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August 5, 2022

The Honorable Jerome Powell
Chairman
Board of Governors of the Federal Reserve System
Attention: Ann E. Misback, Secretary
20th Street and Constitution Ave. NW
Washington, DC 20551
RE: Community Reinvestment Act, Notice of Proposed Rulemaking, Docket Number R-1769, RIN 7100-AG29

The Honorable Michael Hsu
Comptroller
Office of the Comptroller of the Currency
Attention: Comment Processing
Chief Counsel's Office
400 7th Street SW, Suite 3E–218
Washington, DC 20219
RE: OCC Docket ID OCC–2022–0002

The Honorable Martin Gruenberg
Acting Chair
Federal Deposit Insurance Corporation
Attention: James P. Sheesley, Assistant Executive Secretary
550 17th Street NW
Washington, DC 20429
Attention: Comments RIN 3064–AF81

Dear Chairman Powell, Comptroller Hsu and Acting Chair Gruenberg:

I am writing on behalf of the National Housing Conference (NHC) to comment on the Notice of Proposed Rulemaking (NPR) for the Community Reinvestment Act (CRA), published on June 3, 2022. We appreciate the commitment of all three agencies to develop a common proposal to modernize this important regulation.

This NPR is a major step forward in the process of modernizing CRA to fully account for changes in communities, technology and banking that have occurred since the rule was last revised a quarter century ago. The most important work lies ahead, as you carefully consider the detailed feedback you receive and make adjustments to the current body of your work to ensure the CRA is capable of serving its primary purpose in the decades ahead. If this endeavor is successful, it will stand the test of time and the inevitable swings of the political pendulum for many years to come.

About NHC

The National Housing Conference is a diverse continuum of affordable housing stakeholders that convene and collaborate through dialogue, advocacy, research, and education, to develop equitable solutions that serve our common interest: an America where everyone is able to live in a quality,

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affordable home in a thriving community. We have successfully advocated for nearly every major piece of housing legislation including the National Industrial Recovery Act of 1933, the Wagner Steagall National Housing Act of 1937, the Fair Housing Act of 1968, the Community Reinvestment Act of 1977, the Housing and Economic Recovery Act of 2008 and the Homeowners Assistance Fund of 2021 to name just a few. Politically diverse and nonpartisan, NHC is a 501(c)3 nonprofit organization.

Overview

Enacted in 1977, the CRA remains an essential component of our national economic policy, helping ensure that low- and moderate-income (LMI) communities and people are better served by banks of all sizes. This endeavor has involved an enormous amount of effort for over five years by officials from the Federal Reserve Board of Governors (FRB), Office of the Comptroller of the Currency (OCC), Federal Deposit Insurance Corporation (FDIC) [collectively, the Agencies], and the U.S. Treasury Department, as well as a broad range of stakeholders. NHC has repeatedly expressed a strong preference for the rule to be jointly issued by the FRB, OCC, and FDIC. This proposed rule is a testament to the collaboration of the three regulators and represents its own significant success. The NPR is a product of that work and successfully modernizes the CRA to account for the wide range of changes in the financial economy that have occurred since the last effort to modernize the regulations in 1995. At that time, interstate banking was in its infancy, internet banking was introduced by only one bank, and mobile banking did not exist. Today, millions of Americans make deposits, apply for loans and offer financial planning on their mobile devices and home computers. The role of branch banking continues to evolve to meet these tectonic changes in the economy, developing at an exponential pace.

CRA has exceeded the expectations of its authors and early advocates, building a nationwide infrastructure of banking officers dedicated to community development in underserved areas. And CRA is empowering hundreds of major national organizations committed to investing in America’s low- and moderate-income people and communities.

NHC believes that for CRA modernization to be effective and sustainable, it must meet four fundamental tests.

1. Increase investment in communities that are currently underserved;
2. Benefit more low- and moderate-income (LMI) people, particularly people of color, who live in those communities;
3. Ensure that CRA lending and investment do not lead to the displacement of the very people it is meant to help; and
4. Make both bank performance and government enforcement more transparent and predictable.

The NPR goes a long way towards addressing all of these objectives. It is responsive to the interests of both industry groups and advocacy organizations. The new proposal generally meets NHC’s benchmarks for improving consistency and clarity while better serving the people and communities that need it the most. The NPR also creates an opportunity for the final CRA rule to redress the key driver of economic disinvestment in LMI communities – racially motivated

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redlining. This effort is long overdue and is likely to be the lasting historical legacy of this work. Due to its necessary complexity, however, there are areas that require refinement to ensure that the final rule does not have unintended consequences that would limit its effectiveness and risk a reduction in the very lending and investment that the proposed rule seeks to improve. NHC is pleased to provide these comments to assist the regulators in refining the proposed rule and preparing a final rule that will meet all of its objectives while being sustainable through the inevitable political swings over the coming decade and possibly longer.

CRA stands at the intersection of geography and race

When enacted in 1977,[1] the CRA responded to concerns over disinvestment in low-income communities and the persistent impact of "redlining," the practice of avoiding investment in minority neighborhoods codified by the Home Owners' Loan Corporation (HOLC) in 1933 and the Federal Housing Administration in 1934,[2] and practiced by many financial institutions during much of the 20th century. While the Fair Housing Act of 1968 prohibited redlining and other forms of housing discrimination, these practices proved difficult to reverse. As White Americans left cities for new, largely segregated suburban bedroom communities[3] in the 1960s and 1970s, there was a growing disparity between where banks raised their deposits and where they invested, particularly in housing and mortgage finance. Its impact has left deep scars in communities that persist over 50 years after they were outlawed. Research by economists at the Federal Reserve Bank of Chicago demonstrates that areas denied credit in the aftermath of the Great Depression of the 1930s continue to this day to have lower property values, lower homeownership rates, and lower credit scores.[4]

When he introduced the CRA in 1977, Senate Banking, Housing and Urban Affairs Committee Chairman William Proxmire expressed hope that by incentivizing banks to rebuild and revitalize communities threatened by decline, the bill would ultimately prove good for the banking industry as well as the areas that had suffered disinvestment. Congress sought to encourage banks to invest in the communities where their branches were located and reverse the impact of redlining. A high CRA rating was intended to provide that incentive. Though Americans' residential migration patterns and banking industry business models have changed dramatically since 1977, the lack of equitable access to credit in communities of color has been alarmingly persistent.

CRA's current regulations address race only peripherally, insofar as evidence of racial discrimination can lower a bank's CRA rating. CRA's establishment of a "continuing and affirmative obligation" by banks to serve their entire communities goes far beyond a fair lending

1 Pub. L. 95–128, title VIII, § 807, as added Pub. L. 101–73, title XII, § 1212(b), Aug. 9, 1989, 103 Stat. 527; amended Pub. L. 102–242, title II, § 222, Dec. 19, 1991, 105 Stat. 2306; Pub. L. 103–328, title I, § 110, Sept. 29, 1994, 108 Stat. 2364.

2 Remarks by Martin J. Gruenberg, Member, Board of Directors, Federal Deposit Insurance Corporation on The Community Reinvestment Act: Its Origins, Evolution, and Future at Fordham University, Lincoln Center Campus; New York, New York, October 29, 2018

3 https://www.nytimes.com/1997/12/28/nyregion/at-50-levittown-contends-with-its-legacy-of-bias.html

4 The Effects of the 1930s HOLC "Redlining" Maps (Revised August 2018) by Daniel Aaronson, Daniel Hartley, Bhash Mazumder. Federal Reserve Bank of Chicago Working Paper, No. 2017-12, 2017.

mandate to do no harm. While CRA does examine service to LMI people and communities, "LMI" and "minority" are far from the same: nearly two-thirds of LMI households are White, while nearly 40 percent of Black households and more than half of Hispanic households are not LMI.[5] These middle-income areas are particularly important in narrowing the significant homeownership gaps that directly result from the legacy of redlining.

NHC recommends that the CRA regulation develop a process for collecting and reporting baseline data on investment and lending to people of all races, as delineated in by Home Mortgage Disclosure Act (HMDA). Much like the first report of HMDA data in 1976 led to the introduction of the CRA in 1977, this data may inform future efforts to improve racial equity. This same data reporting should be used in assessing performance and establishing performance context in CRA evaluations as well. Material decreases in performance by race should be a factor in determining a "Needs to Improve" rating, and material increases should be an important part of earning an "Outstanding" rating.

Some have expressed concerns that directly addressing race in the CRA rule could risk violating the Fair Housing Act or the Equal Credit Opportunity Act. These concerns have been taken seriously in the NPR and as a result, a direct requirement for lending to specific racial or ethnic groups has been avoided. However, the fact remains that the legacy of federally required discrimination in lending is deep and persistent. This was true in 1977 and is just as true today. Senator Proxmire directly addressed this issue in his defense of CRA on the floor of the Senate on June 6, 1977, when he said "for more than two years the Banking Committee has been studying the problem of redlining and the disinvestment by banks and savings institutions in older urban communities. By redlining let me make it clear what I am talking about. I am talking about the fact that banks and savings and loans will take their deposits from a community and instead of reinvesting them in that community, they will invest them elsewhere, and they will actually or figuratively draw a red line on a map around the areas of their city, sometimes in the inner city, sometimes in the older neighborhoods, sometimes ethnic and sometimes black, but often encompassing a great area of their neighborhood."[6]

Special Purpose Credit Programs

The new CRA rule can effectively address this issue while balancing a strict reading of the Fair Housing Act and Equal Credit Opportunity Act (ECOA) by providing significant weight for a bank's use of Special Purpose Credit Programs (SPCPs) under ECOA and lending to "socially disadvantaged" groups, as defined by the Small Business Administration's 8a program.[7]

SPCPs are lending products designed to target an economically disadvantaged group of people. SPCPs are explicitly permitted by ECOA, which prohibits discrimination in credit based on race or national origin, among other factors. However, ECOA also states that it does not constitute discrimination for a for-profit organization to refuse to extend credit offered under an SPCP in order "to meet special social needs" or for a nonprofit to administer a "credit assistance program"

[5] https://www.census.gov/data/tables/time-series/demo/income-poverty/historical-income-households.html
[6] Senate Congressional Record, June 6, 1977, p. 17630
[7] 13 CFR 124.103 https://www.ecfr.gov/current/title-13/chapter-I/part-124/subpart-A/subject-group-ECFR4ef1291a4a984ab/section-124.103

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for its members or an "economically disadvantaged class of persons."[8] Congress ensured that these programs permit consideration of prohibited bases such as race, national origin, or sex to increase access for people denied it in the past. This is especially important because the privileges of government-subsidized mortgages were made widely available only to White borrowers. These benefits have had a detrimental multigenerational impact.

Lenders can choose to create an SPCP targeted by race or ethnicity and by geography based on majority-minority, greatest disparities, and greatest need. The determination of whether to base a program on individual characteristics or geographic characteristics depends in part on the data demonstrating the need for the program.

In the case of SPCPs based on individual characteristics, the lender needs to decide if the SPCP will be open to all borrowers of color or limited to some subset (e.g., Black borrowers only, Black and Hispanic borrowers, etc.; or majority-Black, majority-Black and/or Hispanic, etc. census tracts). If comparable disparities exist for borrowers in different groups, a lender might include all such groups in the program. We are concerned that LMI has not been an effective tool to address the racial homeownership and wealth gap. We encourage the Agencies when finalizing the rule to remove language suggesting that only SPCPs designed for LMI individuals would qualify for CRA credit and clarify that under ECOA, banks can offer race-conscious SPCPs for CRA.

In addition to demographic eligibility, other eligibility criteria might be included to ensure responsible lending and identify a group of borrowers most likely to benefit from the SPCP. Wealth and income disparities exist within protected classes, and access to credit can vary based on credit score and other borrower characteristics. Several lenders and nonprofits have already launched SPCPs, and many more are expected to do so thanks to recent guidance from the U.S. Department of Housing and Urban Development (HUD) and the Consumer Financial Protection Bureau (CFPB).

NHC believes that it is crucial that CRA incorporates SPCPs in bank evaluations. In combination with the adoption of SPCPs by Fannie Mae and Freddie Mac under the direction of the Federal Housing Finance Agency (FHFA), we expect that this will make a significant contribution to improving CRA's ability to address its foundational issue of reversing the impact of redlining.

Risk of unattainable standards

Another significant concern is whether the largest and most impactful banks can achieve the highest rating of Outstanding. Without significant changes in how lending and investments are scored, the proposed regulation unintentionally risks deflating the incentives of CRA by undercutting those directly responsible for delivering on CRA's promise.

