April 8, 2020

Via Electronic Submission

Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429
Attention: Comments, RIN 3064–AF22

Legislative and Regulatory Activities Division
Office of the Comptroller of the Currency
400 7th Street SW, Suite 3E–218
Washington, DC 20219
Docket ID OCC–2018–0008

Re: Community Reinvestment Act Regulations

Dear Madam or Sir:

The American Bankers Association[1] and the undersigned state trade associations are pleased to comment on the joint Notice of Proposed Rulemaking[2] issued by the Office of the Comptroller of the Currency (OCC) and the Federal Deposit Insurance Corporation (FDIC) that would modernize the regulations that implement the Community Reinvestment Act of 1977 (CRA).[3]

Banks care deeply about the vibrancy and vitality of their communities, and they support the goals of the CRA statute. In fact, banks provide more than $100 billion in capital *each year* to low- and moderate-income (LMI) communities.[4] Banks also supply financial products and services that provide important economic opportunities for individuals, families, and small business owners.

Unfortunately, outdated implementing regulations undermine the CRA's objectives. For several years, there has been broad, bipartisan agreement among policymakers, bankers, and consumer and community advocates that the CRA regulatory framework needs to be modernized to reflect how technology has transformed the delivery of financial products and services. There is also wide recognition that CRA examinations are unpredictable and inconsistent.

---

[1] The American Bankers Association is the voice of the nation's $17 trillion banking industry, which is composed of small, regional, and large banks that together employ more than 2 million people, safeguard $13 trillion in deposits, and extend nearly $10 trillion in loans.
[2] 85 Fed. Reg. 1204 (January 9, 2020).
[3] Pub. L. No. 95-128, 91 Stat. 1147 (1977) (codified at 12 U.S.C. §§ 2901-2908 (2012)).
[4] Federal Reserve Bank of Dallas, Closing the Digital Divide, A Framework for Meeting CRA Obligations (December 2016) p. 2.

We are grateful for the OCC's and the FDIC's (the agencies) work to bring the CRA regulations into the 21st Century. Developing a proposed rule was not easy—the needs of communities vary widely, bank business models are not monolithic, and technology has forever changed consumer preferences for accessing financial products and services. These are complex issues. While we have several serious concerns about the proposed rule, we remain optimistic that it is possible to improve the effectiveness and administration of the CRA framework in a manner that will benefit banks, communities, and consumers alike.

Our comments, observations, and recommendations are not confined to views expressed by institutions regulated by the OCC and the FDIC. Rather, our input represents the perspective of the entire banking industry, and we expect that our recommendations will be reviewed and considered by all three of the banking agencies, including the Board of Governors of the Federal Reserve. Furthermore, this letter reflects the input of banks with a wide range of business models, asset sizes, and geographic locations.

I. Summary of the Comment

We strongly support the agencies' efforts to modernize CRA. The proposed rule is a significant step toward achieving this goal, and we are grateful to the agencies for the considerable work that has gone into the modernization effort. Nevertheless, we have significant concerns regarding the substance and complexity of the proposed performance measurement framework as well as the substantial costs that would be required to implement it. Accordingly, we request that the agencies refrain from finalizing this aspect of the proposal pending further study. We also request that the agencies finalize those elements of the proposal that have broad support, such as clarifications regarding qualifying activities, the establishment of a qualified activities list, and the creation of a pre-clearance process. In addition to these specific recommendations, our comments address the following themes:

- **Durability**. A modernized CRA regulatory framework must be long-lasting. Modernized regulations that are clear and calibrated appropriately will avoid the need for subsequent amendments, adjustments, and clarifications. Multiple, successive changes—by current policymakers or future ones—would be costly, counterproductive, and would result in less certainty and predictability than exists today. Implementation of broad CRA reform will be expensive, and therefore, reforms must be workable and durable so that resources are not redirected from community reinvestment toward implementing multiple revisions to CRA. Regulations that have broad support will avoid the risk of being unwound by Congress or future regulators.

