-congress-weaken-oversight-of-discriminatory-auto-financing.

critical that the rule produce accurate evaluations of the achievements and shortcomings of digital banks with respect to the goals of CRA. Some important changes should be made to the proposal to that end:

a) Banks should be able to consider personal loans a Major Product Line in the Retail Lending Test and within a strategic plan (See Sections 2 and 4, below).
b) If personal loans are included in the Retail Lending Test, benchmarking LMI performance to market data must be permitted (Section 3).
c) Strategic plan weights and goals should remain flexible (Section 4).
d) Public participation in the approval process for strategic plans should be strengthened (Section 4.C).
e) The Retail Lending Screen should be revised, or it will inadvertently result in automatic failure of the Retail Lending Test for banks like LendingClub (Section 5).
f) CRA evaluations should explicitly consider bank performance at meeting the needs of people and neighborhoods of color (Section 6).
g) Financial Health measurements should be considered as part of the Retail Lending Test, as an important part of measuring outcomes (Section 7).
h) The geographic financial inclusion potential of digital bank lending could be captured more effectively and efficiently through national assessment areas with goals for serving harder-to-reach LMI areas, rather than through the proposed Retail Lending Assessment Area ("RLAA") framework (Section 8).

2. Personal loans must be eligible for consideration as a Major Product Line within the Retail Lending Test

We believe that CRA cannot effectively encourage or assess credit access in LMI communities if personal loans become excluded from the CRA Retail Lending Test. Personal loans, a category which explicitly excludes payday loans and high-cost installment loans as defined by the CFPB,[17] are a valuable product for LMI families and communities, and the agencies' concerns regarding the inclusion of personal loans can be addressed. Irrespective of whether credit cards and other non-auto categories of consumer loans continue to be eligible for the Retail Lending Test, personal loans should be eligible for consideration.[18]

[17] The CFPB defines payday loans to include short term loans where "the consumer is required to repay substantially the entire amount of the loan within 45 days of consummation" and high-cost loans longer term loans where "the cost of credit for the loan exceeds 36 percent per annum." 12 C.F.R. § 1041.3.
[18] This section is partially responsive to the agencies' CRA notice of proposed rulemaking ("NPR") Question 67, which asks, "Should credit cards be included in CRA evaluations? If so, when credit card loans constitute a major project line, should they be evaluated quantitatively under the proposed Retail Lending Test or qualitatively under the proposed Retail Services and Products Test?" Although we do not speak to credit cards in this section, we strongly believe that personal loans should be evaluated quantitatively under the proposed Retail Lending Test. NPR pg. 49.

A. CRA cannot effectively encourage or assess credit access in LMI communities if personal loans are no longer eligible for consideration in the Retail Lending Test

This CRA modernization effort proposes excluding personal loans and other types of consumer loans from evaluation under the Retail Lending Test, with the exception of automobile loans. The Retail Lending Test would evaluate Major Product Lines which are defined to include only closed-end home mortgage loans, open-end home mortgage loans, multifamily loans, small business loans, small farm loans, and automobile loans, generally when these loan categories represent more than 15% of a bank's lending.[19] This mandatory omission of personal loans would prevent the Retail Lending Test from accurately reflecting if the emerging group of digital banks that focus on personal loans, like LendingClub, are meeting the needs of LMI families and neighborhoods.

The Retail Lending Test constitutes the greatest part of CRA evaluation, at 45% of the overall CRA score for Large Banks and 50% for Intermediate Banks. An inaccurate evaluation in the Retail Lending Test would represent serious inaccuracy in a bank's overall CRA score.[20] Banks like LendingClub want to do more in CRA and to raise the bar for LMI service in the banking industry. Shortchanging these banks for the LMI service they are already offering, and have historically been able to get credit for in the current examination frame, results in an inaccurate evaluation and harms communities by failing to encourage more LMI service.

Consider the following example of how the proposal will misevaluate banks with substantial personal lending businesses. In a given assessment area, suppose that 90% of a bank's lending is in personal loans, 5% is automobile, and 5% is small business. Once personal loans are excluded, the remaining 10% of the bank's lending becomes 100% of its Retail Lending Test evaluation.[21] Although neither auto nor small business would exceed the 15% threshold proposed for qualifying as a Major Product Line if the full range of the bank's retail loans were considered, these smaller product lines now represent the entire Retail Lending Test, worth half of the bank's CRA evaluation, while 90% of the bank's lending has essentially been excluded.

Allowing such a small part of a bank's business to determine the evaluation of their CRA lending performances would be fundamentally inaccurate. If the bank is doing a poor job of serving LMI needs through its core business of personal loans, it could get an Outstanding evaluation on the Retail Lending Test simply if the non-core business lines are performing well. And, as perversely, if a bank is doing an excellent job serving LMI needs in its core personal loans business, it could get a severely low score because of business lines outside of the core business.

There appears to be a shared view among industry and consumer groups that consumer loans should be considered in the Retail Lending Test. As the agencies' proposal states, "industry groups generally preferred to retain the current approach of having consumer loans considered at

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[19] *See,* e.g., NPR pg. 164.

[20] As discussed below in Section 2.A.iv, the exclusion of personal loans from the Retail Lending Test cannot be sufficiently addressed by considering personal loans instead only in the Retail Products test which is worth only a few percentage points of the overall CRA score.

[21] *See,* NPR pg. 42.

a bank's option and when such loans amount to a substantial majority of a bank's business. Community groups instead favored requiring consideration where consumer lending amounts reach a significant quantitative threshold and emphasized that predatory products should not receive CRA credit."[22] These views of both industry and community groups appear not to be reflected in the proposal, but would be accommodated by maintaining personal loans as eligible for Retail Lending Test credit, while excluding predatory products, as discussed in Section 2(c) of this letter.

i. *The exclusion of a bank's core business from CRA evaluation is inconsistent with regulatory goals*

The omission of a bank's core business lines from CRA evaluation is inconsistent with other efforts in the proposed rule to evaluate a bank's activities in proportion to their importance in the bank's business model. As a key example, the agencies rejected a considered approach in a different aspect of the Retail Lending Test on grounds that it would potentially ignore most of a bank's lending. More specifically, the agencies' proposal explains that it rejected that approach because "in an extreme case, most of a bank's lending might effectively get ignored under such a weighting approach."[23] Consistent with this logic, similarly ignoring most of a bank's lending, in LendingClub's case, personal loans, should likewise be rejected. Furthermore, it would not be an "extreme case" under the proposal for banks' personal lending to be ignored — rather, it will happen with certainty and frequency for many banks.

A second example of the agencies' intent to give proportionate weight to banks' product lines in CRA is the discussion of how product lines would be weighted in assessment areas. The proposal requires "weighting each product by the dollar volume of lending the bank engaged in each product line in that assessment area."[24] This focus on lending volume was selected because it would incorporate prominent business lines and be tailored to individual banks' business models. The proposal explains that this approach seeks to "give proportionate weight to a bank's product offerings so that more prominent product lines … have more weight on the bank's overall conclusion in an assessment area," and concludes that the approach "is, thus, tailored to individual bank business model."[25]

Each of these examples emphasizes the agencies' intent to weigh banks' business lines for CRA purposes in proportion to the banks' businesses; however, the proposal will not achieve this goal for LendingClub and similar banks. Instead, some banks' minor retail lending product lines will be dramatically overweighted, while their primary lending operations will be disregarded.

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[22] NPR pg. 45.

[23] This rejected approach considered weighting of assessment areas for state and multistate MSA conclusions on the basis of assessment area deposits alone. *See*, NPR pg. 67.

[24] NPR pg. 64.

[25] Id.

ii. The exclusion of personal loans is a step backwards from modernization and the 1995 rule

The exclusion of personal loans is a regression from the 1995 CRA rule under which consumer loans (including personal loans) have generally been eligible for inclusion. Under the 1995 rule, interagency guidance explains that consumer loans can be evaluated under the Lending Test at a bank's option (or, in fact, be required in some circumstances):

> "Consumer loans will be evaluated if the institution so elects and has collected and maintained the data … However, if consumer loans constitute a substantial majority of the institution's business, the Agencies will evaluate them even if the institution does not so elect. The Agencies interpret 'substantial majority' to be so significant a portion of the institution's lending activity by number and dollar volume of loans that the Lending Test evaluation would not meaningfully reflect its lending performance if consumer loans were excluded."[26]

Given this precedent, it is not clear why this modernization effort regressively cuts some of the fastest growing lending categories. Experian found that "personal loan debt was the fastest-growing type of consumer debt" before the COVID-19 pandemic and found that this trend continued even during the pandemic. "Even during the beginning of the pandemic in 2020, when most other types of loan balances decreased, personal loans continued to grow ... [and] in 2021, personal loans continued their steady annual increase," Experian stated.[28] Credit categories that are increasingly important to consumers and used to a great extent by LMI consumers should not have a decreasing role in CRA.

iii. Accepting personal loans for consideration in the Retail Lending Test need not be complex

The simplest way to include personal loans in a modernized CRA would be to treat personal loans in the same manner as auto loans, the only included category of consumer loans in the proposal. Key issues around the treatment of consumer loans have already been resolved for auto lending, including Geographic Distribution Metrics[29], Community Benchmarks[30] and Market Benchmarks.[31] Those treatments would be just as effectively applied to personal loans.