Some see banks as monolithic bad actors, determined to drive profits regardless of the cost to communities. Under this model, banks will not do more unless the government forces them. Those who hold to this view believe that an Outstanding rating, which they believe is achieved by too many banks today, should only be available to those who excel far beyond their peers. Others see a more complicated financial ecosystem, where banks are siloed into profit-and-loss centers that compete against each other for capital. In this latter vision, held by NHC, community development

[8] Special Purpose Credit Program Toolkit, https://spcptoolkit.com/#d1652196-a3e9-473f-bf50-6acc13a665e8

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lending and investment reside in one of these silos and are empowered. CRA regulations enable bank CRA officers to argue better for capital allocations to support investments and lending decisions that earn a reasonable risk-rated return on investment (ROI), although not as much as market-rate investments that offer an even higher return.

We should all want banks to manage their capital prudently, balancing risk and return. We know what it looks like when they don't, as evidenced by the Savings and Loan crises of the 1980s and the subprime meltdown of the late 2000s. Overseeing the prudent management of capital is the primary function of financial regulators. We also want to ensure that consumers are protected, hence the creation of the CFPB. Balance is critical. To achieve it, we must recognize that banks are not monoliths but highly siloed financial centers with a wide range of interests that compete for compensation based on risk-weighted ROI. CRA is a critically important thumb on the scale when these decisions are made.

Knowing that the best they can achieve is a Satisfactory rating, banks would have little incentive to spend the extra money and effort to strive for Outstanding. Over time, it is likely that a bank's CRA efforts will be overtaken by other priorities resulting in a gradual decline in CRA impact. In the NPR's own analysis of the last three years of banking activities through the lens of the new approach, not a single bank with assets over $50 billion achieved an Outstanding conclusion on the Retail Lending Test. The risk that CD could become incidental to a rating is greater because the Retail Lending Test's Outstanding market metric performance threshold is so high (125 percent of median industry performance) that the NPR projects that none of the largest banks would currently achieve it. It is likely that only 2 percent of the banking system's assets would reside in banks projected to achieve Outstanding performance.[9] The Retail Financing Test performance is critical because it accounts for 75 percent of retail performance and 45 percent of overall performance. It would be rational for a bank to determine that an overall Outstanding rating is beyond reach on this basis. NHC recommends that the final rule lower the Outstanding threshold to a point where it is more achievable.

In addition, the High Satisfactory market metric performance threshold (110 percent of median industry performance) means about 60 percent of banking assets will be in banks with Low Satisfactory (or lower) performance. Achieving even a High Satisfactory performance will be challenging. It is counter-intuitive that a bank should out-perform its competitors and still be Low Satisfactory. We urge the Agencies to consider lowering this threshold as well.

Importance of Community Development

The NPR's CD test approach, which consolidates CD activity and separates it from retail activity, is a major improvement from the current rule. The NPR's recognition of banks' responsibility for CD activity at the institution level, including outside AAs, is an important improvement. This change is likely to increase CD activity in more communities, as well as support for Community Development Financial Institutions (CDFIs). We are very concerned that the weighting assigned to CD in the NPR could have the unintended consequence of significantly depreciating the rule's incentive for CD activity.

[9] Even so, we expect the market benchmarks to be more achievable -- and therefore more applicable – than the community benchmarks in most cases.

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The damage caused by redlining, particularly redlining required by the U.S. government, has left deep scars and has had a lasting impact. If we reduce our commitment to community development, we depreciate our commitment to addressing redlining's historical impact. CD investment and lending are essential to repairing communities. Yet, under the proposal, CD performance would not affect most large banks' overall CRA rating because retail test performance weighs heavier (60 percent) than CD performance (40 percent). A bank that is Satisfactory on Retail is likely to receive an overall Satisfactory rating regardless of whether its CD performance is Outstanding or even Needs to Improve. [10] If a bank cannot reasonably expect to achieve an Outstanding retail performance, CRA will provide little motivation for CD activity. Especially because CRA drives so much CD activity, such an outcome would be a major setback.

We urge the Agencies to weigh retail and CD activity equally for large banks, so they are motivated to maximize performance on both. If an Outstanding retail test rating is not achievable, a bank will receive an overall Satisfactory rating even if its Community Development test score is Needs to Improve, as long as its retail test score is Low Satisfactory – a standard that nearly all banks are likely to meet or exceed. The value of Community Development would be effectively eliminated in the context of CRA compliance. NHC strongly urges the regulators to adopt a 50 percent weight for CD. Anything less will have a disproportionately negative impact on the effectiveness of the final rule.

Treatment of home mortgage loans

We are also concerned about the treatment of home mortgage loans. The NPR would provide CRA credit on the Retail Lending Test for all home mortgages in LMI census tracts, without regard to the owner's income. Indeed, the Urban Institute has found that 60 percent of banks' mortgages in LMI census tracts went to middle- and upper-income borrowers.[11] However, the NPR would confer credit for home construction or rehabilitation financing only if the occupant is LMI, and without regard to the neighborhood's median income. We are deeply concerned this latter approach fails to recognize the importance of home construction and rehabilitation to community stabilization and revitalization.

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

[10] Two scenarios illustrate the point. First, a bank with retail performance at the midpoint of the High Satisfactory range (7.5 points) and CD performance at the midpoint of the Outstanding range (9.25 points) would have an overall Satisfactory rating (7.5 X 60 percent plus 9.25 X 40 percent = 8.2 points). Second, a bank with retail performance at Low Satisfactory midpoint (5.5 points) and CD performance at the Needs to Improve midpoint (3.0 points) would still receive an overall Satisfactory rating (5.5 X 60 percent plus 3.0 points X 40 percent = 4.5 points). It is mathematically possible for a bank to achieve an overall Outstanding rating if it combines retail performance at the top end of the High Satisfactory range with CD performance at the top end of the Outstanding range, but such scenarios are highly unlikely.

[11] https://www.urban.org/research/publication/community-reinvestment-act-what-do-we-know-and-what-do-we-need-know

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neighborhoods need to support retail activity and community institutions ranging from youth sports leagues to churches. In a rural context, we often hear that it is hard to keep or attract growing businesses because quality affordable homes are simply not available. Revitalizing both urban and rural communities is very difficult unless these problems can be addressed. CRA is needed and well justified to support the construction and rehabilitation of owner-occupied homes.

To avoid providing CRA credit for constructing or rehabilitating expensive homes that could contribute to gentrification and displacement, we recommend limiting CRA credit to homes that sold for a price not exceeding four times the AMI. This limitation would ensure that the homes are broadly affordable to middle-income homebuyers. In cases where an already owner-occupied home is being rehabilitated, the owner should be either LMI or middle-income.

We recommend that loans backed by Fannie Mae, Freddie Mac, or Ginnie Mae (agency MBS), be treated carefully since agency MBS comprises the world's largest, most liquid investment market (except for certain sovereign securities).

1. Only the portion of the MBS attributable to CRA-qualified loans should be considered. Loans not meeting CRA eligibility should be disregarded to avoid over-stating their volume. Single-family loans within an MBS pool would be considered individually. Multifamily loans within an MBS would be treated consistently with CRA policy – i.e., the entire loan would qualify if the property is at least 51 percent LMI.
2. Banks should be required to hold agency MBS for which CRA consideration is claimed for at least two years or limit credit to originations and first turn, measured on a portfolio basis annually. Applying the test on a portfolio basis would allow banks some flexibility while discouraging short-term holdings. In particular, this approach would discourage banks from purchasing MBS at the end of a year or exam period unless it has held other MBS for sufficiently long periods to maintain the two-year average holding period.
3. At the institution level, not more than 25 percent of a bank's CD activity should be credited for agency MBS. It may be necessary for a bank to rely more heavily on MBS in any given AA, since CD opportunities may not be present in any given AA in any given year. However, MBS should not be the primary way a bank fulfills its overall CD financing responsibilities at the institution level.
4. Non-agency MBS issued by a CDFI should be treated the same as any other CDFI loan or investment.

Assessment Areas and Performance Context

The proposed framework makes useful and practical distinctions across the geographies in which a bank may do business. The NPR retains a focus on evaluating a bank's CRA performance within any existing branch network by requiring the designation of Facility-Based Assessment Areas (FBAAs) where banks have a main office or branches. For markets where large banks provide retail loans beyond their FBAAs, the NPR adds two new types of geographies for evaluating the retail lending performance for major product lines: 1) Retail Lending Assessment Areas (RLAAs) where there are concentrations of loans (the NPR proposes thresholds of 100 home mortgages or

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250 small business loans) and 2) an Outside Assessment Area (OAA) that encompasses all the other geographies where a bank makes retail loans.

These geographic distinctions make possible a nuanced approach to evaluating CRA performance. While all four of the performance tests (Retail Lending, Retail Services and Products, Community Development Financing, and Community Development Services) are applied in FBAAs, only the Retail Lending Test is applied in RLAAs and the OAA. Community development is evaluated at the FBAA level, but not separately for RLAA and OAA geographies. Rather, to allow banks to receive full CRA credit for community development activities wherever they are made, community development is only additionally evaluated at the state/metro and institution levels where the regulators are required to produce CRA ratings based on evaluations of both retail and community development performance within the relevant geographic boundaries.

While the proposed framework allows for distinctions in where and how banks make their products and services available, it is too limiting in the way it evaluates retail lending performance in RLAAs and the OAA. For these geographies, the evaluation also needs to include qualitative factors that bear directly on the ability and opportunity of a bank to serve each of those markets. While the bank metrics and community and market benchmarks are important pieces of information, basing conclusions exclusively on quantitative formulas using the same fixed criteria for setting thresholds for FBAAs can have unintended consequences to the detriment of both banks and the communities that they may no longer choose to serve.

In particular, the evaluation needs to take account of Performance Context which includes a bank's strategy and capacity in a locality, as well as the opportunity in that locality given the competitive environment (particularly, for example, from non-bank mortgage providers and local banks with a physical presence). Serving geographies remotely can present unique challenges even when offering an array of special products that are responsive to the needs of LMI communities and small businesses. The competition from local branch-based banks for these market segments may be very intense as they seek to enhance their own CRA ratings in that geography.

Without taking into account these types of factors, the Retail Lending Test on its own may result in RLAAs failing to achieve even a Low Satisfactory rating as a bank could fail the proposed test for at least 80% of the AAs to be at least Low Satisfactory. In addition to this potential for receiving inappropriately low ratings for their efforts in RLAAs, banks will not always know which localities will be evaluated as RLAAs until loan counts exceed the minimum thresholds. And the mix of products that will be evaluated in the RLAA may also not be known in advance (the answer to Question 44 should be to evaluate only those products that meet the minimum threshold). To manage this uncertainty, banks may limit their reach to only those geographies where volume will be sufficient volume to warrant a focused CRA effort. In this light, and especially if RLAA product line evaluations remain strictly quantitative, the answer to Question 140 is that the required minimum percentage of assessment areas in which a bank must achieve at least a Low Satisfactory be limited exclusively to FBAAs.

Designating RLAAs and OAAs creates a sensible framework for evaluating CRA retail lending performance outside of FBAAs, but it is inappropriate to apply a purely quantitative Retail Lending Test where banks do not have branches. Therefore, the minimum threshold for the percent of AAs to achieve at least a Low Satisfactory should apply only to FBAAs which are

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evaluated based on all four tests and which explicitly take into account qualitative factors including Performance Context. Exclusive use of a quantitative Retail Lending Test in RLAAs and OAAs may put banks in the uncomfortable position of having to limit which markets to serve, a dilemma that could be particularly acute for markets where a bank has a small market share and strong CRA competition from local banks. And, without input based on examiner assessment of these factors, banks could end up with low ratings, regardless of their efforts, for many of their RLAAs.

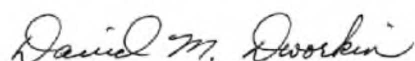
Conclusion

Some may express a concern that certain recommendations in this letter are not tough enough on banks. We believe a better way to measure the rule's effectiveness is its impact. A new final rule must meet two thresholds of success. It must improve lending, investment and activities for low- and moderate-income communities and the LMI people who live in them. But it must also be sustainable so the new approach can withstand the test of time and the inevitable swings in the political pendulum. This was certainly the case for the OCC when it pursued a highly partisan rule during the Trump administration, only to have it repealed by the Biden administration less than two years later. Only a non-partisan CRA ensures long-term success. If the regulation fails to meet this standard, embracing well-intentioned but essentially partisan priorities, we will be forced into a process of updating CRA through a multiyear regulatory rewrite or even risk repeal of the CRA statute altogether. Some may dismiss these concerns. But, given the current makeup of the Supreme Court and the real possibility that the upcoming elections may shift power in the White House and Congress, we must have a final CRA rule that has broad support. NHC is nonpartisan and has worked well with both parties, but there is no question that many, maybe most, Republicans will oppose a controversial CRA regulation. It is equally likely that a nonpartisan CRA regulation will have enough bipartisan support to last well beyond the inevitable swings of the political pendulum. We have a historic opportunity to write a new CRA regulation built to last and serve 21st Century communities.