- **Interagency Regulations**. The agencies should continue to pursue a modernized regulatory framework that can be adopted by all three Federal banking agencies. An interagency final rule will help to ensure that modernization stands the test of time. In addition, failure to act in coordination would yield undesirable results—including perpetuating confusion and inconsistency—which would be contrary to the objectives of the modernization effort.

- **Testing and Analytics**. CRA performance measures must be well-grounded in data. We offer a number of suggestions that the agencies could incorporate into revised performance measures that should be tested extensively—and piloted—prior to finalization. All testing and pilot programs must include a diverse set of banks based on size, geography, specialization, local economic conditions, and other relevant considerations.

- **Interconnectedness**. The proposed changes to the assessment area concept and the proposed performance measures would transform the way that banks administer and are evaluated on their CRA programs. Prior to issuing a final rule, the agencies must take particular care to ensure that CRA performance measures are calibrated appropriately in light of the multiple changes contemplated in the proposal. The preamble does not describe the extent to which the agencies analyzed the *cumulative* aspect of the proposed changes.

- **Balance Sheet Approach**. The proposal's heavy reliance on a bank's balance sheet to measure CRA performance would be highly complex and would not give adequate CRA value to a variety of activities that are meaningful to communities and LMI individuals, such as selling loans into the secondary mortgage market, syndicating low-income housing tax credits, and providing volunteer service.

- **Diversity of the Banking System**. Tailoring should continue to be part of the CRA regulatory framework. However, certain aspects of the proposed performance measurement system do not take into account bank business models, areas of specialization, and unique community characteristics. We recommend that the final rule reflect the diversity of the banking system, including by (1) permitting Small *and* Intermediate Small Banks to opt out of the General Performance Standards; (2) adjusting the Small Bank and Intermediate Small Bank thresholds to $500 million and $2.5 billion; (3) permitting wholesale and limited purpose banks to continue to be examined according to a community development test; and (4) making improvements to the strategic plan process to make the option more accessible for all banks.

- **Ratings System**. We have several concerns with the proposed CRA ratings system and recommend that the agencies develop a ratings framework that is more flexible and does not include pass/fail components.

- **Data Burden**. The proposed data collection, recordkeeping, and reporting requirements would create costly, ongoing data requirements that are considerably more complex than existing CRA reporting mechanisms (*See* Appendix A, Summary of Data Reporting Requirements Under the CRA Proposal). The proposed requirements are not compatible with the way bank systems are structured and reflect a fundamental misunderstanding of the burdens that will be imposed by the required information technology and systems changes as well as additional work to ensure data integrity. Prior to adopting a final rule, regulators should form an interagency taskforce of regulators and bankers with specialized, in-depth expertise in bank data systems, CRA regulations and reporting, HMDA, and Call reporting. This taskforce should be charged with developing data reporting requirements that support a more objective regulatory framework while (1) taking into account the diversity in the U.S. banking system and (2) working to minimize unnecessary data costs on banks.

- **Assessment Areas**. While we appreciate the agencies' work to address the digital revolution and its impact on banking, we do not support the proposal's creation of deposit-based assessment areas.

Among other things, deposit-based assessment areas would exacerbate CRA hot spots and CRA deserts.

- **Transition**. The agencies should provide two years for banks to implement the data collection, recordkeeping, and reporting changes associated with CRA modernization. It will be particularly important for the agencies to provide industry training and support regarding any new rules as well as a series of case studies illustrating how any final rule would apply to sample banks. Examples should include a variety of business models, specialization, geography, and number of assessment areas. Regulators should also provide electronic copies of all formulas and calculators to be used by banks and examiners.

II. CRA Rules Must Be Durable

It is critical that a modernized CRA regulatory framework be long-lasting. As noted above, revising the CRA framework is a herculean task, and one which history shows, is achieved only every few decades. CRA regulations that have broad support will avoid the risk of being unwound by Congress or future regulators.