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[26] OCC, FDIC, and Federal Reserve, *Interagency Questions and Answers Regarding Community Reinvestment; Guidance*, Community Reinvestment Act Q&A pg. 31 (July 2016), https://www.federalregister.gov/documents/2016/07/25/2016-16693/community-reinvestment-act-interagency-questions-and-answers-regarding-community-reinvestment.

[28] Horymski, Chris, *The Average Personal Loan Balance Rose 3.7% in 2021*, Experian (June 2022), https://www.experian.com/blogs/ask-experian/research/personal-loan-study/.

[29] Geographic Distribution Metrics compare non-auto consumer loans in low-income census tracts and in moderation-income census tracts (matching the metrics for all the other potential major product lines, not just auto).

[30] Community Benchmarks compare bank's LMI lending performance to demographic LMI representation. Typically, the percentage of a bank's loans to LMI borrowers is compared to the % of families in the given area who are themselves LMI, and the percentage of a bank's loans into LMI census tracts is compared to the % of census tracts in the given area which are considered to be LMI census tracts.

[31] Market Benchmarks compare bank's LMI lending performance to that of peer banks. Typically, the % of a bank's loans to LMI borrowers is compared to the % of total bank loans in the given area that are made to LMI borrowers, and the % of a bank's loans into LMI census tracts is compared to the % of bank loans in the given area made into those LMI census tracts. Thus, based on

Personal loans are similar to auto loans in that they are fully amortizing loans with fixed monthly payments, terms of one to seven year terms, and typical amounts from $1,000 to $50,000, as will be discussed in Section 2.B. In these respects, personal loans behave more similarly to auto loans than to credit cards, so should be treated in a similar manner to auto loans.

If personal loans are treated like auto loans for CRA evaluation purposes, the agencies would have the discretion to make their inclusion optional, or their inclusion could be required for banks where these personal loans account for a large portion of the bank's business, consistent with the 1995 rule.[32] Or the agencies could create a new threshold for CRA inclusion that appropriately captures consumer lending. Whatever way the threshold is designed, it would not be difficult to apply rules that ensure the Retail Lending Test comprehensively captures the retail lending of a bank. Additionally, the historical performance and CRA loan register data that is available for auto loan reporters would also be available for optional loan reporters. Further recommendations to close the gap in consumer loan data will be covered in Section 2.C.ii-iii.

iv. The exclusion of personal loans from the Retail Lending Test cannot be sufficiently addressed by consideration instead in the Retail Products Test, which is worth only a few percentage points of the overall CRA score

Moving personal loans from the Retail Lending Test to the Retail Products Test, as the agencies propose, is insufficient for several reasons. First, this limited approach would not incentivize responsible personal credit offerings to LMI communities, because the Retail Products Test is worth only a few percentage points of the overall evaluation and considers many factors other than personal loan activity. Therefore, the Products Test would not consider the volume of consumer lending to LMI communities or the percentage of consumer lending that is reaching LMI communities. Instead, the proposal would simply consider whether the products being offered, such as personal loans, are useful to LMI communities. Thus, the Products Test would not capture the difference between a bank that delivers these products to a nominal extent and a bank that is among the largest providers of personal loans in the United States.

Second, the proposed Retail Products Test approach does not address the over-weighting of smaller lines of businesses distorting bank performance within the Retail Lending Test. A bank providing excellent credit access to LMI people in its core business could fail the Retail Lending Test while another bank doing poorly by LMI people in its core businesses could pass the test.

Further, the proposed approach does not address problems that result within the Retail Lending Test from the exclusion of a bank's core personal loan business from the Major Product Line category, such as the potential for automatic failure in the Retail Lending Test Screen,

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the example of auto lending, Market Benchmarks for personal lending would be (1) the percentage of bank personal loans in low-income or moderate-income census tracts in an assessment area, and (2) the percentage of bank personal loans to low-income or moderate-income borrowers in an assessment area.

[32] The threshold could be based on a bank's lending at an institutional level, not each geographic area examined, which would promote simplicity while accurately identifying whether a bank's business model is significantly focused on non-auto consumer lending. The determination of whether personal loans are eligible to be a Major Product Line could be based on the same 15% of loans threshold determined by the number of loans made, the dollar value of those loans, or a combination of the two.

which is discussed in Section 4. Finally, the level of scrutiny applied to ensuring that appropriate distribution of lending to LMI geographies and LMI individuals is not as thorough as the Retail Lending Test. Excluding personal loans from the Retail Lending Test could allow predatory lenders or bad actors to continue to offer credit products that harm LMI individuals or communities without appropriate oversight or evaluation of their performance by their federal regulator.

B. Personal loans are an important product to LMI people and communities, so should be encouraged

Personal loans are an important source of credit to LMI communities and should not be neglected by CRA. Personal loans are reducing the cost of consumer credit in LMI communities by about one fifth in some circumstances, thus saving consumers thousands of dollars, as demonstrated in the research studies described in Section 1.[33]

Unsecured consumer loans also represent a critical rung in the ladder of credit access which the Retail Lending Test otherwise omits. We acknowledge that mortgage and small business financing are central to wealth building and deserve an important place in CRA. However, mortgages and small business loans are also generally used by people who have already established sufficient credit and economic stability to buy a home or start a business. Personal loans are often used before that level of credit and economic stability is established, and so, they can reach a greater representation of LMI borrowers.

The great relevance of personal loans to LMI people is evident from LendingClub's internal data on the credit behavior of our personal loan customers, who use mortgage loans at a much lower rate than personal loans. Only 39% of LendingClub personal loan borrowers have a mortgage loan. LMI individuals are even less likely to use a mortgage even while they do use personal loans. For personal loan borrowers with incomes below $40,000, only 17% have a mortgage. (For personal loans borrowers with incomes above $120,000, 59% have a mortgage.)

A comparison to small business credit use also demonstrates the importance of personal loans. Only 7% of LendingClub personal loan borrowers are small business owners, defined as being self-employed, suggesting that personal loans are of greater relevance to many LMI people than small business credit.

Nonetheless, personal loans are also valuable for small business owners as well. Personal loans can be an early source of credit that is obtainable before a business has developed the financial record to be underwritten successfully for a small business loan. Personal loans have funded about three of 10 of small businesses that are less than five years old, and two in 10 older businesses; these firms rely on personal loans often because they lack the size or stable revenue to be underwritten for traditional commercial loans.[34] 15% of personal loan applications have

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[33] Federal Reserve Bank of Philadelphia, Working Paper No. 18-15., *The Roles of Alternative Data and Machine Learning in Fintech Lending: Evidence from the LendingClub Consumer Platform*, (April 2018, revised Jan. 2019).

[34] These firms are deemed to have "medium" or "high" credit risk, which is the majority of small businesses today. Federal Reserve Bank of New York, *Small Business Credit Survey: Report on Startup Firms*, (Aug. 2017), https://www.newyorkfed.org/medialibrary/media/smallbusiness/2016/SBCS-Report-StartupFirms-2016.pdf.

traditionally come from small business owners, one-third of whom are low- or moderate-income.[35] Disaster-affected firms are also about 50% more likely to rely on personal loans.[36]

Auto loans are more commonly used than mortgage loans but are also less available for lower-income personal loan borrowers. While auto loans are used by 70% of LendingClub personal loan borrowers with incomes at or above $120,000, auto loans are used by only 42% of personal loans borrowers with incomes below $40,000. The remaining 58% of these LMI consumers nonetheless rely on personal loans for credit.

The importance of non-auto consumer lending to consumers is also evident in the volume of its use. Experian estimates that consumer debt for credit cards and personal loans, at $1.3323 trillion, is nearly the same volume as that of auto loans and leases, at $1.43 trillion.[37] Non-auto consumer lending is much too large a portion of the credit market to ignore in the Retail Lending Test. Personal loans provide too great a service to LMI people and communities to be excluded from consideration in the Retail Lending Test.