In the following pages, we provide feedback on the specific questions posed in the NPR. These responses were crafted following extensive consultations with a broad range of NHC's membership, and participation in dozens of consultations conducted with members of NHC, the National Association of Affordable Housing Lenders and the National Community Reinvestment Coalition. This input was then taken into consideration by the NHC staff and Policy Committee. The views expressed herein, however, are NHC's alone and do not speak for any individual member, many of whom will be submitting their own comment letters.

On behalf of all of our members, we are deeply appreciative of the enormous amount of work and commitment evidenced by this NPR. This modernization process will be a historic achievement by all three agencies and the dozens of staff who have committed countless hours to this work. We look forward to continuing to work with you during the months ahead as you prepare the final rule.

Sincerely,



David M. Dworkin

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President and Chief Executive Officer

Attachment: Questions and Answers

Community Reinvestment Act

Detailed comments of the National Housing Conference to the Notice of Proposed Rulemaking

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Community Development Definitions

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

NHC is in favor of giving CRA credit for targeted infrastructure projects that have a positive impact on rural and other socially disadvantaged communities. For example, there is widely accepted agreement that there is an educational materials gap, which is partly due to the unequal access to broadband around the county.[12] NHC believes that giving CRA credit for targeted investments in broadband can have a material impact in educational attainment in LMI communities. We believe that the regulators should put guardrails in place to ensure that (1) even partial CRA credit is not given to projects that would happen without the CRA incentive; (2) projects must have a demonstrable impact on LMI communities; and (3) if projects span multiple census tracts that partial CRA credit should be given in proportion with the demonstrated impact on LMI communities.

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

We agree that 51 percent is the right minimum percentage to achieve CRA credit. There is little justification for denying CRA credit if most of the beneficiaries are LMI. Given the preponderance of recent research that LMI people benefit from living in high opportunity areas, we believe it does not make sense to deny CRA credit if most of the beneficiaries are LMI.[13]

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

[12] https://www.aclu.org/news/privacy-technology/how-broadband-access-hinders-systemic-equality-and-deepens-the-digital-divide
[13] https://mf.freddiemac.com/docs/Affordable_Housing_in_High_Opportunity_Areas.pdf

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NHC believes that creating separate affordable housing standards based on the presence or absence of governmental support is mistaken. Further, most of the federal programs that would receive exclusive credit were not enacted until well after the CRA statute was enacted. Governmental support varies too widely to be a reliable proxy of LMI benefit. At the federal level, for example, HUD/FHA primary multifamily mortgage insurance program for new construction and rehabilitation, Section 221(d)(4), has a stated purpose of serving moderate-income renters,[14] yet the program does not require either affordable rents or LMI occupancy and it is often accordingly used for middle- and upper-income housing. In addition, many states and localities support "affordable" housing but standards vary widely. For example, New York City's 421-a tax exemption applies to properties affordable at 130 percent of AMI;[15] many inclusionary zoning programs require only 5-10 percent of the property to be affordable, and the duration of affordability varies widely. On the other hand, some entirely private affordable housing initiatives, such as the Washington Housing Initiative,[16] require both affordable rents and documentation of LMI occupancy.

We strongly urge the Agencies to establish a uniform yet flexible *performance-based* standard that would apply to all non-LIHTC affordable multifamily housing, regardless of whether it has governmental support. This approach combines elements of the NPR's proposals for governmentally supported and naturally occurring affordable housing (NOAH). Such a standard should apply a universal rent affordability standard and also meet one additional standard from a menu of options, with periodic re-confirmation of compliance.

1. All affordable properties should have rents affordable at 80 percent of area median income (AMI), based on a 30-percent-of-income rent standard, and that the rents used for underwriting after any planned rehabilitation or construction.
    a. In the absence of substantial public subsidies, setting affordable rents at 60 percent of AMI, as the NPR proposes for NOAH, is too restrictive to be workable. Please see our response to Question 6 for more details.
    b. To address needs in the least affordable local markets, a bank should be permitted to use HUD Fair Market Rents where they exceed the 30 percent of 80 percent of AMI standard. See our response to Question 4 for more details.
2. Properties should be required to meet *any one* of the following requirements in addition to affordable rents.
    a. Location in an LMI census tract, as included in the NPR. This has been construed as an informal rule of thumb under the current policy for many years.
    b. Location in a census tract where the median renter is LMI, as the NPR offers to consider. Because most renters in the census tract are LMI and because the rents for the specific property are LMI affordable, there is a reasonable likelihood that

[14] https://www.hud.gov/program_offices/housing/mfh/progdesc/rentcoophsg221d3n4
[15] https://www1.nyc.gov/site/hpd/services-and-information/tax-incentives-421-a.page
[16] https://www.washingtonhousinginitiative.com/

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most of the occupants will be LMI. See our response to Question 6 for more details.

c. Nonprofit or CDFI ownership or control (e.g., where a nonprofit is the general partner of a limited partnership). The NPR provides for nonprofit sponsorship. Nonprofits and CDFIs have proven their commitment to maintaining affordability over several decades. Some CDFIs are not nonprofits, but all CDFIs must meet the same public purpose test.

d. Documented LMI occupancy. It is impractical to require that most NOAH meet an LMI occupancy standard. Banks and other lenders do not have access to this information. Accordingly, most of the properties electing this option are likely to involve government programs. A tenant's income would be established at the time they first occupy the property, and no re-certification of income would be required. For properties that were occupied before the bank finances it, the bank should be able to rely on a tenant's prior income documentation or have perhaps 12-18 months after the financing is provided to document a tenant's income.

e. Owner commitment to maintain affordability for at least five years, as provided in the NPR.

Periodic confirmation that a property is continuing to meet the above requirements should be required for a bank to receive continuing credit for financings made in previous years. We strongly support the Agencies' proposal to provide continuing credit for CD loans made in prior years. Continuing consideration will encourage the kind of long-term financing that is so important in many cases. Yet, in some cases, there may be legitimate concerns that affordability today does not guarantee affordability tomorrow. Housing markets and communities change in ways that are not always easy to anticipate, and these changes vary across markets. Instead of setting a policy that could prove both too narrow and too broad, depending on local circumstances, the Agencies can set a common-sense performance-based standard. How long a bank can continue to count housing as affordable should depend on whether it remains affordable.

Fortunately, affordability can be easily confirmed based on a rent roll, which most responsible lenders regularly collect as a normal business practice. Properties located in LMI census tracts (2a above) or a census tract where the median renter is LMI (2b above) could continue to meet this standard as of right, assuming that rent affordability is maintained. In cases where documented LMI occupancy (2d above) is the second qualifier, it should be subject to periodic confirmation.

3. Activities would qualify for full credit if more than 50 percent of the units meet the affordable housing standards. *Pro-rata* credit should be available for properties where 20-50% of the units meet the affordable housing requirements. Mixed-income housing is important because it promotes mixed-income neighborhoods that can sustain important services and amenities, as well as long-term property financial sustainability. However, affordability may be incidental and CRA immaterial to financing decisions where fewer than 20 percent of the apartments are affordable. We note that the Low-Income Housing

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Tax Credit, tax-exempt multifamily bonds, and HUD's HOME Investment Partnerships program all require a minimum of 20 percent affordability.

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

NHC is supportive of the agencies considering activities that provide housing for middle-income families provided that the housing is in high opportunity areas. "Non-metropolitan areas or in other geographies" is too vague and are therefore concerned that CRA credit could be used to encourage gentrification.

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

NHC strongly believes that credit should be given here. Preserving naturally occurring affordable housing is important but doing it in a way that avoids unintended consequences is critical to this preservation strategy. NHC would like to underscore that geography alone is inadequate to ensure that credit is allocated to LMI communities. As stated above, the regulators should consider increasing underwriting requirements from 30 percent of 60 percent of AMI to 80 percent of AMI to expand the scope and feasibility of this activity. However, there needs to be strong guidelines in place to ensure no unintended consequences such as short-term repositioning or raising rents. See question 3 for additional criteria.

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

See responses to Question 3 and Question 5.

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

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With 32.2 percent of the of rental units found in single family homes, NHC believes CRA has an important role to play.[17] It's important that regulators understand that there are single-family rental companies with a track record of improving properties and not raising rents above the median rent increase for the market, regardless of size. Bad actors as well, exist in all segments of the overall market. Any allocation of credit must first address the quality of the housing and affordability requirements, regardless of size of development portfolio. We do not recommend that this approach be limited to rural geographies. The approach is appropriate for all geographies that meet the proposed eligibility criteria.

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

CRA has an important role to play to put a finger on the scale to help incentivize banks to provide loans to consumers or mission-driven organizations to curb an industry trend that pits consumers in competition with investors. The guiding principle should be how do we ensure that CRA is being leveraged to create more opportunities for homeownership, especially first-generation homebuyers, and socially disadvantaged people and communities. Without knowing how impact factors will work or if equity investments will count, it's hard to know how material the impact of the proposal will have on the market. However, there are activities that we think CRA can support, such as providing credit for first look programs, REO, note sales, and providing support for mission-driven organizations who engage in acquisition and rehabilitation or homeownership activities.

In addition, NHC supports targeting credit to geographies that most need it. We would support limiting its credit to LMI census tracts and for properties that don't exceed four times the AMI or that the owner-occupant's income does not exceed AMI.

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

NHC believes that it is important that banks continue to get credit for purchasing mortgage-backed securities. Not only does the secondary market provide important financing tools for critical actors in the housing market, such as Housing Finance Agencies, banks also seek out housing bonds, placed through private borrowers, that help provide better terms for homebuyers. The net impact is that it does increase liquidity which results in savings for the LMI consumers. However, NHC strongly believes that there should be some guidelines for how MBS is treated within CRA. These include:

[17] https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_Americas_Rental_Housing_2022.pdf

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1. Credit should be limited to 25 percent of the institution-level community development financing;
2. A bank should hold it for at least two years *or* limit credit to originations and first turn, understanding that there are originators who rely on their loans being purchased;
3. It should be measured on a portfolio basis for CRA applicable MBS;
4. Credit should be limited to loans that qualify within a security.

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

See response to Question 3

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

Lending to small businesses and farms that supports job creation and retention should not be included or double counted in Community Development. It should remain in Retail Lending.

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

NHC defers to organizations with refined expertise in this subject area.

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

Job creation and retention is an extremely difficult variable to measure.[18] In the spirit of simplifying the CRA regulation wherever possible, this is an example of an area where complexity may not accurately reflect impact due to data limitations. Broadly speaking, NHC supports the

[18] https://www.whitehouse.gov/cea/written-materials/2021/06/29/distinguishing-between-signal-and-noise-in-recent-jobs-data/

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allowance for supporting public sector initiatives or certified entities to accommodate this objective. We further support the proposals that offer CRA consideration to bank financing of intermediates like Community Development Financial Institutions (CDFIs) that support small businesses with revenues less than $5 million, and technical assistance to small businesses and farms with revenues under $5 million as eligible community development activities. Both would foster further job creation and retention.

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

NHC supports providing flexibility with this proposal as it's important to ensure that stakeholders can take advantage of this but ultimately that LMI communities stand to benefit. Any place-based definition should be purposefully designed to ensure that LMI communities benefit and should not assume that being associated with a government program means that the project will benefit LMI consumers and communities. We suggest that the definition of a government-related program include a demonstration that the program has demonstrated benefits to LMI consumers and communities.. Net displacement is an essential aspect of ensuring that credit is not given to projects that will have a negative impact on socially disadvantaged communities. NHC advises that banks also demonstrate that their investments do not increase net displacement.

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

We encourage the agencies to take great care to recognize that the pejorative "gentrification" is often a conflation of investment and displacement. Most LMI communities are in dire need of investment in a broad range of businesses, including but not limited to grocery stores, retail and small businesses of all kinds. Recent work has shown that social community capital may play a central role in shaping important social phenomena such as income inequality and economic opportunity.[19] Where economic activity benefits LMI residents, it benefits the community where they live. If an activity benefits the community, it may or may not benefit the residents. Recent research has demonstrated that Opportunity Zone investments have had little impact on property

[19] Chetty, R., Hendren, N., Kline, P. & Saez, E. Where is the land of opportunity? The geography of intergenerational mobility in the United States. *Q. J. Econ.* **129**, 1553–1623 (2014).