Similarly, modernized regulations that are clear and calibrated appropriately will avoid the need for subsequent amendments, adjustments, and clarifications. Multiple, successive changes—by current policymakers or future ones—would be costly, counterproductive, and would result in less certainty and predictability than exists today. In addition, resources that should go to support community development would be diverted to regulatory implementation, software and system adjustments, and training. We recommend the following steps to create an updated regulatory structure that stands the test of time.

A. Conduct Robust Testing and Analytics

To promote the longevity of a modernized CRA framework, the agencies must ensure that performance measures are well grounded in historical data. Testing should include data reflecting a wide range of economic conditions as well as bank business models, areas of specialization, and asset sizes. To augment this data testing, we recommend that the agencies conduct a pilot program involving a diverse set of institutions prior to adopting a final rule. Publishing the anonymized results of this testing would promote the confidence of policymakers, banks, and other CRA stakeholders in the new performance measures and would avoid the need for multiple, successive regulatory amendments.

Importantly, scenario testing and/or a pilot program would help regulators assess how all aspects of a revised framework would perform in concert. As a practical matter, the various elements of any updated CRA rule would not operate independently. Rather, changes to one section of the regulation will have down-stream impacts on other portions of the rule. For example, revisions to the definition of Retail Domestic Deposits will have implications for the benchmarks associated with the CRA Evaluation Measure and the 2 percent Community Development Minimum. This interconnectedness makes it especially important that banks, policymakers, and other CRA stakeholders have confidence that the proposed framework will yield cumulative results that promote banks' CRA support of their communities.

B. Develop a Tailored Framework

One of the great challenges of CRA modernization will be to develop a performance measurement system that is objective without being overly rigid. While a certain amount of standardization is needed to reduce the unpredictability and inconsistency that undermines the current CRA supervisory process, performance metrics must take different business models into account. Scenario testing must be structured to include (and to differentiate among) banks based on size, geography, specialization, local economic conditions, and other relevant considerations. This will enable a richer evaluation of the proposed rule and associated impacts.

C. Continue to Pursue an Interagency Final Rule

The development of long-lasting regulations also requires the participation and adoption of a final rule by all three banking agencies. Even though the Federal Reserve did not join the proposal, we were pleased by the public remarks of Federal Reserve Chairman Jerome Powell and Governor Lael Brainard reaffirming the need to update the CRA regulatory framework in a manner that benefits communities and provides banks with needed clarity and certainty regarding regulatory expectations.[5]

The importance of joint final rules cannot be overstated. Every day, banks regulated by different agencies partner on CRA lending and investments, and consistent rules would go a long way toward continuing and enhancing this important activity. Inconsistent rules would be a barrier to these relationships and the much-needed capital infusions they provide to communities.

Additionally, a coordinated rulemaking will facilitate regulators' evaluation of bank applications to engage in certain activities. The agencies take CRA ratings into consideration when evaluating a bank's application to open new branches, relocate the main office or a branch, and make acquisitions. These important undertakings help banks to grow, achieve economies of scale, and develop innovative products, services, and technology that customers demand. However, differing CRA regulatory frameworks could unnecessarily delay or impede merger and acquisition activity, particularly in situations involving banks subject to different CRA frameworks.

We are optimistic that banks, regulators, communities, and other interested parties will be able to agree on updated CRA regulations. However, failure to act in coordination would yield undesirable results that would be contrary to the objectives of the modernization effort and would undermine the longevity of any final rule.

III. The Proposed Performance Measures Warrant Further Study and Extensive Revision

In lieu of the current CRA regulation's lending, investment, service, and community development tests, the proposed rule would evaluate a bank's CRA performance within each assessment area and at the bank

[5] Chairman Jerome Powell at the Federal Open Market Committee Press Conference (January 29, 2020), p. 24; Speech by Federal Reserve Governor Lael Brainard, Strengthening the Community Reinvestment Act by Staying True to Its Core Purpose (January 08, 2020).

level using three measures: (1) the CRA Evaluation Measure, (2) the Retail Lending Distribution Test, and (3) the 2 percent Community Development Minimum (collectively, the General Performance Standards). Together, these three measures would generate a presumptive CRA rating, which the agencies could adjust based on performance context factors or evidence of discriminatory or other illegal credit practices.