C. The concerns motivating the agencies' exclusion of personal loans can be addressed

We believe the concerns that may be motivating the agencies' exclusion of personal loans can be sufficiently addressed by four reasons described below:

i. Clearly defined categories of consumer lending can be evaluated separately

The agencies' concern that consumer loans are too diverse a credit category to evaluate together can be addressed by sufficiently defining the separate categories of consumers. Although secured and unsecured loans is too broad of a category, it is actually far narrower than closed-end home mortgages that co-mingles all home mortgage loans, including consumer primary residences, second/vacation homes, commercial investment properties, single family rental housing, and a variety of loan purposes including purchase, refinance and home improvement, and mixes both bank-held financing, as well as secondary market, VA, FHA, USDA, first-time homebuyer, etc. To narrow the definition of consumer loans, unsecured personal loans, like credit cards, should be defined separately from the extremely general category that the proposal defines called "other secured and unsecured loans."[38]

The agencies' anticipated difficulty evaluating non-auto consumer loans is not due to the nature of consumer lending, but is due to the overly general categorization of consumer loans in the proposed rule. The agencies state that the primary challenge for including non-auto consumer loans in the Retail Lending Test is that these products vary and may not be comparable with each

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[35] Data from LendingClub and other marketplace lenders

[36] Federal Reserve Banks of Dallas, New York, Richmond, and San Francisco, *Small Business Credit Survey: Report on Disaster-Affected Firms*, (2017), https://www.newyorkfed.org/medialibrary/media/smallbusiness/2017/SBCS-Report-on-Disaster-Affected-Firms.pdf.

[37] Horymski, Chris, *Consumer Debt Continued to Grow in 2021 Amid Economic Uncertainty*, Experian (July 2022), https://www.experian.com/blogs/ask-experian/research/consumer-debt-study/.

[38] The agencies propose to define a consumer loan as an automobile loan, credit card loan, or other secured or unsecured loan to one or more individuals for household, family, or other personal expenditures. NPR pg. 174.

other. This problem arises from the proposed segmentation of consumer loans into just three categories: automobile loans, credit card loans, or other secured or unsecured loans.[39] Even the proposal observes that this segmentation is too general to be functional, stating "a part from automobile loans, this category spans several product categories that are heterogeneous in meeting low- and moderate-income credit needs and are difficult to evaluate on a consistent quantitative basis."[40] This observation then leads to an unnecessary viewpoint that comparison between the three categories is not possible, driving the tautological conclusion that automobile lending should be the sole consumer loan type evaluated under Retail Lending Test.[41]

A simple way to address the agencies' observation that consumer lending is too broad a category would be to further develop the proposed approach of segmenting consumer loans into different categories. The current CRA framework divides consumer loans into five categories of consumer loans: automobile loans, credit card loans, home equity loans, other secured loans, and other unsecured loans.[42] Additionally, the proposal describes that most commenters to the ANPR suggested that consumer loans be evaluated in separate categories: "Most stakeholders favored evaluating consumer loans as separate categories rather than as a single category considered in the aggregate."[43]

We suggest that an additional category of consumer loans be added for unsecured personal loans, so that these no longer fall within the overly broad category of "other secured and unsecured loans." Unsecured personal loans are a fairly uniform credit class. They are fully amortizing installment loans with fixed interest rates that "usually range from 3 percent to 36 percent … [with] between one and seven years to repay the money."[44]

In these respects, unsecured personal loans are similar to auto loans, and in fact more similar to auto loans than to credit cards. Additionally, they are similar quarterly originations, even if auto loans tend to be somewhat larger. For example, there were 7.3 million auto originations and 5.1 million unsecured personal loans originations in Q3 2021.[45] If auto loans are included in the Retail Lending Test, personal loans should be as well.

ii. Personal loans can be considered within the Retail Lending Test without encouraging payday or high-cost installment loans

The agencies' potential concern regarding payday and high-cost installment loans can also be addressed. These products should not be considered for credit within the Retail Lending

[39] *See,* NPR pg. 48.

[40] NPR pg. 48.

[41] *See*, NPR pg. 48.

[42] *See,* NPR pg. 42.

[43] NPR pg. 45.

[44] Porter, Kim, *Beginner's Guide: What is a Personal Loan?*, Bankrate, (April 2022), https://www.bankrate.com/loans/personal-loans/what-is-a-personal-loan/.

[45] *See*, e.g., TransUnion, *Recent Vintage Loans Perform Well Even as More Non-Prime Consumers Secured Credit in Second Half of 2021*, (February 2022), https://newsroom.transunion.com/recent-vintage-loans-perform-well-even-as-more-non-prime-consumers--secured-credit-in-second-half-of-2021/.

Test, because loans that frequently harm vulnerable people should not be rewarded through CRA.

Fortunately, the unsecured personal loan category, as commonly understood and defined by the CFPB, does not include payday loans or high-cost longer-term loans.[46] For example, the American Fintech Council, an association of fintech banks and nonbanks that includes many of the country's largest personal loan providers, has had membership criteria that exclude any firm offering payday or high-cost installment loans, as defined by the CFPB, since 2016.[47,48]

By similarly defining unsecured personal loans to exclude these "covered loans" under the CFPB's Payday Lending Rule, CRA could encourage healthy personal loans without encouraging potentially predatory payday loans or high-cost loans with APRs above 36%.

iii. Reporting burdens for personal loans can be low

Although we appreciate the proposal's sensitivity to not creating undue regulatory burden, reporting personal loan data need not be burdensome. First, the proposal's discussion of the decision to exclude non-auto consumer loans raises the concern that reporting borrower income may be challenging. The proposal states, "banks may not currently retain or have the capability to capture borrower income at origination or subsequently as cardholders maintain their accounts."[49] However, nearly all personal lenders, and much of the credit card industry, capture borrower income at origination by necessity, in order to underwrite the loans. This income data is easily queried from a modern bank's database, and thus easily reportable (and should be collected for safety and soundness considerations anyway). As permitted under the existing CRA rules, the income data is collected at origination and could be maintained as the borrower's income.[50]

For other data points that the proposal considers potentially challenging to collect, the proposed approach for auto loans could be applied to other consumer loans, such as personal loans. In describing data reporting for auto loans, the proposal outlines the following six required data points. Our review below of each of these six required points demonstrates that if personal loans were reported like auto loans, such reporting would not be a burden for banks who are capable of maintaining databases and producing digital reports:

"(i) A unique number or alpha-numeric symbol that can be used to identify the relevant loan file"

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[46] The CFPB defines payday loans to include short term loans where "the consumer is required to repay substantially the entire amount of the loan within 45 days of consummation" and high cost loans longer term loans where "the cost of credit for the loan exceeds 36 percent per annum." 12 C.F.R. § 1041.3.

[47] *See*, e.g., https://fintechcouncil.org/members. "Members may not offer 'payday' or 'high-cost installment loans' as defined by the CFPB."

[48] Similarly, an analysis of all rated securitizations of unsecured personal loans in 2019 found that 99.7% of total loan volumes securitized was from companies engaged in lending only below 36% APR.

[49] NPR pg.42.

[50] See, NPR pg. 81.

This first required data point is bank-generated and so should be accurate in 100% of instances.

"(ii) The date of the loan origination or purchase"

This data point is also determined by the bank and so should be accurate in 100% of instances.

"(iii) The loan amount at origination or purchase"

This data point is determined by the bank and so should be accurate in 100% of instances.

"(iv) The loan location, including state, county, and census tract"

These location data are the only required data on the proposal's six-point list that is generally self-reported or determined through geolocating software, and thus potentially subject to error and require data cleaning. Although a consumer's address is required for Know Your Customer compliance and is therefore readily available, inaccuracies may occur where the borrower accidentally selects the incorrect state or mistypes part of an address. We appreciate that the agencies have proposed offering geolocating software. We believe that with such tools and sufficient allowance for unintentional geolocating errors within large portfolios of many small consumer loans, establishing the state, county, and census tract of each loan need not be burdensome.

"(v) An indicator for whether the loan was originated or purchased by the bank"

This data point is determined by the bank and so should be available in 100% of instances.

"(vi) The borrower annual income on which the bank relied when making the credit decision"

As described in the beginning of this subsection, existing CRA rules permit borrower-reported income to be reported for consumer loans without any additional verification for CRA purposes beyond what the bank already uses in the course of business.[51] Thus, income is known to the bank in 100% of instances.

Our review of these data reporting points demonstrates that reporting these data fields for personal loans need not be a burden for banks who are capable of maintaining databases and producing digital reports. To further decrease the burden on banks, reporting could only be required for banks with over $10 billion in assets and could be optional for Large Banks with

[51] The rules also do not require reporting of consumer income in any instance where the bank does not consider income in the credit decision.

assets below $10 billion. Data reporting need not be an obstacle to including consumer loans in the Retail Lending Test and thereby achieving a more effective CRA framework.

iv. Market Benchmark data for personal loans can be obtained

A fourth concern raised by the agencies is the apparent lack of personal loan market data on LMI penetration to make a benchmark. This rationale dooms itself into becoming true. If agencies withdraw the option to report personal loan data from CRA, as the proposal does, there will never be such data available to benchmark against and the concern could never be addressed. And there are several other potential sources of data that may be considered on an interim basis until further optional or required data reporting establishes new benchmarks. These other sources include data from credit bureaus and from banks who have submitted consumer lending data for CRA under the existing CRA rule. Additionally, the type of historical and benchmarking data that is currently available from the existing CRA reporting and examination framework for auto loans would be available for consumer loans.