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prices[20] and that observed price increases are driven by the higher end of the Opportunity Zone market.[21]

The Agencies should clearly articulate that the financing of retail services, including grocery stores, pharmacies, and other neighborhood-scale services, qualify as essential community facilities, regardless of the size of the occupant business. For example, a chain supermarket brings a wide array of high-quality, healthy, fresh, and affordable food that is common in middle- and upper-income communities but missing in so many LMI communities. These facilities bring convenience, jobs, physical revitalization, and lower prices for consumers. Indeed, the presence of quality shopping at major-brand grocery stores, pharmacies, fitness gyms, and other retailers is often experienced by residents and perceived by outsiders as a marker of community stability and attractiveness. Yet, financing these facilities is often complicated. Uncertainty and perceived risk – especially if comparable facilities are not already present – make CRA consideration important to their financing.

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

Financing the construction or rehabilitation of owner-occupied homes (including condominiums and cooperatives) should receive CRA consideration if: (1) the homes are located in a LMI CT or a distressed or underserved middle-income non-metropolitan CT; and (2) the sales price does not exceed four times the AMI. Financing the rehabilitation or reconstruction of an already owner-occupied home (where no sale is involved) should qualify if the owner is either LMI or middle-income.

The NPR would provide CRA credit on the Retail Lending Test for *all* home mortgages in LMI CTs, without regard to the owner's income. Indeed, the Urban Institute has found that 60 percent of banks' mortgages in LMI CTs went to *middle- and upper-income* borrowers. [22] Under the affordable housing definition, however, the NPR would apparently confer credit for home construction or rehabilitation financing only if the occupant is LMI, and without regard to the neighborhood's median income. We are deeply concerned this latter approach fails to recognize the importance of home construction and rehabilitation to community stabilization and revitalization. Single-family homes comprise the primary land use in most LMI CTs, but many or most existing homes in these neighborhoods are old or in need of improvement, and empty lots (sometimes where dilapidated homes were demolished) are common. These communities typically have relatively low rates of homeownership and little chance of attracting or retaining homeowners

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[20] Campbell, Sophia, Wessel, David. [Little evidence of increased demand for property in Opportunity Zones so far](). Brookings, March 15, 2021

[21] Bekkerman, Ron and Cohen, Maxime C. and Maiden, John and Mitrofanov, Dmitry, The Impact of the Opportunity Zone Program on the Residential Real Estate Market (February 5, 2021). https://ssrn.com/abstract=3780241

[22] https://www.urban.org/research/publication/community-reinvestment-act-what-do-we-know-and-what-do-we-need-know

unless quality homes can be built or rehabilitated. While many of these prospective homeowners may be middle-income, not LMI, they are important to sustaining the diversity of incomes that neighborhoods need to support retail activity and community institutions ranging from youth sports leagues to churches. In a rural context, we often hear that it is hard to keep or attract growing businesses because quality affordable homes are simply not available. Revitalizing both urban and rural communities is very difficult unless these problems can be addressed. CRA is needed and well justified to support the construction and rehabilitation of owner-occupied homes.

To avoid providing CRA credit for constructing or rehabilitating expensive homes that could contribute to gentrification and displacement, we recommend limiting CRA credit to homes that sold for a price not exceeding four times the AMI. This limitation would ensure that the homes are broadly affordable to middle-income homebuyers. In cases where an already owner-occupied home is being rehabilitated, the owner should be either LMI or middle-income. This approach is also consistent with requirements of the proposed Neighborhood Homes Investment Act, bipartisan legislation Congress is currently considering with the sponsorship of 24 Senators and 86 Representatives.

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

In addition to NHC's response to Question 1, some additional ways to measure the benefits of infrastructure projects to LMI communities include jobs created for LMI individuals, contracts with local companies, and economic growth-related metrics such as growth in median income for census tract residents, and the environmental improvements, such as greenhouse gas emissions and/or pollution reductions, increases in the amount of greenspace, community health benefit, and climate adaption strategies.

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

NHC believes that disaster recovery should be focused on LMI people and communities. Mounting evidence[23] shows that in the wake of natural disasters upper-income neighborhoods receive the resources they need for recovery while socially disadvantaged communities do not. For example, in in the wake of Hurricane Sandy federal funding was used to address the storm drains in wealthy neighborhoods, which left LMI communities with open drains and increased risk of damage.

Question 19. Does the disaster preparedness and climate resiliency definition appropriately define qualifying activities as those that assist individuals and communities to prepare for, adapt to, and withstand natural disasters, weather-related disasters, or climate-related risks? How should these

[23] Billings, Stephen B. and Gallagher, Emily and Ricketts, Lowell, Let the Rich Be Flooded: The Distribution of Financial Aid and Distress after Hurricane Harvey (May 30, 2019). Journal of Financial Economics (JFE), Available at SSRN: https://ssrn.com/abstract=3396611

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activities be tailored to directly benefit low- or moderate-income communities and distressed or underserved nonmetropolitan middle-income areas? Are other criteria needed to ensure these activities benefit low- or moderate-income individuals and communities?

NHC supports the proposed definition of disaster preparedness and climate resiliency and recommends that it be made part of the final rule, with the addition of what is mentioned below. As stated in other parts of our letter, NHC recommends that CRA activities related to these definitions should be evaluated to ensure that they provide a direct, meaningful, and proven benefit to LMI communities.

We encourage regulators to consider expanding the definition of climate resiliency to include activities that help LMI communities prepare for climate change and the transition to a decarbonized economy. We believe that the criteria laid out by the proposal for qualifying activities that help communities adapt to physical risks associated with climate change are a good starting point. However, it the Agencies should give attention to investments that support LMI communities in staying aligned with the speed and scale of the transition that is happening nationwide and globally. Otherwise, LMI communities stand to lose out significantly as transitioning these communities is delayed or neglected due to a lack of investment. Due to network effects, costs will be highest for the last communities to transition, such as through increasing fuel supply costs for outdated fossil fuel infrastructure. LMI communities today already face a disproportionately high energy burden, partially due to fossil fuel assets.[24] [25]

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

NHC suggests that the rule expand the list of qualifying activities under energy efficiency to provide clarity to banks and communities about which activities will qualify and should be prioritized. Activities for a non-exhaustive list should include energy efficient upgrades for residential and commercial buildings including appliance and fixtures replacements, weatherization, improved insulation, window replacement, heat pump purchase and installation, HVAC systems, and education for building owners and tenants on energy efficiency. We also encourage consultation with the Office of Energy Efficiency and Renewable Energy (EERE) at the Department of Energy to develop a prioritized, regional-specific list of efficiency upgrades and standards to be included in the final rulemaking to provide banks and communities with a more useful starting point for investment.

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[24] https://www.canarymedia.com/articles/energy-equity/build-back-better-act-would-reduce-burden-of-household-energy-costs
[25] See "Customers and Communities", https://utilitytransitionhub.rmi.org/

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

Yes, so long as these activities have a material impact on LMI communities.

NHC supports the inclusion of other energy-related activities under the disaster preparedness and climate resiliency definition. CRA has an important role to play to help LMI communities transition into a green economy. As such, we recommend that activities such as community solar projects and electrification efforts that benefit targeted communities should be considered for CRA credit. Additionally, we recommend that the following projects are included in energy-related activities, so long as they benefit LMI communities: energy storage systems, distribution grid modernization, EV charging infrastructure and municipal fleets, biodigesters, and early retirement of fossil fuel-emitting assets before the end of their useful lives. Related to question 20, the benefits of energy efficiency investments are increased substantially when such efforts are combined with electrification. Investments in electrification, energy efficiency, and renewable energy together will provide durable, compounded benefits to mitigate both short- and long-term climate risks and bolster climate resilience. The rule should consider how, if at all, these compounded benefits can be reflected in the ways in which credit is awarded for climate-related lending in LMI communities.

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

Utility-scale projects are too far from the letter and spirit of CRA. These kinds of issues are best left to other incentives. This would create a much broader application and much higher dollar amount that can dilute the purpose of CRA due to size. The climate agenda should be appropriately dealt with in the climate agenda.

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

NHC defers to organizations with refined expertise in this subject area.

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

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NHC defers to organizations with refined expertise in this subject area.

Question 25. Should the agencies also include in the MDI definition insured credit unions considered to be MDIs by the National Credit Union Administration

NHC defers to organizations with refined expertise in this subject area.

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

The value of MDIs and WDIs to their community is staying in business. MDIs and WDIs are, at face value, beneficial to have in the community and any activity conducted is worth CRA credit. Sustaining these organizations in and of themselves is a positive impact and therefore should receive credit.

NHC supports providing CRA credit for investments and other financial support in MDIs, women-owned financial institutions and low-income credit unions, as well as CDFIs, outside of a bank's AA or outside of broader statewide or regional areas. The pandemic has revealed the importance of these institutions as financial "first responders" in LMI areas, particularly communities of color. Yet their assets remain low relative to many other financial institutions. Today, only 507 MDIs are operating in the country.[26]

We further support designating these investments as a factor for an "outstanding" rating to incentivize them. NHC encourages the agencies to highlight and disseminate best practices in bank support for MDIs, women-owned financial institutions, low-income credit unions and CDFIs (e.g., through publications and other tools available on their websites).

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

In an underserved community, there is value to the entire community to provide financial literacy training to anyone who needs it, regardless of their income. This is particularly important for socially disadvantaged people.[27] The need for financial literacy training may be greater for people

[26] https://www.ncua.gov/support-services/credit-union-resources-expansion/resources/minority-depository-institution-preservation/mdi

[27] Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities. The social disadvantage must stem from circumstances beyond their control. There is a rebuttable presumption that the following individuals are socially disadvantaged: Black Americans, Hispanic Americans, Native Americans, and Asian Americans and Pacific Islanders. In addition, an individual may be determined to be a socially disadvantaged individual in accordance

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with more resources who could be more susceptible to being taken advantage of without financial training, as it is not uncommon for people who make moderate or higher income to continue utilizing cash checking services.

CRA is a powerful tool for incentivizing partnerships between banks and local communities. CRA leverages investments across those communities, often through nonprofits with a deep commitment to serving these areas, to achieve their shared goals. In proposing to grant automatic eligibility for CRA consideration for any activity undertaken in partnership with a Treasury-certified Community Development Financial Institution (CDFI), the Agencies have recognized this potential. According to the NPRM, activities undertaken with a CDFI "would be presumed to qualify for CRA credit given these organizations would need to meet specific criteria to prove that they have a mission of promoting community development and provide financial products and services to low- or moderate-income individuals and communities."

Applying this same reasoning, NeighborWorks recommends extending this status to partnerships between banks and nonprofit organizations that hold a charter from NeighborWorks America. NeighborWorks is a Congressionally-chartered organization, and membership in the network for these mission-driven organizations requires rigorous financial and management assessments prior to receiving their charters and on an ongoing basis thereafter. Furthermore, membership in the NeighborWorks network is only available to organizations that demonstrate a commitment to resident leadership, ensuring that the organization continues to represent the interests of the communities in which it works. The accountability and oversight that NeighborWorks America provides to network organizations are akin to the stewardship of the Treasury for certified CDFIs, ensuring that NeighborWorks Organizations (NOW's) maintain their physical and financial health as well as their mission-driven focus. Activities relating to partnerships with NWOs, including loans and grants, should be explicitly included in the regulations describing qualified activities. Inclusion of this provision would strengthen community-based organizations' ability to attract investment from financial institutions by providing the clarity and certainty that such investments would receive CRA consideration.

Similarly, we recommend the Agencies consider whether extending this treatment to HUD-designated Community Housing Development Organizations (CHDOs), HUD-approved Housing Counseling Organizations, and HUD-approved Nonprofit Organizations is appropriate.

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

From our conversations with our members, this definition has too much of a focus on artificial barriers and less on the community that CRA intends to serve. It is important to recognize that the definition and term "Native Land Areas" is imperfect so long as geography is the primary indicator. A majority of Native Americans do not live on reservations, meaning a geographical framework is not the sole way that banks should be directing their activity toward Native

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with the procedures set forth at 13 CFR 124.103(c) or (d). https://nationalfairhousing.org/wp-content/uploads/2021/04/COVID-19-Update_Homeowner-Assistance-Fund_20APRIL21.pdf

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communities.[28] Targeting Native Land Areas remains an important piece of investing in these communities, however, it would be more impactful to also include targets for Native peoples and households in order to capture the entire community rather than only those living on reservations.