To be clear, we support the agencies' efforts to establish quantifiable CRA performance metrics. Today, CRA performance evaluations commonly reference a variety of unofficial benchmarks for determining the resources that a bank should allocate to CRA activities (e.g., a percentage of assets or Tier 1 capital). These informal policies are highly problematic; regulators should not expect institutions to meet minimum thresholds for CRA activity that are not clear and transparent.

However, we have serious concerns regarding the proposed performance measures and request that the OCC and the FDIC refrain from finalizing this aspect of the proposal pending further study. Our members have expressed concern regarding the complexity of the proposed system and the costs to implement it—both initial and ongoing. Accordingly, we recommend that the agencies finalize those aspects of the proposed rule that have broad support, (such as clarifications regarding qualifying activities, the establishment of a qualified activities list, and the creation of a pre-clearance process) but delay adoption of a performance measurement system until it has been fully tested. Prudent policymaking dictates that regulators and the public understand the impacts of new performance standards prior to incorporating them into regulation. Accordingly, we offer the following suggestions for potential next steps in the modernization effort:

- Conduct a pilot program in which a proposed framework is implemented and tested by some banks, concurrent with an evaluation of those banks under the current rule. Provide a public report, along with an opportunity for public comment, prior to adopting a final rule.

- Form an interagency taskforce of regulators and bankers with specialized, in-depth expertise in bank data systems, CRA regulations and reporting, HMDA, and Call reporting to develop CRA data reporting requirements that support a more objective regulatory framework that takes into account the diversity in the U.S. banking system and minimizes unnecessary data burdens on banks.

- Provide a series of examples or case studies demonstrating how the performance measures would apply to sample banks. Examples should include banks of various sizes, business plans, number of assessment areas, delivery channels, community development opportunities, etc.

- Provide electronic copies of all formulas and calculators to be used by banks and examiners.

While we offer multiple recommendations below for improving the proposal, we acknowledge that our suggestions are not data tested. We also note that the proposal requests comment on several performance benchmarks and thresholds. For the most part, we are unable to provide specific recommendations on these empirical aspects of the proposal because we do not have the data necessary to evaluate them or the ability to test any suggestions that we would make for improving them.

A. Data Limitations Hindered Regulators' Ability to Test the Proposal

The data required to calculate a bank's CRA performance under the proposal is significantly different than the data that banks collect and report for CRA purposes today (*See* Appendix A, Summary of Data Requirements Under the CRA Proposed Rule). As a result, regulators have been limited in their ability to leverage existing data to test the proposed performance measures. These limitations are reflected in the OCC's January 10, 2020 Request for Information (RFI) seeking extensive bank-specific data covering a 3-year period for the purpose of assisting regulators in determining how the CRA proposal might be revised. [6]

While the RFI may yield important information, we caution that it may not produce a sufficiently large or a complete data set from which valid conclusions can be drawn. Several member banks have reported that they do not plan to respond to the RFI or that they can provide only partial responses due to lack of data availability, cost, priority of meeting CRA and HMDA data filing deadlines, and time needed to validate data that would be included in the RFI response. Banks have also expressed concern that the OCC would have limited ability to protect the confidentiality of the data.

The limited response underscores both the challenges that the agencies have faced in testing the proposal and the need for a pilot program. Moreover, developing a pilot and working with banks that agree to participate in it will provide opportunities to address concerns about regulatory burden and to explore whether the proposed data collection, retention, and reporting requirements will be compatible with bank data systems and existing regulatory reporting mechanisms.