3. It is crucial that benchmarking LMI performance to market data be permitted for personal loans

If included, personal loans should be given a Market Benchmark option like every other loan category in the Retail Lending Test. If personal loans are treated differently from other loan categories in this respect, personal loans will be penalized and their benefit to LMI communities discouraged. However, some flexibility may be required to break through the chicken-and-egg problem of gathering sufficient market data to benchmark personal loans against.

A primary reason that banks have avoided submitting personal loans for evaluation is that Community Benchmarks are generally too high a hurdle to clear. Falling short of this Community Benchmark can disqualify a bank from an Outstanding rating.[52] Nonetheless, some banks have been advised that under the current 1995 CRA rule, personal loans that are submitted for evaluation must exceed Community Benchmarks to be considered Outstanding and that no available Market Benchmarks will be considered a sufficient alternative. The insistence on often-unachievable Community Benchmarks is not applied to any other loan category in CRA and cannot be blamed on the lack of market data, given that only the agencies themselves have the ability to require or allow CRA to collect this market data.

Available market data indicates how insufficient the Community Benchmark is for personal loans. According to credit bureau data, 19% of bank personal loans were made to LMI households in 2019.[53] This compares to a demographic Community Benchmark of 39.4%, from the FFIEC data.[54] Thus, a bank *doubling* industry standard LMI representation, such that 38% of

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[52] Several banks serving specialized populations have submitted consumer lending data that has exceeded the demographic benchmark. For example, one bank focused on student lending has submitted data showing that the LMI penetration of these loans excludes the demographic benchmark. But students are, by nature, a low-income group that is not representative of the population served by banks lending broadly in the community.

[53] During 2020, this percentage dropped to 17%, which may be atypical due to the COVID-19 pandemic.

[54] FFIEC, *CRA National Aggregate Report*, https://www.ffiec.gov/craadweb/national.aspx.

its loans are reaching LMI people compared to an industry standard of 19%, would be prevented from receiving an Outstanding rating.

If the agencies decide not to require reporting of personal loan data, we encourage the agencies to be flexible in developing the personal loan Market Benchmark data. given the chicken-and-egg nature of this data benchmarking problem. For example, third-party data sources might be accepted. In time, the bank's benchmarking against third-party data would become a benchmark for other banks. Therefore, Market Benchmark data that agencies could consider using include the following options:

1) Previously reported personal loan data under the 1995 rule
2) New personal loan data reported at banks' option
3) New personal loan data reported from agency requirement
4) Market data obtained from credit bureaus
5) Market data obtained from other industry sources (e.g., DV01 or others)
6) Market data obtained from other research projects undertaken by the agencies, submitting banks, or other parties

Any of these data sources could help develop a sufficient Market Benchmark to break through the chicken-and-egg problem of data on personal loans, and enable personal loans to be brought in to CRA resulting in credit access and savings for LMI families.

i. Credit bureau data could serve as an effective market benchmark for personal loans

Data from credit bureaus could serve as an effective source of a Market Benchmark for personal loan where bank-reported data is thin. The proposed rule already supports reliance on credit bureau data, such as in the use of Dun & Bradstreet data for establishing the distribution of small businesses and small farms. For personal loans, TransUnion has provided LendingClub with analysis of unsecured personal lending by banks. TransUnion found that, in 2019, 19% of bank personal loans went to LMI households.[55] Similar data could be available for different time periods and for percentage of personal loans into LMI census tracts. These data could be used to break the chicken-and-egg lack of Market Benchmark data for personal loans if the agencies elect not to collect personal loan data from banks directly.

This credit bureau data is not identical to bank reported CRA data, but we believe it is sufficiently comprehensive and accurate. Regarding comprehensiveness, this TransUnion data set is believed to include nearly all bank personal lending because nearly all bank personal lenders report to TransUnion (as do the vast majority of nonbank personal loan companies).[56]

Regarding accuracy, income is established in this data set using TransUnion's CreditVision Income Estimator, which is a model that uses attributes on the credit report to

[55] Analysis available to agencies on request.
[56] We understand that personal lenders generally report to the major three credit bureaus, with the exception of some smaller nonbank startups with less developed systems. Short-term, subprime lending, which is not considered part of the personal loan category, is not included in this data and is reported instead to different, specialty credit reporting agencies such as Clarity.

predict income reported in tax returns.[57] The model was developed and validated using verified Adjusted Gross Income as reported on the Form 1040 U.S. Individual Income Tax Return (whether filed jointly or separately).[58] CreditVision Income Estimator is already used in some regulatory compliance contexts in consumer lending, such as establishing income for ability to repay analysis required by the CARD Act.[59,60] This level of accuracy may be similar to self-reported, unverified income, which is otherwise accepted under current CRA regulations for consumer lending.[61]

TransUnion's data appears capable of sufficient geographic accurate as well. The credit bureaus have the address of personal loan consumers.[62] As such, the bureaus' geocoding accuracy can be similar to that achieved by using available geocoding tools. This industry benchmarking data is available for the percentage of personal loans to LMI families both at the national level and for census tracts.

The availability of this data demonstrates that credit bureaus like TransUnion can serve as an adequate source of Market Benchmark data for personal loans if the agencies choose not to collect personal loan data directly from banks. Using credit bureau or other third-party data would help break the catch-22 that is otherwise preventing personal loan data from being reported in the future because simply because little personal loan data has been reported in the past. In time, banks opting to benchmark against this data would expand the available market data through their own reporting.

4. Strategic plans must be available, flexible, and accountable to the community

The option to develop a strategic plan in consultation with community groups and regulators remains critical for banks with non-traditional business models. Question 134 of the proposal asks if "the strategic plan option [should] continue to be available to all banks, or ... [if] changes in the proposed regulation's assessment area provisions and the metrics approach reduce the need for the strategic plan option for banks with specialized business strategies." As illustrated in Sections 2, 3, 5, and 8 of this letter, the standard CRA approach (i.e., no strategic plan) is far from adequate to sufficiently address the business models of all banks, and in particular digital banks. The strategic plan option continues to be crucial to prevent innovative banks from receiving inaccurately poor evaluations and to harness the potential of these banks to provide substantial benefit to LMI communities.

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[57] More information about CreditVision Income Estimator can be found at TransUnion, *CreditVision Income Estimator*. https://www.transunion.com/content/dam/transunion/global/business/documents/product-creditvision-income-estimator-as.pdf. Additionally, extensive model documentation is available from TransUnion upon request.

[58] This income is thus analogous to family income, as it represents join income when taxes are filed jointly, and single income when taxes are files singly. This is, in fact, an improvement in accuracy over borrower self-reported income which typically does not include spousal or other family income.

[59] TransUnion, *CreditVision Income Estimator*.

[60] This data is available in nearly all instances. CreditVision Income Estimator was able to provide an income for 99.8% of bank personal loans in the TransUnion database.

[61] 98% of consumers placed by CreditVision Income Estimator at $30,000 or less, actually had incomes of less than $40,000.

[62] While the credit bureaus have strict rules around limiting access to consumer address data, and other identifying data, they may be able to use this data for internal analysis so long as results are shared with banks and other external parties only at an aggregate level.

A. Strategic plans should include the option to consider personal loans as a Major Product Line with goals benchmarked against industry performance, or should omit goals for Major Product Lines that are not truly a major part of the bank's business

LendingClub's recommendation thus far has been that personal loans be eligible for consideration in the Retail Lending Test with a weight commensurate to their importance in a bank's business model, and that the LMI penetration of these loans be benchmarked against other bank personal loans. Regardless of the ability to consider personal loans outside of a strategic plan, personal loans must also be eligible for consideration within a strategic plan. If personal loans are not eligible for lending goals within a strategic plan, and goals are required for other types of loans qualified as Major Product Lines, then strategic plans do little to ease the issues for banks focused on personal loans.

The proposal should make clear either that personal loans are eligible for inclusion in the lending portion of a strategic plan, or that lending goals are not required to be included for loans of other types that are not truly "major" in the banks business. If closed-end mortgage, open-end mortgage, multifamily, small business, small farm, and automobile lines are not genuinely "major" for an institution, they may be of limited importance to an accurate evaluation of the bank's service to LMI communities. Requiring goals for product lines that represent less than 15% of a bank's total activity would overemphasize these non-personal lending business lines and undermine the accuracy of the evaluation.[63] Requiring those Major Product Line goals for banks with significant non-Major Product Line lending businesses would defeat the purpose of strategic plans, which is to harness non-traditional banks' potential to serve LMI communities by allowing the bank to be evaluated under a more suitable rubric.