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

An income limitation for Native American communities can be counterproductive to serving the needs of Native communities. Community Development activities within Native American communities benefit all members, including LMI members, regardless of their income focus and can help foster economic and community development for the broader community of enrolled tribal members. Removing limitations is ideal for this purpose. A survey by FDIC in 2019 shows that Native communities as a whole have the highest rate of unbanked households at 16.3%, three times higher than the national average.[29] This is unique in the housing and community development world, but broad flexibility is particularly impactful in spurring economic development for communities that have been consistently overlooked historically. In general, NHC continues to defer to organizations with expertise in this area for questions regarding Native American communities. Our responses are reflective of conversations with our membership.

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

NHC continues to defer to organizations with expertise in this area for questions regarding Native American communities. However, in general, Community and economic development activities should be implemented with as much flexibility as possible without creating an impediment. When partnerships are considered it is crucial that trust land, tribally- or Native-led organizations, Native CDFIs, and TDHEs are eligible entities available to partner to ensure banks are consulting and adhering to the guidance of community-driven entities to secure robust community impact.

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

NHC recommends that the regulators utilize the list of "sin business" activities that do not qualify for CRA. This often includes liquor businesses, tobacco businesses, sex-related industries, weapons businesses, and gambling.[30] Importantly, this list should not be considered exhaustive and

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[28] https://minorityhealth.hhs.gov/omh/browse.aspx?lvl=3&lvlID=62
[29] https://www.fdic.gov/analysis/household-survey/2019report.pdf

[30] https://www.investopedia.com/terms/s/sinfulstock.asp

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activities that can cause economic harm to communities should not receive CRA credit simply because we are not creative enough to think of them.

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

The timeline for accepting submissions for CRA consideration should be 60 days or less. There is a time value of money that must be considered. Regulators should balance the time value of money that drives investor decisions. Oftentimes, a time delay is just the same as answering "no". This denial by delay can cause good investments to suffer as a result. NHC encourages expediting the process however possible.

Generally, no activities should be excluded but some activities should be considered particularly responsive (e.g. equity investments, long-term loan facilities, grants, etc.). The regulators also include wholly owned subsidiaries of CDFIs/MDIs/WDIs/LICUs in their definition. NHC also recommends that the agencies allow banks to seek confirmation from the regulators in advance that an activity will qualify, to the extent that it is not otherwise addressed on the list of qualifying activities.

Question 33. Various processes and actions under the proposed rule, such as the process for confirming qualifying community development activities in § __.14, the designation of census tracts in § __.12, and, with respect to recovery activities in designated disaster areas, the determination of temporary exception or an extension of the period of eligibility of activities under § __.13(h)(1), would involve joint action by the agencies. The agencies invite comment on these proposed joint processes and actions, as well as alternative processes and actions, such as consultation among the agencies, that would be consistent with the purposes of the Community Reinvestment Act.

NHC defers to organizations with refined expertise in this subject area.

Impact Review of Community Development Activities

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

We encourage the Board to consider providing additional credit for community development activities in especially vulnerable census tracts within designated areas of need (e.g., areas of persistent poverty, particularly low income, highly segregated, distressed housing stock, significantly lower levels of community development financing than other areas within designated areas of need).

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NHC also recommends adding community development special purpose credit programs (SPCPs) on the list of impact review factors. While we appreciate and support the agencies' proposal to include home mortgage and consumer lending SPCPs on the Retail Services and Products Subtest, this leaves out an entire category of targeted community development lending programs

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

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

NHC recommends that activities in all rural areas (as distinguished from non-metro areas) qualify as an Impact Factor. This impact factor should not be restricted only to bank activities in counties outside of MSAs (i.e., those that meet the Office of Management and Budget definition that governs the rule as a whole). Rather, the regulators should draw on more recent and precise definitions of "rural" to recognize the impact of such activities in census tracts within MSAs whose economies and housing markets are rural (e.g., Central Valley of California). Examples of a more granular approach include the FHFA's recent Duty to Serve rule[31] and the Housing Assistance Council's proposed definition.[32] The disadvantages and challenges facing rural areas are well known, generally including the lower capacity of most rural governments, lower income levels, limited infrastructure, and the difficulty of financing the small-scale properties that many rural areas need and can support. Perhaps less appreciated is that "non-metro" is an inadequate proxy for "rural." As the U.S. Census Bureau explains, "Many counties classified as metropolitan include rural territory, while many counties outside of metropolitan and micropolitan statistical areas contain urban clusters. Based on the Census Bureau's urban/ rural classification, 54 percent of the rural population in 2016 resided within metropolitan counties. Rural areas within metropolitan counties encompass a wide variety of landscapes and settlement patterns—from sparsely populated desert lands within large metropolitan counties in the Southwest to small-town landscapes and "large-lot" (one-, three-, or five-acre) housing subdivisions on the fringes of large metropolitan statistical areas."[33]

Question 35. For the proposed factor focused on activities supporting MDIs, WDIs, LICUs, and Treasury Department-certified CDFIs, should the factor exclude placements of short-term

[31] https://www.fhfa.gov/DataTools/Downloads/Pages/Duty-to-Serve-Data.aspx#:~:text=FHFA's%20Duty%20to%20Serve%20regulation.that%20is%20outside%20of%20the
[32] https://ruraldataportal.org/geoterms.aspx
[33] https://www.census.gov/content/dam/Census/library/publications/2019/acs/ACS_rural_handbook_2019_ch01.pdf

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deposits, and should any other activities be excluded? Should the criterion specifically emphasize equity investments, long-term debt financing, donations, and services, and should other activities be emphasized?

We don't believe that certain types of investments in these institutions should be disallowed, but we do agree that banks should be incentivized to make the more impactful investments (e.g., equity investments, long term debt financing) whenever possible. In fact, we recommend elsewhere in this document to expand the community development services test to also include an evaluation of "responsiveness", as is done in the retail services test. It would be in this context that the type of product offered by a bank will factor into the scoring, so that a bank might get a more favorable (or less favorable) score, depending on how impactful its investment are. And ideally, as noted earlier, the agencies could post a non-exhaustive, illustrative list of what it deems to be particularly responsive products.

We also want to flag here that the regulators should also be sure to include not just CDFIs, MDIs, etc., but also any wholly owned subsidiaries of these entities, as well as LLPs and other funds managed by these entities. CDFIs are increasingly engaged in complex financing instruments that necessitate the formation of subsidiary entities, so it is critical that they are included in this definition.

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

NHC defers to organizations with refined expertise in this subject area.

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

NHC reiterates that definitions should be consistent across regulatory agencies wherever possible. See response to Question 15.

Assessment Areas and Areas for Eligible Community Development Activity

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

The proposed factor to include activities benefitting Native and tribal communities that are not located in Native Land Areas should be included. In general, NHC defers to Native organizations

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with expertise in this area. Our responses are reflective of conversations with our members that have interests in this area.

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

All counties are not equal. Some counties are so large and economically diverse that they require a more precise delineation, and delineating partial counties would be appropriate. However, NHC is concerned about the potential for redlining within county lines.

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

The future of branch banking is evolving. We want to make these definitions as open to adjustment by public Q&A or guidance as possible to ensure that we are enabling definitions to remain applicable over the next decade or longer. While we cannot predict the changes that technology will make to banking, we can maximize flexibility in order to anticipate the needs of our own progress in the future.

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

NHC defers to organizations with refined expertise in this subject area.

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

Yes, the proposed language is sufficient.

Question 43. If a bank's retail lending assessment area is located in the same MSA (or state non-MSA area) where a smaller facility-based assessment area is located, should the bank be required to expand its facility-based assessment area to the whole MSA (or non-MSA area) or should it have the option to designate the portion of the MSA that excludes the facility-based assessment area as a new retail lending assessment area?

A bank should have the option to designate the portion of the MSA that excludes the facility-based assessment area as a new RLAA.

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Question 44. Should a bank be evaluated for all of its major product lines in each retail lending assessment area? In the alternative, should the agencies evaluate home mortgage product lines only when the number of home mortgage loans exceeds the proposed threshold of 100 loans, and evaluate small business loans only when the number of small business loans exceeds the proposed threshold of 250 loans?

RLAA evaluations should apply only to the specific product – closed-end home mortgages or small business loans – for which the bank exceeds the required volume.

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

NHC would prefer that all retail lending beyond facility-based AAs (FBAAs) be considered as part of an Outside AA analysis. Our reason is embedded in the final words of the Agencies' question: areas, where banks have no branches, are not "its local communities," but instead are outside them. Nevertheless, if the Agencies move forward with RLAAs, we strongly recommend that:

1. A more robust materiality threshold should be used to establish RLAAs. In addition to the proposed minimum loan count in a RLAA, lending should exceed both (1) 1 percent of the area's total lending for the applicable loan product; and (2) 0.5 percent of the bank's total lending for the applicable loan product. A bank with less than 1 percent local market share is not material to the community. Similarly, performance in an area will be immaterial to a bank's CRA rating if the bank makes less than 0.5 percent of its loans in that area. This more robust standard would significantly reduce the number of RLAAs, focusing RLAAs where they matter most and substantially mitigating the additional complexity that numerous RLAAs would add to a bank's management of its CRA responsibilities. Based on unpublished research conducted by Urban Institute, this more robust materiality test would reduce the total number of RLAAs for mortgage lending from 654 to 102 (84 percent) and the most RLAAs for any single bank from 121 to 20 (83 percent); and for small business lending from 826 to 121 (85 percent) and the most for any single bank from 233 to 41 (82 percent). This approach would help reduce the considerable complexity of managing CRA compliance. We reiterate that all Outside AA lending would still be evaluated, so the reducing the number of RLAAs would not reduce any bank's responsibility.
2. RLAAs should apply only to a lending product if that product meets the materiality test. For example, if a bank's home mortgage lending meets the materiality test but its small business lending does not, then the RLAA analysis should apply only to the bank's home mortgages and not to its small business lending.
3. RLAAs should not be counted in determining whether at least 60 percent of a bank's AAs have at least Satisfactory performance. It is much harder for banks to penetrate LMI lending if they have no local physical presence. The NPR's Table 12 indicates that banks

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would have less than Satisfactory ratings in 34 percent of RLAAs, far more than in AAs more generally. We note that a bank must achieve at least Satisfactory performance for retail lending at the institution level in order to receive an overall Satisfactory rating so, again, the bank would still be accountable.

4. The retail lending screen should not apply to RLAAs. It would be inappropriate to apply a retail lending screen, which measures lending relative to deposits, to an area where a bank has no deposit-taking facilities. In these areas, deposit-taking and lending are unrelated.

The agency proposal meets the objectives of reflecting changes in banking over time. An alternative is not necessary.

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

See response to question 45.

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

We greatly appreciate the Agencies' proposal and strongly discourage any restriction or limitation on consideration for CD financing outside FBAAs. CRA's current geographic restriction has seriously impeded the flow of CD capital to the places that need it most. The clearest evidence relates to LIHTC. Because banks provide 85 percent of all LIHTC investments, CRA policy significantly affects our nation's ability to address the growing affordable housing crisis. LIHTC investment pricing, which determines the amount of equity invested, can vary dramatically, by $0.20 for each $1.00 of LIHTC, between what are commonly known as CRA hot markets and CRA deserts.[34] In other words, properties with the least CRA demand receive 20 percent less equity for the same amount of LIHTCs as properties with the highest CRA demand, rendering many properties with low pricing financially infeasible. The Agencies' proposal to remove geographic limitations for CRA consideration would mitigate this long-standing problem. Based on a survey jointly undertaken by the Affordable Housing Investors Council, the Affordable Housing Tax Credit Coalition, and NAAHL, two-thirds of the 24 respondent banks said the NPR's

[34] CohnReznick, "Housing Tax Credit Monitor," (2022). Retrieved from: https://www.cohnreznick.com/-/media/resources/2022_housing-tax-monitor_august_2022.pdf

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new geographic flexibility would make them likely to make LIHTC investments in underserved CRA markets outside their current AAs.

Finally, the CD Impact Factors would incentivize banks to focus their CD activity on underserved and other high-priority communities, so any restriction of consideration for activity outside FBAAs would be unnecessary as well as counter-productive. There is no need to create a whole new list of assessment criteria if an activity is outside of the assessment area. The quality of investment and impact on the community should be the deciding factor when considering credit for these activities. In proposing to grant automatic eligibility for CRA consideration for any activity undertaken in partnership with a Treasury-certified CDFI, the Agencies have recognized this potential. According to the NPR, activities undertaken with a CDFI "would be presumed to qualify for CRA credit given these organizations would need to meet specific criteria to prove that they have a mission of promoting community development and provide financial products and services to low- or moderate-income individuals and communities."