B. Re-Work and Re-Test the CRA Evaluation Measure

The proposed rule would rely on a bank's balance sheet to assess the institution's ongoing commitment to CRA. To accomplish this, the proposal would create a CRA Evaluation Measure, which takes the sum of (1) a bank's qualifying activities value[7] divided by the average of its quarterly Retail Domestic Deposits and (2) the number of the bank's branches located in LMI census tracts, distressed areas, underserved areas, and Indian country divided by its total number of branches, multiplied by 0.01. The CRA Evaluation Measure will correspond to the following presumptive CRA ratings:

- Outstanding: 11 percent or higher
- Satisfactory: 6 percent or higher
- Needs to Improve: 3 percent or higher
- Substantial Noncompliance: less than 3 percent

We appreciate that the agencies have approached CRA modernization with the goal of providing clarity and consistency regarding how CRA ratings are assigned. However, multiple components of the CRA Evaluation Measure must be revised substantially, while other aspects of the rule are unclear and need to be clarified. We also have significant concerns regarding the CRA Evaluation Measure's reliance on a

[6] Significantly, the agencies developed the proposed performance standards *prior to* issuing the RFI. Notably, the RFI was released the day after the CRA proposal was published in the Federal Register.
[7] A bank's qualified activities value is the sum of the quantified values of all qualified activities, adjusted by any applicable multipliers or haircuts.

bank's balance sheet to measure CRA activity, and we offer recommendations for improving this component of the proposed performance measurement system. Taken together, these changes are significant and would require that the agencies re-calculate the benchmarks that correspond to each of the CRA ratings categories.

For these reasons, we recommend that the agencies refrain from finalizing the CRA Evaluation Measure as proposed. Once the agencies are in a position to issue a final rule, we request that they include multiple examples of how the CRA Evaluation Measure would work in practice and provide electronic copies of all formulas and calculators to be used by banks and examiners.

1. <u>The CRA Evaluation Measure Relies Too Heavily on a Bank's Balance Sheet to Measure CRA Activity</u>

Under the proposal, a bank would receive CRA credit only for the loans and investments on its balance sheet at the end of each month. As discussed in detail in Section IV. of this letter, the balance sheet approach would require banks to pull data from various loan origination and servicing systems to build an entirely new infrastructure to comply with the proposed rule's monthly reporting requirement. This requirement would be *in addition* to the infrastructure that exists today for reporting under the Home Mortgage Disclosure Act (HMDA).

Revise the Balance Sheet Approach. We appreciate that the agencies have proposed a balance sheet approach because they believe it will be streamlined and simple. However, we have significant concerns about the level of complexity and cost of such an approach—both initially and on an ongoing basis. Our members overwhelmingly believe that it would be significantly more complicated to base CRA performance on a bank's balance sheet than on originations and purchases, as is done under the existing CRA framework. Therefore, we recommend that that the agencies revise the CRA Evaluation Measure to incorporate mortgage lending data based on loan origination amount and loan purchase amount.

Under this approach, HMDA reporters could utilize the HMDA LAR and non-HMDA reporting banks could use their current systems for mortgage reporting under CRA. To address concerns about churning, examiners could use the universal loan identifier that was introduced into HMDA data in January 2018. Similarly, banks could leverage their existing reporting structures for small business/small farms. By allowing banks to pull from data in existing systems, this approach would alleviate many of the issues posed by the proposal's data collection, recordkeeping, and reporting requirements.

Likewise, we recommend that the agencies significantly revise the proposed data reporting requirements for community development loans and investments. Specifically, we suggest that banks report total community development loans and investments originated during the exam period as well as outstanding balances for prior period loans and investments as of the end of the current exam period. Conceivably, banks could report their community development loan and investment origination totals on an annual basis, as is done for community development loans today. However, banks would provide only the balances for prior period activity at the end of the examination period. This approach would align more closely with existing practices would be significantly less burdensome than the extensive monthly data requirements contained in the proposed rule.

The Proposal Would Devalue Important CRA Activities. In addition to creating extraordinary cost and burden, we are concerned that the balance sheet approach would not give adequate CRA value to a variety of activities that are meaningful to communities and LMI individuals. These unintended and undesirable consequences, described in detail below, further illustrate the need to reconsider the CRA Evaluation Measure as proposed.