The proposal appears inconsistent as to whether strategic plans must include goals for all loan categories that would be considered Major Product Lines. The final rule should seek to clarify this inconsistency. On one hand, the proposal requires strategic plans to include measurable goals and evaluation for each retail lending Major Product Line.[64,65] But, on the other hand, other portions of the proposal indicate that goals for Major Product Lines are not always required. For example, one other such portion states the CRA strategic plan "must include the same performance tests and standards that would otherwise be applied … *unless the bank is substantially engaged in activities outside the scope of these tests*"[66] (emphasis added). This statement is followed by an explanation that if a bank's retail lending goals do not incorporate the Retail Lending Test's metrics-based methodology, the bank must explain why those goals are appropriate.[67] These two provisions suggest the Major Product Line standard need not play a role in a strategic plan in appropriate circumstances.

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[63] The ability to add goals for other lines will not adequately ameliorate this problem; the bank will still be evaluated in significant part on an improper basis.

[64] NPR pg. 149.

[65] NPR pg. 103.

[66] NPR pg. 149.

[67] NPR pg. 149.

The final regulation should leave no doubt that goals for Major Product Lines are not required in strategic plans if an alternative approach is more appropriate for a given bank's business model. In appropriate circumstances — to be determined on an individualized basis by the agencies, with the benefit of public and other stakeholder input — a bank should be able to limit the goals in its strategic plan to lines other than closed-end mortgage, open-end mortgage, multifamily, small business, small farming, and automobile.

B. Strategic plan weights and goals should remain flexible

LendingClub supports the proposal's approach to not prescribe evaluation weights for different elements of a strategic plan. Under the proposal, a bank must include measurable goals for Retail Lending, Retail Services and Products, Community Development Financing, and Community Development Services in their strategic plan. Relative weights for these four areas are not prescribed as they are for banks that do not use strategic plans. Requiring that strategic plans adopt prescribed weights to these four areas would be contrary to the underpinning rationale for strategic plans, which is to offer flexibly to harness the CRA potential of banks with non-traditional business models.

It would be beneficial for the agencies to make explicit both that a strategic plan may incorporate weights and that they are not the same weights that would apply absent a strategic plan. For example, if personal loans are not included as a Major Product Line, it may be appropriate to reduce the Retail Lending Tests' weight within a strategic plan. Through a strategic plan, weighting of the Retail Lending Test could be adjusted to a level commensurate with the portion of the business that small business and auto lending represents, and perhaps the weight of the Community Development and Retail Products and Services tests could be increased to account for this change.

C. Additional steps should be taken to strengthen public participation in the approval process for strategic plans

Strategic plans should be posted in full on the regulators and banks' websites and circulated by regulators over email to ensure a high level of community engagement. While the strategic plan option should offer banks significant flexibility, it must not enable banks to avoid accountability for meaningful service to LMI communities. We believe the flexibility of the strategic plan process depends on harnessing banks' capabilities to serve the needs of communities, and thus must be developed in consultation with community representatives.

Strategic plans must be the result of robust engagement with community groups and subject to the approval of regulatory agencies. In LendingClub's ongoing efforts to develop a strategic plan, we have proactively sought feedback from over a dozen groups, including the National Community Reinvestment Coalition and California Reinvestment Coalition. This level of engagement has been of great benefit to the quality of the plan LendingClub has drafted, but such engagement does not occur at every bank. However, it is in the interests of the banks and the agencies that collaborative input is garnered from the broadest range of constituents.

Therefore, LendingClub recommends strengthening the mechanisms for public input in the proposed regulations. The current approach of publishing a notice that a CRA plan or strategic plan is available upon request seems to come from a time before the internet made it possible for documents of any size to be accessible to the public. The proposed regulation requires an institution to post the draft strategic plan on the agency's website and the bank's website for thirty days.[68] We offer our strong support for this proposal. However, the availability of strategic plans for community review is only meaningful to the extent that the community is aware of this opportunity, so we believe the proposed posting of strategic plans should be augmented with emails notifying interested parties that an institution is open for comments on a proposed strategic plan. These emails should be sent to those who sign up on the regulatory agencies' websites. Interested parties would thus not need to routinely visit those websites to determine if an institution is currently seeking approval of a strategic plan. These email notices should include links to the strategic plans themselves. This email list could also facilitate communication when the agencies approve a strategic plan with a link to the final plan.

5. The Retail Lending Volume Screen may inadvertently fail banks if personal loans continue to be excluded from the Retail Lending Test

The proposed Retail Lending Volume Screen is intended to ensure that banks are lending their deposit capital back into the community, but this screen may inadvertently fail banks whose core retail lending businesses are excluded from the loan volumes it measures. The proposal explains that the purpose of the proposed Retail Lending Volume Screen is to "measure the total dollar volume of a bank's retail lending relative to its presence and capacity to lend in a facility-based assessment area compared to peer lenders."[69] The screen as currently proposed, however, will be inaccurate and may result in an examination failure for banks that focus on personal lending because those loans are currently excluded from the numerator of the calculation.[70] The consequences would be draconian: a rating of "needs to improve" or "substantial noncompliance" for banks that may actually be doing an excellent job of making retail personal loans in their facility-based assessment areas.

The problem is that the proposed screen (a loan-to-deposit ratio) only counts Major Product Lines — automobile, closed-end home mortgage, open-end home mortgage, multifamily, small business, and small farm loans.[71] Any bank with a large business in personal loans will be handicapped with a reduced ratio for not limiting the focus of their business to products eligible for this Major Product Line status. The qualitative portion of the screen does little to ease these concerns. Although we appreciate that the 30% loan to deposit threshold is not the sole determining factor, banks that focus on personal loans should not be reliant on non-

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[68] NPR pg. 44.

[69] NPR pg. 51.

[70] It is worth noting that LendingClub's focus on personal loans has allowed us to dramatically exceed typical origination-to-deposit ratios. LendingClub has been a driving force in developing a secondary market for personal loans, going back to LendingClub's roots in "peer-to-peer" lending. Today, 75-80% of the personal loans LendingClub generates are sold through our marketplace business model, rather than held on the balance sheet. As a result, the volume of this lending reinvested is 4x-5x greater than would be accomplished by a more traditional use of deposits and balance sheet.

[71] *See*, NPR pg. 42.

quantitative metrics to pass the screen. Accordingly, and as with the Retail Lending Test, the screen will be deeply flawed if personal loans are categorically excluded from the calculation. Furthermore, once a bank fails the retail lending screen, the overturning of the failure is dependent on performance context and examiner judgment, which seems counterintuitive to a metrics-based approach for assessing bank lending performance and opens up the possibility for inconsistent application of CRA performance evaluation across banks, a key criticism that led to the need for CRA modernization.

The agencies state that they selected a "relatively low threshold" loan-to-deposit ratio of 30 percent, "so banks with various business strategies could meet the threshold."[72] But the selection of 30 percent does not appear to be based on a quantitative analysis. There is every reason to expect the threshold will frequently be unobtainable for banks with business models that emphasize personal loans if those loans do not count in the numerator.

Our recommendation is to include personal loans as a Major Product Line, similar to the proposed treatment of auto lending (See Section 2), and within strategic plans (See Section 4), but there are other ways to fix the Retail Lending Volume Screen. Including personal loans and potentially other non-auto consumer loans such as credit cards in the numerator of the ratio would improve both fairness and accuracy. As discussed in Section 2.C.ii, the agencies should exclude payday loans and longer-term loans with APRs above 36% by excluding these loans as defined by the CFPB's Payday Lending Rule.

An alternative recommendation would be to utilize the existing loan-to-deposit ratio calculated by banks under the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994. Although that ratio reflects loans held on a bank's balance sheet, not total lending activity in a given year, it is nonetheless aimed at the same purpose as the proposed Retail Lending Volume Screen.[73] The agencies could even fine tune the Riegle-Neal ratio by excluding non-retail loans in order to measure solely the loans reaching households and small businesses. This adjustment to the Riegle-Neal ratio would not be difficult because loan subcategories within the Riegle-Neal deposit ratio are reflected on Call Reports where banks input the underlying data for the Riegle-Neal calculation.[74] The agencies' proposal already relies on these Call Reports to identify deposits for the denominator of the screen's ratio. CRA could be revised to rely on the Riegle-Neal-based loan-to-deposit ratio calculation for all banks, or maintain the current proposal and permit banks to use a Riegle-Neal-based loan-to-deposit ratio at their option.