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

Yes. NHC does not see a reason to exclude community development activities outside of these assessment areas. We encourage any policies that can help to address CRA deserts that do not see investment activity, including in strategic plan evaluations.

Performance Tests, Standards, and Ratings in General

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

The revised regulations need to encourage a self-reinforcing "race to the top" where are continually motivated to compete with each other to have a positive impact on low- and moderate-income communities, as evidenced by an Outstanding CRA rating. A key to sustaining such a "virtuous circle" is a scoring system that makes an Outstanding rating achievable. The NPR, as currently drafted, with its disproportionate emphasis on "retail" and unreasonably high market benchmarks for the Retail Lending Test, makes it all but impossible to achieve an overall rating of Outstanding. This diminishes to the incentive to do more; the opposed outcome the Agencies seek.

Without the "carrot" of an overall rating of Outstanding, g banks would unlikely be motivated to strive as hard as they do under the current regulations on any of the four tests. If this should happen, banks may allow their efforts to slip and a gradual decline in CRA performance could easily set in as the market-based benchmarks begin to ratchet down. Over time, this would likely result in banks a Satisfactory with less and less effort over time.

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Two aspects of the NPR scoring system contribute to the risk of this "vicious circle": the disproportionate weight given to the Retail Lending Test and the extreme difficulty of achieving an Outstanding rating on that test. Rather than equally rewarding excellent CRA retail and community development efforts, the NPR favors the former. Both are important as they provide critical credit and services to help historically disinvested communities thrive. While branches, home mortgages, and small business loans matter to low- and moderate-income communities, so do community development loans, investment, and services where banks are key players both directly and through community-based intermediaries like CDFIs.

In determining a bank's overall rating, the four tests are weighted with Retail Lending at 45%, Retail Services and Products at 15%, Community Development Financing at 30%, and Community Development Services at 10%. As a result, a bank could achieve an overall rating of Outstanding with an Outstanding on the Retail Lending Test and one additional test. However, an Outstanding on the Community Development Financing Test requires the same on *two* additional tests to secure an overall rating of Outstanding.

The fix for this inequitable treatment is simple: equilibrate the total weights given for the retail tests and the community development tests at 50/50. With this change, an Outstanding on Community Development Financing and at least one of the "services" tests (assuming the weight for the Retail Services and Products Test is at least equal to that for the Community Development Services Test) would allow for an overall rating of Outstanding. This equal balance between retail and community development also is appropriate for calculating the ratings for Intermediate banks.

The imperative to weight equally retail and community development is even stronger, given the extreme difficulty of obtaining an Outstanding on the Retail Lending Test. As Table 9 in the NPR shows, zero percent of the banks with deposits over $50B would meet the new criteria for an Outstanding conclusion on the Retail Lending Test based on their performance between 2017-2019.

The problem here flows from unrealistic market benchmarks for an Outstanding or High Satisfactory rating. A bank can meet the Outstanding threshold of 125% of the market benchmark only if one or more of the other lenders in the market of collectively equal size has underachieved by a corresponding 25%. Any such lender(s) would, if subject to CRA, be classified as Needs to Improve as their bank metric at 75% would be considered a "fail"—not a rating any regulated bank would want to be saddled with and so unlikely to occur. This unrealistic standard would likely be applied for example where, in the example of home mortgages, the costs of homes are high relative to incomes. Yet, in such a market where banks are working hard to achieve a high CRA rating and non-banks are competing as well for market share, the intent of CRA could be achieved. While non-bank mortgage lenders are not covered by the CRA statute, they are a material competitor in all CRA markets. In many markets, they are the dominant competitor. Yet, with similar bank metrics (matching the overall market benchmark), no bank would receive an Outstanding, or even a High Satisfactory (threshold of 110%), but a Low Satisfactory, despite the CRA's goal being achieved. This competitive externality thereby conspires against the ability of the proposed rule to achieve its intent. More likely it would have the opposite effect as the minimum requirement for a Low Satisfactory is 80 percent of the market benchmark. Even in the case where the community

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benchmark prevails, the low- and moderate-income market may not be well served as the high proportion of mortgage loans in that geography may be from higher-income borrowers.

The complicated calibration of both market and community benchmarks does not remedy either directly or indirectly the shortcomings in the structure of the Retail Lending Test. Addressing this problem requires more than just adjusting the benchmarks. As explained above, in a market that is well-served from a CRA perspective, it could well be that meeting the 100% market benchmark would indicate strong performance. While rewarding banks for reaching the industry average may not sound like holding them to a very high standard, the reality is that the benchmark can be a very high standard if the market overall is being well served, or a low standard if that is not the case. On the other hand, a bank that exceeds 100% might not be doing an exemplary job if the market is not generally being well served.

More factors, including Performance Context, need to be considered in evaluating the results of the Retail Lending Test such as data on the degree to which over-income households are accounting for the sales in low- and moderate-income census tracts, or data evidencing a lack of houses for sale that are affordable to low- and/or moderate-income households. None of these data points by themselves can definitively answer the question if the market is being served well.

In summary, the revised CRA regulations must guard against the possibility of an unintended consequence of dampening bank CRA efforts. It is essential to guard against provisions that could lead banks to ratchet down over time their CRA effort, i.e., engage in a "race to the bottom." Retail and community development should have equal weight and the market benchmarks need to be rethought and/or examiners must be provided with the data they need to be able to adjust the ratings to take into account how well the market is being served.

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

The agency proposal for these asset thresholds is correct.

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

NHC reiterates that consistency across agencies is important to maintain wherever possible. Given the SBA size standard for small banks is $750 million, NHC supports maintaining this alignment. The regulatory cost of having two different standards is outweighed by any benefits.

Question 52. The agencies propose to require that the activities of a bank's operations and operating subsidiaries be included as part of its CRA evaluation, as banks exercise a high level of ownership, control, and management of their subsidiaries, such that the activities of these

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subsidiaries could reasonably be attributable directly to the bank. What, if any, other factors should be taken into account with regard to this requirement?

NHC defers to organizations with refined expertise in this subject area.

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

NHC defers to organizations with refined expertise in this subject area.

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

Yes.

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

NHC supports the creation of a data-driven performance context dashboard, which was offered in the previous ANPR from the Federal Reserve Board in the 2020 rule.[35] This dashboard holds much promise in addressing the need for greater clarity and consistency while allowing banks to be flexible in meeting their performance context benchmarks. We recommend that the Agencies work with the Federal Reserve Board on refining this approach and incorporating it into a renewed effort to modernize CRA. The completed final rule should not preclude the development of a dashboard using existing data provided by the banks that would facilitate greater clarity for banks on performance context.

Retail Lending Test Product Categories and Major Product Lines

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

[35] https://www.federalregister.gov/documents/2020/10/19/2020-21227/community-reinvestment-act

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time and meet different credit needs? (Listed under Retail Lending Test Product Categories and Major Product Lines)

Inherent to this question is the balance of complexity and simplicity. In the case of home purchases and refinances, the difference depends on the economy. When costs are high and rates are going down, refinances are very important for communities. When rates are rising and costs are falling, refinances are less important. Dividing the loans by purposes may add to complexity without having material impact on the final conclusions. That being said, NHC feels strongly that there should be additional impact given to loans for first-generation homebuyers. First-generation homebuyers have been excluded historically and face additional barriers to entering homeownership. This added credit will further have a more meaningful impact on socially disadvantaged first-time homebuyers, as they represent a disproportionate number of first-time buyers.

According to data from the National Fair Housing Alliance and Urban Institute, 72 percent of eligible families who are at or below 120 percent of AMI are families of color, with 43 percent being Black families.[36] Further analysis of "likely" candidates who have incomes above 40 percent AMI and are at first homebuying age shows that the pool is approximately 5 million families, 71 percent of whom would be families of color, with 34 percent of these being Black families. Thus, any impact on first-time, socially disadvantaged homebuyers will consequently impact minority homeownership. As discussed in the introduction of this letter, finding meaningful ways to tackle the racial homeownership gap is imperative for a final CRA rule.

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

NHC recommends including home improvement and other purpose closed-end home mortgage loans in this category. Rehab-acquisition lending for owner-occupants and refinance for home improvement for small investors are an important component of neighborhood stabilization and improvement. It is, however, increasingly difficult for owner-occupants to compete with bids against cash buyers in today's market. For example, Atlanta is now seeing 43 percent of the share of single-family home purchases by investors.[37] Other cities are seeing similarly high shares that can price out first-time homebuyers and buyers of lower cost mortgages.

CRA credit should be given a higher impact review weight for specific products that support owner-occupant loans. For example, Fannie Mae has a HomeStyle Renovation loan product that offers funds for renovation projects, including repairs and energy upgrades.[38] Another example is FHA's 203(k) mortgage insurance which helps finance the cost of rehabilitation by insuring a

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[36] https://nationalfairhousing.org/wp-content/uploads/2021/06/crl-nfha-first-generation-jun21.pdf
[37] https://www.corelogic.com/intelligence/single-family-investor-activity-bounces-back-in-the-first-quarter-of-2022/
[38] https://singlefamily.fanniemae.com/originating-underwriting/mortgage-products/homestyle-renovation

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single, long-term, fixed or adjustable-rate loan that covers both the acquisition and rehabilitation of a property.[39]

Notably, small investors can also play an important role in this space and should not n necessarily be considered bad actors. NHC supports credit to be given for investor home improvement and other purpose closed-end home mortgage loans, but at a lower impact review weight than owner-occupied loans. This should be evaluated under the Retail Services and Products Test.

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

Non-owner occupancy lending should be driven by market conditions without additional incentive. Corporate purchases of single-family housing has been a rising issue within recent years that not only prices out potential LMI homebuyers who may also be socially disadvantaged, but has also been systematically driving up home prices by introducing cash buyers into an already competitive housing market.[40] As noted in our answer to Question 57, Atlanta is now seeing 43 percent of the share of housing purchases being done by investors.[41] Other cities are seeing similarly high shares. This competition made home purchases nearly impossible for new homebuyers. As such, NHC supports including closed-end non-owner-occupied housing lending in the closed-end home mortgage loan product category provided it meets the restrictions we lay out in question 57.

In addition, NHC supports it being considered in the CD test and it will be critical to allow for examiner discretion to consider local market conditions and its impact on LMI communities, particularly its impact on first-time homebuyers. In markets where there is evidence of single-family rental acquisition driving up home prices for first-time homebuyers, lending in that assessment should not be included in that assessment area.

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

Open-end home mortgage loans should be evaluated qualitatively under the Retail Services and Products Test. It is highly unlikely that such loans would meet the 15 percent major product lines threshold. Moreover, we believe the Retail Lending Test should limit its focus to home purchase, home refinance, home improvement, small business, and (where significant) small farm loans.

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

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[39] https://www.hud.gov/program_offices/housing/sfh/203k/203k--df
[40] https://www.nytimes.com/2022/04/23/us/corporate-real-estate-investors-housing-market.html
[41] https://www.corelogic.com/intelligence/single-family-investor-activity-bounces-back-in-the-first-quarter-of-2022/

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Multifamily lending should be evaluated only as part of CD, for several reasons.

- Multifamily loans are commercial real estate loans, not retail loans. The two business lines are entirely different.
- As the Agencies suggest, an inference that all multifamily loans in LMI census tracts should always be viewed favorably and all such loans outside LMI census tracts unfavorably, as the proposed metric implies, would be misguided on both counts. Some multifamily loans in LMI census tracts finance high-rent properties that may contribute to gentrification and even displacement of LMI census tract residents; and many multifamily loans outside LMI census tracts provide beneficial affordable housing opportunities for LMI renters in middle- and even upper-income communities offering good schools and proximity to jobs.
- HMDA data are too limited to support a reliable metric. The unit-count categories are too broad for meaningful use and using loan counts will defeat sound analysis of loans for properties of very different sizes.
- Multifamily lending for most banks would not exceed the 15 percent major product lines test and, in any event, we believe the Retail Lending Test should limit its focus to home purchase, home refinance, small business, and (where significant) small farm loans.
- CRA's primary focus for multifamily lending should be on affordability. Affordable housing is rightly considered on a CD test.

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

Yes.

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

Direct alignment is important wherever possible in order to maintain simplicity where it is possible. Given the complexity of the CRA rule, it further makes sense to allow an additional year for implementation unless a bank chooses to comply earlier.

Question 63. Should the agencies' current small business loan and small farm loan definitions sunset on the compliance date of the definitions proposed by the agencies?

Yes.