Haircut for Loans Originated and Sold. The proposed rule would value loans originated and sold within 90 days at 25 percent of their origination value. This 75 percent "haircut" would undervalue banks' efforts to finance affordable housing. Therefore, we strongly urge the agencies to revise the proposed treatment of mortgage loans by eliminating the haircut for loans originated and sold within 90 days. In making this recommendation, we note that one- to four-family mortgage loans are the primary retail loan product for many community banks. The proposed haircut would reduce dramatically the CRA credit that they would receive if they elect to sell the loans that they originate. However, the proposal does not discuss the extent to which the haircut would impact the existing CRA programs of institutions who have adopted the originate-to-distribute model.

Furthermore, there are several public policy reasons why banks should receive full credit for loans that they originate and sell. First, originating mortgage loans requires banks to create and maintain an entire consumer compliance infrastructure, ensure adherence to the underwriting guidelines of the housing government sponsored enterprises (GSEs) and other secondary market participants, and conduct marketing and outreach activities. This is a substantial investment and the CRA regulations should adequately recognize that effort.

Second, discounting loans sold within 90 days does not take into consideration modern mortgage banking practices. Utilizing the secondary market does not reflect a bank's lack of commitment to CRA; rather, it helps banks to manage their interest rate risk and exponentially expands a bank's ability to finance mortgages for the benefit of consumers and their communities. When banks sell these loans to Fannie Mae or Freddie Mac or other secondary market buyers, they free up capital to make more mortgage loans. The proposed haircut would create an artificial conflict between the goals of the CRA statute and a bank's interest rate risk management practices.

Third, banks could choose to offer on-balance sheet products to meet CRA performance benchmarks; however, such products may not be as competitive or as useful to borrowers as loans sold into the secondary market. In order to address capital and other funding concerns, banks could limit their product offerings to balloon or adjustable rate mortgages (ARMs), which could be retained on balance sheet while minimizing interest rate risk. However, these products may not be as affordable or desirable to borrowers, in which case the proposal would hurt rather than help LMI individuals. Selling loans to the GSEs allows banks of all sizes to offer 30-year fixed rate mortgages to borrowers. These loans are particularly valuable for LMI borrowers who are generally less able to afford payment increases from ARMs and may be less able to refinance before a balloon becomes due.

Fourth, holding CRA-eligible loans in portfolio to avoid the proposed 75 percent haircut would not be an efficient deployment of capital for some institutions. While many banks choose to hold mortgage loans in their portfolio can and do operate in a safe and sound manner, incenting banks to hold more mortgage loans on their books to meet CRA would likely result in fewer LMI mortgages being made rather than more, as it would reduce funds available to lend.

Fifth, we also question the broader impacts of this policy choice. Limiting CRA credit through an aggressive haircut or other limitation could drive banks from residential mortgage lending entirely, ceding this business to non-banks who are not subject to CRA.

Sixth, under the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended by the Housing and Economic Recovery Act of 2008, Fannie Mae and Freddie Mac are subject to affordable housing goals covering their purchases of single-family mortgages and multifamily mortgages.[8] We have long advocated that CRA and the GSE Affordable Housing Goals be more closely aligned. The proposal would seem to cut in the opposite direction, making it less likely that banks will sell mortgages into the secondary market.

If the agencies want to incent banks' ongoing commitment to CRA, they should consider providing additional CRA credit to banks that retain servicing of mortgage loans. Banks that retain servicing tend to develop more extensive ties with their customers. Yet, retention of servicing can be challenging for banks for a number of reasons, including Basel capital treatment of mortgage servicing assets, as well as staffing and systems costs. If the regulators want to encourage such activity, applying a multiplier to a bank's servicing activity would be one method by which to do so.

In addition to the public policy concerns regarding the proposed treatment of loans originated and sold within 90 days, we note that there are a number of ambiguities associated with this aspect of the proposed rule.