Leaving personal lending banks entirely to examiner discretion is insufficient, because a failed screen will potentially ruin the banks examination rating. At a minimum, the proposal must be adjusted to give examiners guidance to accommodate banks with large retail lending volumes excluded from the Major Product Line categories. If the Retail Lending Volume Screen is not revised, the metric will be inadvertently inaccurate, wildly so in many cases, skewing banks incentives and potentially resulting in catastrophic examination results.

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[72] NPR pg. 52.

[73] "Congress enacted section 109 to ensure that interstate branches would not take deposits from a community without the bank's reasonably helping to meet the credit needs of that community." Federal Reserve, *Compliance Handbook at Reg. H*, Section 109. https://www.federalreserve.gov/boarddocs/supmanual/cch/sec109.pdf.

[74] Call Report Schedule RC-C Part I record reports on conditions and income

6. Evaluations should explicitly consider bank performance with respect to people and neighborhoods of color

The current and proposed CRA approaches fail to recognize the systemic and historical ties between race and access to capital, rooted in redlining practices that served as the impetus for the original enactment of the CRA. In the same way that CRA has broadened access to credit for LMI people and neighborhoods across the country, it could do so for people of color. Incorporating race- and ethnicity-based metrics and benchmarks would drastically improve the CRA and is justified under the law.

The purpose of CRA evaluations is to determine how well a bank is "meeting the credit needs of its entire community."[75] Addressing redlining on the basis of race was a central purpose of the statute when enacted in 1977, yet CRA regulations have never focused on how well banks are meeting the needs of neighborhoods and people of color. Although the regulatory focus under CRA has always been focused on LMI people and neighborhoods, people of color were underserved in 1977 and remain so today, though they are certainly part of a bank's "entire community." It seems a shortcoming of the agencies' proposal is that it does not expand the focus of evaluations to consider race in the same way it considers LMI status.

Explicit consideration of race is necessary because of the legacy of systemic discrimination in lending. This legacy is evident in the continuing and extraordinary disparities in wealth and homeownership in the United States along racial lines. For example, the median wealth of White families is $188,200, according to a 2019 survey, but only $24,100 for Black families.[76] Majority non-White census tracts have 35.1% fewer traditional banking establishments than majority White tracts, while alternative providers of financial services that charge much higher fees and make loans that do not help build credit histories are disproportionately found in neighborhoods of color.[77]

i. *Publish data on retail lending to communities of color*

The agencies should incorporate race into CRA in several ways. One crucial element is increasing the public dissemination of information about banks' performance in meeting the needs of people and neighborhoods of color. The proposal's suggestion to publish some already-public Home Mortgage Disclosure Act data is positive, but far from sufficient. Just as metrics and benchmarks are proposed based on lending to LMI individuals and in LMI neighborhoods, comparable metrics and benchmarks based on race should be calculated and made public. Such metrics could identify the percentage of a bank's lending in majority-minority census tracts and in disproportionately-minority census tracts. Shining a light on how well banks are serving people and neighborhoods of color will lead to improved efforts and success in doing so.

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[75] 12 U.S.C. § 2903(a).

[76] Bhutta, Neil et al., *Changes in U.S. Family Finances from 2016 to 2019: Evidence from the Survey of Consumer Finances*, Federal Reserve Bulletin, (Sept. 2020), https://www.federalreserve.gov/publications/files/scf20.pdf.

[77] Weinreb, Michael, *50 Years After the Fair Housing Act — Inequality Lingers*, Trulia Research, (July 2020), https://www.trulia.com/research/50-years-fair-housing/.

ii. Incorporate race into the Retail Lending, Community Development, and Retail Products and Services Tests

Second, evaluation of service to people and communities of color should be incorporated into the Retail Lending, Community Development, and Retail Products and Services portion of CRA examinations. The Retail Lending Test should evaluate banks on the basis of race-based metrics and benchmarks. Just as the agencies propose metrics and benchmarks for LMI, they could measure the percentage of retail loans made in majority-minority census tracts, the percent of mortgage loans made to families of color, and the percent of small business loans made to minority-owned businesses. The final CRA scoring conclusion of the Retail Lending Test should be based on a combination of the LMI and race scores, or alternatively, a high score on the race part of the evaluation could be factor that moves the overall rating up a level.

The Community Development Financing Test should likewise be extended to include consideration of race. Impact reviews, such as whether qualifying activities result in a new community development financing that addresses community development needs for individuals and families of color, minority-owned small businesses, or small farms, could help substantially broaden access to financial products and support economic inclusion.

Race should also be incorporated in the Retail Products and Services Test, similar to how the proposal would treat LMI borrowers. Where the branch distribution assessment is appropriate, evaluations could consider a bank's branch distribution across tracts with different racial demographics[78] and in majority-minority census tracts in comparison to the market's distribution. Other considerations of race in the Retail Products and Services Test could include assessing a bank's strategies and initiatives to serve people of color and the responsiveness of the bank's products to the needs of people and neighborhoods of color.

iii. Prevent the arbitrary exclusion of neighborhoods of color from assessment areas

Third, the arbitrary exclusion of neighborhoods of color from assessment areas should be prohibited, as it is for LMI neighborhoods. We encourage consideration of whether the proposal's requirement that assessment areas not include fractions of counties for Large Banks is sufficient to prevent inclusion of minority communities. Additionally, Small and Intermediate Banks will still be allowed to take fractions of counties, which would allow neighborhoods of color to continue to be excluded.

iv. Encourage outreach to organizations representing neighborhoods of color

Finally, the proposal should be modified to encourage outreach to organizations representing neighborhoods of color in connection with the development of a strategic plan. Even without explicitly accounting for race in the CRA proposal, neighborhood outreach could increase outcomes for communities of color. Just as LMI-focused advocacy organizations help ensure adequate services are provided to their communities, organizations representing neighborhoods of color could do the same.

[78] 0-20% minority, 20-40% minority, etc...

v. Incorporating race into CRA would be lawful

Incorporating race in these ways would be lawful, as is convincingly demonstrated in a white paper published by the National Community Reinvestment Coalition.[79] As shown in the paper, the statutory text of CRA permits consideration of race, so authority exists to incorporate race without amendment of the Act by Congress.

Neighborhoods of color are part of banks' communities and remain chronically disadvantaged after 45 years of CRA focusing exclusively on income disadvantage. This modernization proposal represents a rare opportunity to better achieve the statutory goals of CRA and create a healthier, more prosperous, and more just society.

7. Financial health measurement should be considered for qualitative credit within the Retail Products Test

We recommend that bank programs to measure consumer financial health be considered for qualitative credit within the Retail Products Test, potentially using a three-tier structure we discuss below. Incorporating financial health measurement outcomes is consistent with the agencies' goals for CRA and would be a meaningful step in modernizing the regulation to the benefit of LMI consumers.

One of the developments that distinguishes today's modern financial system from the past is the sheer amount of available data and, therefore, the ability to measure consumer outcomes. Unlike in 1977 when CRA passed Congress, or 1995, significant data is now produced and recorded in the normal course of business.[80] This data can be used to measure how consumers' lives are truly affected by financial products. CRA frameworks developed in 1977 and 1995 were generally based on *inputs*, such as how much credit and investment are put into LMI communities. Today, banks are increasingly able to measure *outcomes*, such as the impact of those investments on the financial health of LMI people. Today's modernization effort presents an opportunity to integrate a modern outcomes-based framework into CRA.

We believe outcomes-based regulations can be a pro-consumer, pro-innovation alternative to the challenges of rules-based and principles-based regulation. On the one hand, rules-based regulation is sometimes criticized as being too prescriptive in ways that may restrict innovative new approaches or fail to keep up with efforts to evade the specifics of a regulation. On the other hand, principles-based regulation is sometimes criticized for a lack of clarity of expectations and, at times, for "regulation through enforcement."

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[79] Blower, Brad et al., *Adding Robust Consideration of Race to Community Reinvestment Act Regulations: An Essential and Constitutional Proposal,* (Sept. 2021), https://ncrc.org/adding-robust-consideration-of-race-to-community-reinvestment-act-regulations-an-essential-and-constitutional-proposal/.

[80] For example, a 2018 Forbes study found that 90% of the world's data had been generated in the last two years. Marr, B, *How much data do we create every day? the mind-blowing stats everyone should read*, (Dec. 2021), Forbes. https://www.forbes.com/sites/bernardmarr/2018/05/21/how-much-data-do-we-create-every-day-the-mind-blowing-stats-everyone-should-read/?sh=43f1db4160ba

As outcomes-measurement becomes increasingly feasible, regulatory metrics that define the desired outcome, and permit industry participants to use their best efforts to achieve those outcomes, can avoid both of these pitfalls. LendingClub considers the disparate impact fair lending framework[81] and the Section 1071 small business data collection as two examples of positive outcomes-based regulations, and we have commented and campaigned in support of both regulations.[82] CRA itself contains outcomes-based elements, such as the setting of goals for LMI penetration and community development. However, these goals measure investment, which is in some sense an input, as opposed to a desired outcome. Expanding the outcomes-based nature of CRA by measuring those desired outcomes, such as improved consumer financial health among LMI families and communities, would be a win for consumers, a win for industry innovation, and potentially a win for regulatory innovation as well.