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

The key consideration for retail loan purchases is balancing the need for liquidity flow within a community and limitations on potential occurrences of loan churning amongst banks. It is very clear that loan origination capacity has the highest community impact and the highest required capital investment, and therefore should receive the highest amount of CRA credit. These originations are extremely important and must be represented on exams as such.

Retail loan purchases, while also important, should not be treated as equal to originations. These restrictions are necessary to have in place in order to prevent loan churning that bolsters CRA credit for banks but does not have a corresponding impact on the community. These purchases should receive credit due to their injection of liquidity dollar-for-dollar back to the originator and the community, but at a lower weight than originations receive due to the lower upfront investment cost. Purchases of whole loans from nonbanks are also an important component of market liquidity.

While it is possible that these restrictions will make exams more complex, this complexity is justified by direct impact. If restrictions from the CDFI or originator are not adapted, there should at the very least be a restriction based on the tier of lender so that large banks are not able to purchase loans from one another on a churning cycle in order to meet their CRA obligations.

CDFIs often face greater liquidity challenges for loans to support community facilities than rental housing or home mortgage loans, given the lack of maturity and smaller scale of those markets. The balance sheet space taken up by these loans affects CDFIs' ability to make additional loans, including home mortgage and rental housing loans. Accordingly, the agencies might consider providing extra credit or other measures to encourage the purchase of whole loans and/or creation of secondary markets for non-housing loans held by CDFIs.

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

Should the agencies adapt the above-recommended restrictions, guessing intent would no longer be necessary at all and become a moot point.

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

NHC does not support automobile lending receiving CRA credit. Automobile lending does not need CRA incentivization to be done by banks, and therefore does not need to be included in the final rule.

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

NHC defers to organizations with refined expertise in this subject area.

Question 68. What data collection and reporting challenges, if any, for credit card loans could adversely affect the accuracy of metrics?

NHC defers to organizations with refined expertise in this subject area.

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

NHC defers to organizations with refined expertise in this subject area.

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

See Question 56.

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

Given the complexity of the regulation, the agencies should maintain simplicity where possible. Creating a different standard for determining a major product line for multifamily lending will add to the complexity of the regulation without a corresponding material impact. The agencies should not evaluate multifamily loans under the Retail Lending Test as it is not a retail lending product. The agencies can look to Community Development Financing to evaluate Affordable Housing

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lending, investment, and products. If a bank does not do home mortgages, small business, or farm lending, it can opt in to developing a strategic plan.

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

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

The proposal of using collected deposits data for large banks with assets of over $10 billion and for other banks that elect to collect this data and using the FDIC's Summary of Deposits data for other banks that do not collect this data, is appropriate as it appears in the NPR.

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

NHC defers to organizations with refined expertise in this subject area.

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

Yes, the geographic distribution evaluations of banks with few or no low- and moderate-income census tracts in their assessment areas should include the distribution of lending to distressed and underserved census tracts. The lending should also be considered qualitatively.

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

NHC defers to organizations with refined expertise in this subject area.

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

NHC defers to organizations with refined expertise in this subject area.

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

Banks must plan and goal-set in advance in order to meet CRA obligations, and so evaluation benchmarks should be based on data available to banks at the beginning of the period for which they are being evaluated. If unexpected shocks occur over the course of the evaluation period, such as a natural disaster or recession, examiners should be given sufficient flexibility to adjust benchmarks accordingly.

The bank volume metric and distribution bank metrics should use all data from the bank's evaluation period. We further support the use of examiner discretion and performance context to analyze results in case of skewed or unavailable data.

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

The community benchmark for home mortgage borrowers should be the LMI share of homeowners in the AA, not the LMI share of families in the AA. Home prices are 10 times higher in San Jose ($1.64 million) than in Toledo ($158,500),[42] so the opportunities for LMI borrowers vary greatly among local markets. LMI homeownership would be a much better (if still imperfect) benchmark for LMI borrowers, just as the Agencies have proposed as the corresponding community benchmark for LMI geographies.

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

NHC does not support automobile lending receiving CRA credit.

[42] https://cdn.nar.realtor/sites/default/files/documents/metro-home-prices-q1-2022-ranked-median-single-family-2022-05-03.pdf

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Question 80. Are the proposed market and community multipliers for each conclusion category set at appropriate levels? If not, what other set of multipliers would be preferable? In general, are the resulting thresholds set at an appropriate level for each conclusion category?

We are doubtful that the same community metric multiplier should apply to different products and metrics. Since closed-end mortgages and open-end mortgages tend to serve LMI borrowers and communities to different degrees, there is every likelihood that different community metric multipliers are needed to calibrate performance accurately. The same disparity applies to home purchase mortgages and refinance mortgages, the blend of which shifts with interest rates. If this is the case just within the home mortgage space, there is no reason to assume that the same community benchmark multiplier should also apply to small business, small farm, or multifamily multipliers. The issue should be less problematic for market metric multipliers, at least as they apply to home mortgage and small business/farm lending, because these are set relative to broad industry (not only banks') performance in that AA.

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

The agencies should set thresholds based on the lower of the calibrated market benchmark or calibrated community benchmark.

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

As discussed in our response to Question 80, we are concerned that the community metric multipliers are not properly calibrated. As discussed in our answer to Question 78, we also question the validity of the home mortgage borrower benchmark. Unless these concerns can be addressed, we strongly advise against using them as binding elements in performance measurement, such as in combination with the market benchmarks.

The best way to avoid market underservice is to motivate better performance, particularly by encouraging a race to the top. This can be best accomplished by a combination of elements, as we described at the outset of this comment letter.

The market metric for Outstanding performance is too high. Banks should see that they have a reasonable chance of attaining Outstanding performance. Setting the Outstanding market metric threshold at 125 percent of industry performance – a level the Agencies estimate that no bank with assets exceeding $50 billion would achieve and that we estimate would include banks with only 2 percent of banking system assets – would clearly signal to banks that an Outstanding rating is beyond reasonable reach. Instead, banks would rationally resign themselves to an overall Satisfactory rating, along with perhaps 80 percent of all banks. Moreover, since Retail Lending

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accounts for 45 percent of the overall rating, and since the market metric is highly likely to be binding in most cases, it is highly unlikely that a bank could achieve an overall Outstanding rating unless it is Outstanding in Retail Lending. If the great majority of banks expect to receive the same Satisfactory rating, there will be little motivation within a given bank to keep up with high performing competitors, and the bank will find no discomfort in the middle of the pack. The NPR's approach could also make CD performance immaterial to most banks' overall CRA rating, as we describe elsewhere, which would be a very serious concern.

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

In general, we support equal weighting of geographic and borrower metrics, but we would support a different blend in rural or nonmetro areas with few LMI census tracts.

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

NHC supports using dollar volume in conjunction with loan count when weighting product line conclusions. As stated in our answer to Question 44, the question to ask about a bank completing 100 loans is where those 100 loans are. For some communities, 100 loans may not be material in comparison to other bank activity. To communities that have been disinvested in over time, the impact of 100 loans could be extremely substantial. We reiterate that it is vital that CRA credit consider the ultimate impact on the community, not simply the amount of investment from banks. Given this difference across communities, an approach that considers both numbers would be appropriate.

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

This proposal would add additional complexity without an assurance that other factors are driving underperforming markets. This would not appropriately counter the possibility of market benchmarks being set too low in assessment areas. If the Agencies decide to set such a formula, they should propose it for public comment before adopting it.

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

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The Agencies need to balance the value of community input with the complexity and subjectivity that risks creating an inaccurate representation of actual Retail performance. Focusing on comprehensive and effective CRA examiner training is a critical part of accurately capturing the intricacies of activities being considered for credit. Comment considered in evaluating retail lending performance should always be in writing with a reasonable opportunity for banks to respond. The imperative to provide timely decision-making on any issue where it is a factor should also be heavily weighted.

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

All large banks should have their retail lending in their outside retail lending areas evaluated at the institution level. Collecting this data outside of assessment area lending should also allow for qualitative considerations and performance context from the examiner when assigning Conclusions.

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

Please refer to our answer to Question 87.

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

NHC defers to organizations with refined expertise in this subject area.

Retail Services and Products Test

NHC is pleased with the decision to make large banks with assets of $10 billion or less have optional components in order to reduce the data burden of new data collection requirements for banks within the asset category and leave requirements for large banks with assets over $10 billion who have the capacity to adequately spend their regulatory burden budget. The proposed regulation shows a controlled approach to holding banks to higher, more impactful standards without consequently mandating burdensome reporting requirements for smaller banks.

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

The percentage of families and total population in an assessment area do not need to be added as an additional comparator. Household data already captures both families and people in households who are not family members.

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

Given the complexity of the regulation and the significant changes already occurring, areas that do not pose a specific problem that needs to be addressed should not be changed. The agencies should continue dividing the geographies as proposed.

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

NHC is concerned less with the system used in this regard and more that it be consistent with other places throughout the regulation for clarity and efficiency. We also see the value of examiner discretion in this context, as the actual transitions between rural, suburban, and urban areas are often not as neat in reality as they are on a map. Maintaining consistency and focusing on clear and valuable examiner training can help to identify the intricate local contexts needed to properly evaluate geographies.

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

NHC defers to organizations with refined expertise in this subject area.

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

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Barring a material reason why the proposed approach would pose a problem, the agencies should maintain the proposed approach.

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

Given the limitations on credit union membership, credit unions should not be taken into consideration in any of the proposed approaches and analysis should be based solely on bank branch distribution. Credit union branches oftentimes have membership restrictions that can disqualify members of the community from utilizing their services.

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

See answer to Question 95.

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

Branch based services remain an important component of meeting the needs of LMI individuals. In particular, activities that address potential fraud for customers who are vulnerable to various schemes should be considered responsive. Many incidences of fraud occur online or by phone with criminals posing as employees of financial services companies for banks. In-person support is an important component of consumer fraud protection and mitigation that only a branch can provide to some customers. Targeting LMI individuals for fraudulent behavior can often put vulnerable people at risk of being pushed further into economic hardship and increasing mental health stressors.

To illustrate this, I ask that the Agencies indulge a personal anecdote. A senior citizen in my own family was subjected to a fraud scam and was conned into providing access to her computer. By the time she realized it was a fraud, the scammer had already attempted to access her bank and brokerage accounts. Though she had learned to use Venmo and make mobile deposits during the pandemic she immediately went to her branch for the first time in over two years where the bank manager helped close and reopen all of her accounts. Though she used the branch must less frequently, when she needed it most, the bank staff was there to help her. Less experienced bank customers and many senior citizens would be similarly dependent on the bank staff in circumstances like this.

In addition, NHC encourages the Agencies to recognize lender fee-for-service payments for housing counseling as an eligible activity provided the bank can demonstrate that this service is being offered to LMI borrowers. Housing counseling is a proven tool that helps consumers get

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mortgage-ready through financial education, pre-purchase counseling, reverse mortgage counseling, and credit history counseling. This eligible activity would make a difference for low-moderate income earners. While lenders recognize the value of housing counseling agencies in addressing the troubling and persistent gaps in access to homeownership, there is a needed clarification in what form that support can take. Lender fee-for-service payments for housing counseling services is an important avenue for supporting housing counseling and a clear statement in the rule that these payments are considered eligible supports under the CRA will provide the necessary clarity.

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

Yes. Distressed or underserved areas are distressed or underserved, and a bank should be incentivized to address this trend. Requiring banks to document services to LMI individuals within these areas is redundant, as any activity within those areas will be beneficial to LMI households.

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

Given the value of working and living in high-opportunity neighborhoods, banks should be incentivized to provide services to low- and moderate-income individuals who reside there. NHC supports providing qualitative consideration for bank activities in higher-income census tracts if the bank can provide evidence that these services primarily serve LMI individuals.

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

NHC defers to organizations with refined expertise in this subject area.

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

Low- and moderate-income individuals should be charged smaller or no fees for digital and other delivery systems. These discounts should not prohibit the use of bank branches, as many branch services such as fraud mitigation are best done in person with bank employees.

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

NHC defers to organizations with refined expertise in this subject area.

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

Given the cost of developing quality digital and other delivery systems, banks with assets less than $10 billion should have the option of being evaluated on this test.

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

NHC discourages adding addition regulatory requirements that have not been specifically vetted in the NPR.

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

NHC supports extra credit for the following products that should be considered especially responsive: SPCPs, small-dollar mortgage programs, small business loans, Limited English Proficiency products, and products for first-generation homebuyers. Each of these products has an outsized impact on LMI communities and helps contribute to realizing racial equity in housing. NHC reiterates that CRA was initially developed as a reaction to anti-redlining that systematically disinvested in socially disadvantaged communities, and any modernized CRA must recognize this role in order to adequately address the lasting effects of redlining in communities of color. Regarding criteria, we encourage the Agencies to write the final rule in such a way as to allow for future Q and A's to address new approaches as they are developed.