- *Scope of the Haircut*. The formula provided in the preamble at 85 FR 1214 (25 percent of the origination value of **Qualifying Loans** sold within 90 days of origination) appears to conflict with the regulation at 25.06(d)(2) (**qualifying retail loans** sold within 90 days of origination). Any final rule should specify the types of loans to which any haircut would apply (i.e., whether it applies to community development loans) and explain when any haircut would be applied in the quantification process.

- *Calculation Questions*. Any final rule that includes a haircut should also address a variety of scenarios, including:

[8] The single-family home purchase housing goals are based on the percentage of the total number of home purchase mortgages that the GSE purchases each year that are for families in the following categories: low-income families (income no greater than 80 percent of area median income); very low-income families (income no greater than 50 percent of area median income); and families in low-income areas. The single-family refinance housing goal is based on the percentage of the total number of refinance mortgages that an Enterprise purchases each year that are for low-income families (income no greater than 80 percent of area median income). The GSEs' regulator, the Federal Housing Finance Agency, is required to estimate the size of the mortgage market in order to establish benchmarks for Fannie Mae and Freddie Mac single-family mortgage housing goals.

- Whether a loan that is sold one month after origination would receive the approximately the same value as if it were held for three months.
- Whether a loan that is originated at the beginning of the year and sold six months after origination would receive a dollar value for that year that is approximately half of the value it would receive if it had been held for the full year.

- *Purchased Loans*. The agencies should clarify and provide examples explaining how purchased loans would be valued under any rule.

LIHTC and NMTC. We are also concerned that the balance sheet approach would not appropriately value Low Income Housing Tax Credit (LIHTC) and New Markets Tax Credit (NMTC) syndication activities, thereby discouraging banks from engaging in this important function that supports affordable housing. Syndicators or sponsors should receive credit for their activities, which are necessary for other parties to be able to invest in these vehicles. Other banks, and community banks in particular, might not be able to participate in these activities if it were not for the willingness and ability of certain banks to take on the sponsorship role. We recommend that the final rule provide CRA credit for a (to be determined) percentage of the total value of the syndication for the term of the investment.

Volunteer Service. Volunteer service is an important way that banks become involved in local communities and develop an understanding of the community development needs in those areas. Unfortunately, the proposed rule could incentivize banks to *reduce* their volunteer activities, which would undermine the spirit of CRA.

The proposed rule seeks to incorporate volunteer service into the CRA Evaluation Measure by requiring banks to monetize community development services. To do this, banks would calculate the value of the volunteer service based on hourly wage data provided by the Bureau of Labor Statistics for the type of work provided by bank employees. For example, if a bank employee helps a nonprofit to create a new website, then the hourly wage rate would be that of a web designer. Alternatively, the preamble to the proposal inquires whether banks would prefer an alternative calculation, such as valuing community development services based on a standardized compensation value for the banking industry (currently $36/hour). Banks would add the value of the volunteer service to the numerator for calculating a bank's CRA Evaluation Measure.

Monetizing volunteer hours is unlikely to have a meaningful impact on the ability of a bank to meet the CRA Evaluation Measure's 6 percent and 11 percent benchmarks because the value of volunteer activities would be underweighted relative to loans and investments. As a result, banks may be incentivized to make a single CRA investment rather than allowing employees to engage in numerous community service hours away from the office that benefit multiple nonprofit organizations.

However, bank employees provide valuable expertise and manpower to nonprofit organizations and the LMI populations those organizations serve. In many cases, the value of these services would exceed any dollar amount that they would be assigned under the proposed rule. This is particularly true for nonprofits that serve rural areas where the pool of skilled workers is limited. In these situations, the proposed method of quantifying volunteer service would not recognize the intrinsic value of these services to the receiving organizations and individuals.