A. *Incorporating financial health outcomes measurement into CRA appears consistent with regulatory goals for CRA*

Incorporating financial health outcomes measurement into CRA appears consistent with regulatory goals. Acting Comptroller of the Currency Hsu stated in his comments on CRA modernization at this year's National Community Reinvestment Coalition's ("NCRC") *Just Economy Conference* that "we're doing this for the outcomes" and also stated that "we're not doing this for the process."[83] Later, in a July speech, Acting Comptroller Hsu discussed the need to measure financial health outcomes to better serve diverse consumer and community needs. Suggesting an implicit connection to CRA, Acting Comptroller Hsu stated "I believe that developing better tools to assess and monitor financial health has the potential to help banks and other financial institutions better serve their diverse consumers and communities."[84] The Federal Reserve system has also indicated an interest in integrating financial health measurement into the supervisory framework, including launching a research project on financial health measurement through the San Francisco Federal Reserve Bank incorporating staff from across the Federal Reserve system.

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[81] *See*, e.g., LendingClub, *Re: Request for Information and Comment on Financial Institutions' Use of Artificial Intelligence, Including Machine Learning*, (July 2021), https://www.regulations.gov/comment/OCC-2020-0049-0059. *See also*, National Community Reinvestment Coalition, Lending Club, Affirm, Varo Bank, Oportun, PayPal, and Square, *NCRC, Fintechs Call on CFPB To Clarify Applying Fair Lending Rules To Artificial Intelligence*, National Community Reinvestment Coalition, (June 2021). https://www.ncrc.org/ncrc-fintechs-call-on-cfpb-to-clarify-applying-fair-lending-rules-to-artificial-intelligence/. *See also*, LendingClub, *RE: Request for Information on the Equal Credit Opportunity Act*, (Dec. 2020), https://www.regulations.gov/comment/CFPB-2020-0026-0126.

[82] *See*, e.g., Responsible Business Lending Coalition, Re: Section 1071 and the Small Business Lending Market Docket No. CFPB-2017-0011 (Sept. 2017), http://www.borrowersbillofrights.org/uploads/1/0/0/4/100447618/final_rblc_letter_to_cfpb_on_1071.pdf. *See also*, Responsible Business Lending Coalition, RE: Docket No. CFPB-2021-0015, Section 1071 Small Business Lending Data Collection (Jan. 2022), http://www.borrowersbillofrights.org/uploads/1/0/0/4/100447618/with_attachment_-_rblc_comment_letter_-_docket_no._cfpb-2021-0015__january_6_2022_.pdf.

[83] Acting OCC Comptroller Michael Hsu, *NCRC Fireside Chat with Lael Brainard and Michael Hsu.* NCRC (June 2022), https://ncrc.org/ncrc-fireside-chat-with-lael-brainard-and-michael-hsu/.

[84] Acting OCC Comptroller Michael Hsu, *Understanding Consumer Financial Health and Well-being in a Turbulent Market,* (July 2022), https://occ.gov/news-issuances/speeches/2022/pub-speech-2022-83.pdf.

Furthermore, some mention of outcome assessments already exists in the current CRA framework. The current guidance provided in the Interagency Q&As states that bank's will be measured on the effectiveness of their programs, not only the availability of their programs. In response to a question on "availability and effectiveness," reframed as "responsiveness" in the proposed rule, of an institution's systems for delivering retail banking services, the agencies state that "alternative systems for delivering retail banking services are considered only to the extent that they are effective alternatives in providing needed services to low- and moderate-income areas and individuals."[85] This requirement for "effective" services represents a focus beyond the delivery of investment to the outcomes of that investment. That outcomes-focus should be expanded as much as possible throughout the rule.

B. Financial health measurement typically utilizes frameworks developed by the CFPB or Financial Health Network

Financial health measurement typically utilizes the frameworks developed by the CFPB or the Financial Health Network. The CFPB offers a user guide and toolkit published in 2015 on how to "measure and score financial well-being" on a 100-point scale.[86] The CFPB explains that the scale was "developed and rigorously tested by the Bureau," and "contains 10 questions to capture how people feel about their financial security and freedom of choice, plus 2 questions to assist with scoring. Responses to the questions can be converted into an overall financial well-being score between 0 and 100."[87]

The most commonly used financial health measurement framework was developed by the Financial Health Network, a nonprofit authority on financial health. Their framework measures consumers' ability to achieve financial goals and weather setbacks across the four categories of "spend, borrow, save, and plan."[88] (These categories of financial health appear to be what Acting Comptroller Hsu referenced in a recent speech stating that, "our goal should be to improve people's financial health — i.e., their ability to spend, save, and borrow so that they are empowered rather than hindered."[89]) The Financial Health Network offers a financial health score measurement toolkit and survey that is similar in many ways to the CFPB's.[90] It also offers software that "integrates the Financial Health Network's expertise and our tried-and-true methodology for measuring, analyzing, benchmarking, and advising on financial health into one simple platform."[91]

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[85] OCC, FDIC, and Federal Reserve, *Interagency Questions and Answers Regarding Community Reinvestment; Guidance*, Community Reinvestment Act Q&A pg. 31 (July 2016), https://www.federalregister.gov/documents/2016/07/25/2016-16693/community-reinvestment-act-interagency-questions-and-answers-regarding-community-reinvestment.

[86] Consumer Financial Protection Bureau, *Measure and Score Financial Well-Being*, https://www.consumerfinance.gov/consumer-tools/educator-tools/financial-well-being-resources/measure-and-score/.

[87] Id.

[88] *See,* e.g., research available at https://finhealthnetwork.org/measurement/.

[89] Acting OCC Comptroller Michael Hsu, *Reforming Overdraft Programs to Empower and Promote Financial Health*, (Dec. 2021), https://www.occ.gov/news-issuances/speeches/2021/pub-speech-2021-129.pdf.

[90] Financial Health Network, *FinHealth Score Tookit,* https://finhealthnetwork.org/tools/financial-health-score/.

[91] Financial Health Network, *Attune*, https://finhealthnetwork.org/tools/attune/.

The Financial Health Network encourages banks and other financial institutions to measure consumer financial health outcomes using the data produced as an addition or alternative to self-reported data from surveying customers. This data-based approach to financial health measurement considers data points that a bank has access to such as a consumer's short- or long-term savings balances, spending trends relative to income, debt-to-income ratios, or credit scores. Best practices in measuring financial health with this data are described in the Financial Health Network publication, "Three Approaches to Using Administrative Data To Measure Financial Health," which includes a profile of LendingClub's measurement program.[92]

The most robust proposal for incorporating financial health measurement into the bank regulatory framework was produced by former CFPB executive Corey Stone and former bank executive Todd Baker. This proposal, called, "Making Outcomes Matter: An Immodest Proposal for a New Consumer Financial Regulatory Paradigm" suggests rating banks on consumer financial health outcomes in addition to the banks' CRA evaluation.[93] Their proposal is also summarized in a Harvard Business Review article entitled, "It's Time to Tie Bank Profits to Customers' Financial Health."[94] Incorporating financial health measurement into CRA, where goals align, seems appropriate and would strengthen CRA's effectiveness at improving financial services for LMI communities.

C. *Financial health measurement should be considered for CRA credit within the Retail Services and Products Test*

We believe the CRA Retail Products Test should consider financial health outcomes measurement for credit. The Retail Products Test is designed to "qualitatively evaluate responsiveness of a bank's credit and deposit products to the needs of" LMI communities.[95] The test "aims to evaluate a bank's efforts to offer products that are *responsive* to the *needs of low- and moderate-income communities*" (emphasis added).[96] Financial health measurement assesses that "responsiveness" and measuring the impacts of banking products on LMI consumers represents an effort to be responsive to the "needs of low- and moderate-income communities."

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[92] Financial Health Network, *3 Approaches to Using Administrative Data To Measure Financial Health*, (June 2021), https://finhealthnetwork.org/research/3-approaches-to-using-administrative-data-to-measure-financial-health/.

[93] Baker, Todd & Stone, Corey, *Making Outcomes Matter: An Immodest Proposal for a New Consumer Financial Regulatory Paradigm*, Columbia Business & Finance Law Review, (Nov. 2020), https://law-economic-studies.law.columbia.edu/sites/default/files/content/Baker%20&%20Stone_Making%20Outcomes%20Matter_Final%20Draft%20(rev%202020%2011%2009,%20for%202020%2011%2018%20Blue%20Sky%20talk).pdf.