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

NHC supports including SPCPs as an example of a loan product or program that facilitates home mortgage and consumer lending for low- and moderate-income individuals. NHC recommends also including community development SPCPs as an impact review factor on the Community Development Finance Subtest, and as an example of a responsive credit product on the Community Development Services and Products Subtest. SPCPs can take the form of any credit product or

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program, including community development products and programs, and it would be a missed opportunity to limit SPCPs to only retail lending activities.

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

NHC defers to organizations with refined expertise in this subject area.

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

As noted above, the following activities should be encouraged for retail banking in order to foster financial inclusion and help increase access to credit: SPCPs, low balance loans for homeowners and small businesses, loans that benefit first-time homebuyers including condominiums and co-ops, special purpose credit programs, community land trusts, participation in GSE pilot programs, and use of alternative credit models. This list is not exclusive of all activities, but illustrative of the types of activities that would have the biggest impact on LMI communities.

Question 109. Are the proposed usage factors appropriate for an evaluation of responsive deposit products? Should the agencies consider the total number of active responsive deposit products relative to all active consumer deposit accounts offered by the bank? (Listed under Retail Services and Products Test)

The proposed usage factors could be helpful for making an evaluation.

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

Agencies should always take additional information into consideration but avoid stipulating a requirement it as it could have the unintended consequence of limiting innovation. The full impact of a responsive product should be subject to examiner judgement based on location and other limiting factors in order to encourage credit for particularly impactful products without adding to reporting burden. Robust examiner training is essential for making such judgement calls during exams.

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

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The optionality for banks with less than $10 billion in assets is an important component that should be maintained. Larger banks can have a disproportionate impact because of their ability to scale products more effectively. Necessitating this additional evaluation could hinder scaling innovative products.

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

This is an appropriate approach. Digital delivery systems are consistent across the institution, and as value is broadly available, credit should be broadly available. Given the cost of developing, promoting, and maintaining high quality systems, institution-level assessment provides the best allocation of a limited regulatory burden budget.

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

This is an appropriate approach. As stated above, this would be a responsible allocation of regulatory burden budget. We should avoid undue complexity outside of areas where it will have the most material impact.

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

We prefer not to leave weighting to examiner judgment as it becomes too subjective. Credit products have a greater impact on helping communities benefit from banking services and products and should receive greater weight.

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

The credit and deposits products evaluation should receive its own conclusion. Credit and deposit products should further be considered a qualitative factor in the Retail Lending Test.

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

Wherever possible, rating should be based on business model and performance context, providing that it is consistent across similar business models and clearly understood by the regulated entities.

Community Development Financing Test

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

NHC believes that simplicity matters the most here. These activities should be considered at the highest level, either state or institution, rather than creating overly complicated allocations to individual counties.

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

NHC defers to organizations with refined expertise in this subject.

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

NHC defers to organizations with refined expertise in this area.

Question 120. For large banks with assets of $10 billion or less, under the proposed Community Development Financing Test, is it appropriate to use the FDIC's Summary of Deposits data instead

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of deposits data that is required to be collected and maintained by the bank to tailor new data requirements, or would it be preferable to require collected deposits data for all large banks?

NHC defers to organizations with refined expertise in this subject area.

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

NHC does not recommend the use of nationwide benchmarks in local contexts. The ability to respond to local market conditions is the hallmark of impactful community development. Formulaic approaches can often have unintended consequences due to their lack of nuance.

NHC reiterates the importance of examiner training. Examiner judgment of impact on a community is important, so long as general criteria are clear. Examiners can more accurately gauge the difficulty of a project without the bank's participation, the complexity of accomplishing the project, and the impact on underserved groups within the community. NHC also recommends extra weights be applied for projects that reduce the risk of displacement in gentrifying neighborhoods.

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

As we said in the answer to question 121, formulaic approaches can have unintended consequences. Banks should fully understand relevant benchmarks to guide decision-making. A bank needs to respond to evolving market conditions. Data from year 1 will be available in year 2 and may be used to set benchmarks for year 3. This approach would address the significant issues of the lack of clarity and consistency that undercuts the ability of banks to be truly response to local markets.

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

NHC defers to organizations with refined expertise in this subject area.

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

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NHC defers to organizations with refined expertise in this subject area.

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

The best way to enhance clarity and consistency is for examiners to be clear about the factors that they consider in reviewing community development financing. In general, an impact review should carry the most weight. Smaller investments can have an outsized impact, which should carry more weight than higher dollar investments that have materially less impact. We recommend the regulators conduct public listening sessions to elucidate the development of the impact review during the preparation of the final rule.

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

The need for greater clarity and consistency in the current rule still needs to be balanced with examiner discretion that may be undercut by formal metrics, which could result in unintentional credit allocation. The risk of government credit allocation was a central concern of CRA authors and plays a prominent role in the legislative history of the statute.

Community Development Services Test

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

The use of nonmetro areas as a delineator leaves out many rural communities that are located within but within the outskirts of otherwise urban counties. The fairest way to address this issue is by including all areas for consideration.

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

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

A full-time equivalent employee is a definition that needs no further qualification. Bank executives and staff are full-time employees and can add just as much to their volunteer work as anyone else. The ultimate measurement of the volunteer work is the value to those receiving it, and not the percentage of time spent by individual volunteers.

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

Benchmarks and thresholds for the bank assessment area community development services hours metric should not be developed. The metrics used to derive Community Development Services Test conclusions should be based on the current quantitative measures of the number, type of community development services provided, and total number of hours are sufficient to prove the impact of serving LMI communities. Qualitative measures should be based on each Bank's Community Development service strategy and approach. NHC further recommends the exclusion of the Community Development service hour goal given that the examiners issue ratings on a discretionary and non-quantitative basis. Moreover, the metric adds unnecessary administrative complexity.

A potential alternative (and administratively simpler approach) could be to allow banks to count operating grants in addition to or in lieu of tracking service hours. Given the way the Community Development Services Test is being proposed, NHC is concerned that grantmaking for non-profit operations could become less attractive given the absence of an investment test and because grants to non-profits typically make up such a small portion of a bank's overall community development activities. Given the outsized importance of these types of grants to the non-profit sector, separating this activity from the larger bucket of community development loans will encourage banks to do more in this space.

Wholesale and Limited Purpose Banks

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

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NHC encourages the use of assets as the measure of financial capacity in the case of wholesale and limited-purpose banks. Assets are used currently on CRA exams to develop Community Development ratios. If assets are not used, the absolute dollar amount of Community Development activity loses meaning since wholesale and limited purpose banks will have differing amounts of assets and thus differing capacities to engage in Community Development finance.

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

NHC defers to organizations with refined expertise in this subject area.

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

NHC defers to organizations with refined expertise in this subject area.

Strategic Plans

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

NHC does not see any reason to eliminate the Strategic Plan option. Strategic Plans, in their nature, are intended to serve niche banks with narrow business strategies that cannot abide by a "one-size-fits-all approach. This makes them an important component of CRA. More banks would likely adopt Strategic Plans if they were allowed to be more responsive to market conditions on a timely basis.

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

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NHC recommends that strategic plans have full flexibility on assessment areas, products, measurable goals, test weights, etc. There is concern that the proposal defeats the core purpose of the strategic plan, which is to provide flexibility for banks that don't fit the conventional banking model of providing mortgage and small business loans through a branch network. All banks, regardless of size, should have the option of activities outside of facilities-based assessment areas considered.

Question 136. In assessing performance under a strategic plan, the agencies determine whether a bank has "substantially met" its plan goals. Should the agencies continue to maintain the substantially met criteria? If so, should it be defined and how? For example, as a percentage (e.g., 95 percent) of each measurable goal included in the plan, the percentage of goals met, or a combination of how many goals were not met and by how much?

The substantially met standard is adequate. We are not aware of an example case study where this has been lacking.

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

In general, the agencies should consider how changes in strategic plans will influence decisions to adopt this approach.

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

NHC defers to organizations with refined expertise in this subject area.

Assigned Conclusions and Ratings

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

NHC strongly urges the agencies to weight Community Development and Retail Lending activities each at 50 percent. Splitting the weights in any other way is not acceptable, as it is essential to the spirit of CRA to treat retail lending and community development equally. Without significant

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Community Development, LMI communities cannot fully benefit from the benefits of additional retail lending.

The original consideration of the CRA statute attempted to address two distinct problems that were relevant to banking in 1977. The first was the disinvestment from some communities and investment in others using those funds. This disinvestment often created the development of suburban communities and greenfields at the expense of investment in the cities that were still generating deposits, as many legacy businesses had not yet moved to the suburbs. In the late 1970s through the mid-1990s, more and more businesses in these redlined areas follow their customers and employees to the suburbs as well. The source of deposits, as well as the beneficiaries of lending, became increasingly concentrated at first inner ring, and then outer ring suburbs. As a result, the agencies must be careful not to address a problem that was relevant in 1977 in regulations we are writing in 2022.

Today in many metropolitan areas, the opposite trend is taking place. Investment is moving from aging inner-ring suburbs to recovering urban areas. The elegance of the CRA statute is that it provides the ability for regulators to make adjustments to changing geographic needs as the economy has grown and changed. The fact that CRA is relevant at all given the fact that interstate banking and online and mobile banking didn't exist in 1977 is a credit to its authors.

To repair the damage that was done by disinvestment over decades, community development lending and investment is the foundation on which future expansion of retail deposit-taking and lending are built. Redlining left deep scars in communities that remain clearly present today. Investing in Community Development is the only practice that can help to heal these scars of redlining, even in times when redlining is no longer legal and occurs much more infrequently.

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

Given the inadequacy of applying a purely quantitative Retail Lending test in Retail Lending Assessment Areas where banks do not have branches, it would be inappropriate to include the conclusions for Retail Lending Assessment Areas within the 60% test. That test should apply only for Facility-based Assessment Areas which are evaluated based on all four tests and which explicitly take into account qualitative factors including Performance Context.

A requirement that banks meet a "Low Sat" mark in 60 percent of assessment areas in order to receive an overall score of "Needs to Improve" could have unintended consequences as it might affect where banks choose to do business, thus having a negative effect on the overall level of products and services offered in these areas. This could be a particular problem for smaller markets

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and markets where a bank has a small market share. In those cases, the incremental cost of achieving a "Low Sat" score could exceed the business potential.

Performance Standards for Small Banks and Intermediate Banks

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

NHC defers to organizations with refined expertise in this subject area.

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

NHC defers to organizations with refined expertise in this subject area.

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

NHC defers to organizations with refined expertise in this subject area.

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

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Yes, the agencies should provide consideration for those loans under the Community Development Financing Test.

Questions 145-171

NHC defers to organizations with refined expertise in those subject areas.

Data Collection, Reporting, and Disclosure

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

NHC defers to organizations with refined expertise in those subject areas.

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

Yes. The enactment of CRA was in part directly in response to the first release of HMDA data in September 1976, which elucidated the impact and persistence of redlining.

HMDA data as published by the CFPB is challenging to use and is not released in as timely a fashion as is possible. Analysis and organization of the data by the CRA regulators would significantly improve the ability to use all categories of HMDA data, without exception, in evaluating CRA performance, as was intended by the authors of the statute. There is no indication in the statute or its legislative history that Congress intended to exclude race from the consideration – to serve the needs of their community.

Additionally, below are a few areas that HMDA data can be improved to support a better understanding of the market by industry and researchers:

1. Release the precise number of units financed by a multifamily loan. While banks submit information to the regulators on the number of units supported by each multifamily loan, public HMDA disclosure puts this into five broad categories: 5-24 units, 25-49 units, 50-99 units, 100-149 units, more than 150 units. This makes it hard to actually know how many units have actually received financing.
2. For Fannie Mae and Freddie Mac quarterly loan performance data, two new fields (months' reserves and front-end DTI) should be added to their quarterly and historical releases. This would allow us to test whether these fields have an impact on mortgage performance for LMI borrowers in particular. Geographical detail provided at the 3-digit ZIP code level in addition with credit score should be sufficient to identify LMI areas.
3. Release credit score data in the publicly available HMDA data. Knowing the credit score of borrowers would be helpful for researchers as credit history is mostly cited reason for mortgage declines. Knowing the credit score distribution of those who are denied mortgages can help the industry target what supports are needed.

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For questions 174-180, NHC defers to organizations with refined expertise in those subject areas.

This concludes NHC's responses. Thank you.