[94] Baker, Todd & Stone, Corey, *It's Time to Tie Bank Profits to Customers' Financial Health,* Harvard Business Review, (August 2020), https://hbr.org/2020/08/its-time-to-tie-bank-profits-to-customers-financial-health.

[95] Interagency Webinar, *Community Reinvestment Act (CRA) Reform Update: Overview of the Interagency CRA Notice of Proposed Rulemaking*, (May 2022), https://bsr.stlouisfed.org/connectingCommunities#104/ask-the-regulators-cra-reform-update-overview-of-the-interagency-cra-notice-of-proposed-rulemaking.

[96] NPR pg. 7.

D. The Retail Services and Products Test should consider three tiers of qualitative credit for consumer financial health outcomes measurement activities

We suggest that measurement of consumer financial health be considered for qualitative credit within the Credit and Deposit Products Evaluation portion of the Retail Services and Products Test, akin to offering a responsive credit or savings product. We suggest three tiers of responsiveness that could be considered.

The first tier would consider whether a meaningful program has been established to measure financial health, regardless of outcomes measured. Simply measuring financial health represents the creation of accountability for a bank's impact on its consumers. Establishing measurement is also an important first step towards using measured data to increase consumer benefit, as described below.

The second tier would consider whether the measurement identified positive outcomes resulting from credit and deposit products for LMI customers. Positive outcomes, such as increased savings balances or credit scores, certainly represents responsiveness. However, we note that rewarding measurement only if it identifies positive outcomes may create unintended incentives for banks. For example, it may encourage skewed interpretation of the data or dissuade banks from undertaking measurement at all if they already have high confidence that the outcomes would be negative. Nonetheless, we believe that CRA credit should be offered in this second tier for measurement of products and services that improve consumer financial health, and especially those that are innovative, responsive, or flexible.

The third tier would consider whether the bank used the measurement to improve the *responsiveness* of its products. This responsiveness measurement could include actions such as:

a) Expanding products and services found to be truly beneficial for LMI consumers
b) Prioritizing the selection of new products and features to introduce based on observed financial health measurement outcomes in tests
c) Incorporating insights from financial health measurement into the design of new products or redesigning existing products to achieve better financial health outcomes

For example, the Financial Health Network publication entitled "Three Approaches to Using Administrative Data To Measure Financial Health," referenced earlier includes a profile of LendingClub and details the expansion of a loan feature called "balance transfer."[97] LendingClub's balance transfer feature provides a financial incentive to borrowers, in the form of a lower rate on a personal loan, when borrowers authorize LendingClub to directly pay down credit card debt, instead of delivering LendingClub's loan to the consumer's bank account. LendingClub has found that this balance transfer feature leads to more sustained debt reduction and higher credit scores. The affirmation of these positive consumer financial health outcomes

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[97] Financial Health Network publication, *3 Approaches to Using Administrative Data To Measure Financial Health*, (June 2021), https://finhealthnetwork.org/research/3-approaches-to-using-administrative-data-to-measure-financial-health/

led LendingClub to increase marketing of the feature, make it available to as many customers as possible, and incorporate elements of it in new product development, in hopes of further delivering improvements in our customers financial health.

As this example suggests, CRA could drive banks to offer more innovative and responsive products to LMI consumers. Recognizing consumer financial health measurement programs as a responsive activity, eligible for credit within the Retail Products Test, will incentivize banks to embrace designing LMI products in a modern and data-driven way.

8. Bank-wide assessments with goals for serving harder-to-reach LMI areas would be a more beneficial and efficient way to integrate online lending than the proposed Retail Lending Assessment Areas

We strongly support efforts to integrate digital banking business models into CRA. We also believe it is appropriate and valuable for digital banks to have obligations to the LMI communities they serve online, and that these obligations should not omit the harder-to-reach LMI communities. However, we believe that the proposed RLAA framework is an unnecessarily complex and inefficient way to accomplish these goals. We believe a better approach would be utilize a national or bank-wide geography for online lending considered in the Retail Lending Test, while setting specific goals measuring service to persistently underserved communities defined according to the agencies' goals.

As a digital lender, LendingClub has been engaging with community groups, regulators, and thought leaders for some time about the most effective way to integrate online lending into a modernized CRA framework. In fact, in 2015 when the OCC requested comment on whether its non-depository national charter proposal should require a "financial inclusion plan" similar to a CRA plan, LendingClub was perhaps the only for-profit company that wrote in favor of the requirement.[98] We offered a framework developed with input from leading national CRA advocates and others for financial inclusion requirements of digital banks. As we did then, we believe that defining a bank-wide geography for online lending will help promote fair and equitable lending.

Throughout our discussions with national and local community groups regarding the proposed rule, a central concern related to assessing national online lending strategies on a national basis has been that a single nationwide assessment of LMI lending may permit LMI lending to concentrate in the easiest to serve LMI areas, while leaving some harder-to-reach LMI areas persistently underserved. However, the proposed RLAA framework does not solve this problem. In fact, the RLAA framework may in fact incentivize banks to only focus on those areas that are highest in population or already best-served.

More specifically, we are concerned the proposed framework will, first, concentrate credit in more-served areas and, second, create inefficiencies that could reduce the total amount

[98] LendingClub, Re: OCC White Paper., *Exploring Special Purpose National Bank Charters for Fintech Companies*, pgs. 11-13, (Jan. 2017), https://www.occ.gov/topics/supervision-and-examination/responsible-innovation/comments/comment-lending-club.pdf.

of LMI lending overall. First, as proposed, an RLAA would be created in any metropolitan statistical area where a bank has made 100 mortgage loans or 250 small business loans when no branch is present. However, in our view, such thresholds would likely be biased toward areas with higher population densities, and thus steer lending into more-served communities rather than less-served communities. A better approach would be to harness digital banks' tendency to be naturally more concentrated in LMI areas nationwide, as demonstrated in the Federal Reserve research studies of LendingClub programs described in Section 1 of this letter. Newer models of lending often find the greatest business opportunity where the traditional market is overlooking or overpricing customers. For example, while LendingClub's auto loan refinance product delivers an average savings of $4,000, Black customers see an additional average of 12% savings relative to White customers, due to our model removing hidden and discriminatory markups from their initial loan. If RLAAs require banks like LendingClub to focus these loans into areas where population density had resulted in an RLAA trigger, such refocusing could come at the expense of delivering these loans to where they are naturally most needed.

Second, we are concerned that the proposed RLAAs will lower overall LMI lending by not allowing banks to allocate consumer marketing resources efficiently. As discussed above, RLAAs will largely be a function of population density, and thus serve to focus more attention to populated areas, not where attention may be most warranted. For illustrative purposes, say the marketing cost to reach an additional LMI borrower in an RLAA is $300, but the cost to reach an LMI borrower outside of that area is $150. If LMI penetration in a given RLAA is low, a bank will spend CRA or marketing resources to increase LMI representation in that RLAA, rather than pursuing LMI customers who can be more efficiently reached. Instead of allowing banks to pursue whichever set of LMI customers is most efficient, they will be fighting over the same groups of people in likely the same population dense areas. As a result, instead of working to increase access in banking deserts, the RLAA framework may worsen outcomes in such areas, particularly rural ones, which harms the natural advantage of digital banking. Through a bank-wide digital lending strategy, the Federal Reserve researchers discussed in Section 1 have found that LendingClub, as a result of its digital model, has "penetrated areas that may be underserved by traditional banks, such as in … areas that have fewer bank branches per capita."[99]

To ensure that more difficult to reach LMI areas are served, we suggest that the agencies abandon the proposed RLAAs, and instead simply define the types of areas the agencies would like served and evaluate bank-wide performance for reaching those areas. Such definition would incentivize the most efficient service to those communities, in turn enabling more service to be delivered with the same budget. Depending on the specific goals of the agencies, these areas could be defined as low-income (excluding moderate-income), communities that are distressed and underserved under FFIEC criteria, areas of persistent poverty, or another preexisting designation.

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[99] Federal Reserve Bank of Philadelphia, Working Paper No. 18-13., *Do Fintech Lenders Penetrate Areas that are Underserved by Traditional Banks?*, (Mar. 2018), https://www.philadelphiafed.org/consumer-finance/consumer-credit/do-fintech-lenders-penetrate-areas-that-are-underserved-by-traditional-banks.

Conclusion

LendingClub appreciates the opportunity to provide its perspective in support of a modernized, stronger, and more innovative CRA. Thank you for affording us the opportunity to comment and for your consideration of our views and suggestions. If we can be of any assistance, please do not hesitate to contact us at lcaditzpeck@lendingclub.com.

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