Not only would the value of volunteer hours be discounted, but the processes and procedures required to monetize volunteer service would be a significant burden for CRA departments in banks of all sizes. For example, on its last exam a community bank with $6 billion in assets reported 4,500 service hours. Many of these involved events that were 2-3 hours in duration. Under the proposal, the bank would have to research the hourly rate applicable to each activity, conduct the requisite calculations, and potentially determine how to prorate that calculation based on the extent to which there is an LMI benefit. Many bank CRA departments consist of one or two individuals responsible for CRA compliance and reporting. The CRA benefit the bank would receive relative to the time and resources that these employees would be required to spend calculating the value of volunteer service activities could result in banks engaging in less service activity. This would be detrimental to communities and would not be in keeping with the spirit of CRA.

In addition, we note that the proposed data collection and reporting requirements would require banks to report data for *all* qualifying activities conducted during the annual period, including the quantified value of community development services and to certify that the information is true and correct. The proposal could be interpreted to require that banks establish robust procedures to ensure that every volunteer opportunity is captured, quantified, and reported. Given the lack of CRA credit given to volunteer services, some banks would prefer to forego receipt of CRA credit for such services due to the burden of ensuring that *every* volunteer opportunity is captured and quantified, if they continue to engage in such services at all. For those data aspects not necessary to peer comparators, such as volunteer service, the rule should not require that the reported information be complete—only that it be accurate. Furthermore, the agencies should provide that banks *may* collect and report volunteer service hours, but they are not required to do so.

In addition to being laborious, it is not clear how some community service would be counted under the Bureau of Labor Statistics job categories. For example, how would a bank quantify the service of a banker who serves on the board of directors for a local nonprofit and participates on the financial committee of that organization? This type of service to nonprofits is common and highly valued, but we foresee many questions regarding how banks should quantify this type of work under the proposed framework.

In light of these concerns, we recommend that the agencies adopt an approach that utilizes the median hourly compensation value for the banking industry in lieu of the hourly wage data provided by the Bureau of Labor Statistics. Utilizing a standard compensation value would reduce the burden associated with tracking community service. In addition, the regulators should consider adding a significant multiplier so that volunteer services will not be overshadowed in the total qualified activities value for the CRA Evaluation Measure. Furthermore, we recommend that the agencies factor volunteer activities into performance context and develop specific guidelines explaining how examiners should do so.

Relatedly, the proposal's treatment of donations raises concerns that are similar to those regarding the proposal's devaluation of volunteer service. Under the proposal, a $1 million contribution would be valued the same as a $1 million loan. However, loans and contributions have materially different impacts on a nonprofit organization. A loan must be repaid with interest, whereas a contribution is equity that the organization can deploy without repayment of principal or interest. Accordingly, we recommend that contributions and donations be subject to some multiplier to adequately account for the true value of those contributions to the recipient.

Revise the Denominator for Calculating the CRA Evaluation Measure. Retail Domestic Deposits would play a central role in the proposed CRA framework. Specifically, the proposal would use Retail Domestic Deposits as the denominator of the formula used to calculate a bank's CRA Evaluation Measure and as the denominator for calculating whether a bank meets the 2 percent Community Development Minimum (discussed in Section II.D. of this letter). Retail Domestic Deposits would also serve as the denominator for determining whether a bank must designate deposit-based assessment areas (*See* Section V. of this letter). As such, it is critically important that this term be defined appropriately.

We make a number of recommendations below for revising the definition of Retail Domestic Deposits. In light of these suggestions, and in conjunction with other changes that we suggest to other elements of the proposed performance measurement system, we request that the agencies reassess the benchmarks associated with the CRA Evaluation Measure and the Community Development Minimum as well as the trigger for deposit-based assessment areas. Additional study and analysis would be needed to determine how changes to the denominator for these calculations would impact the various benchmarks established in the proposal.

Moreover, on December 12, 2019, the FDIC issued a notice of proposed rulemaking to modernize its brokered deposit regulations. However, the proposed CRA rule does not discuss how the brokered deposit rulemaking could impact the proposed definition of Retail Domestic Deposits for CRA purposes. We also note that in a recent speech, FDIC Chairman McWilliams recommended that Congress repeal section 29 of the FDI Act, which would make the definition of brokered deposit obsolete. It is *critical* that the agencies take these potential changes into account prior to finalizing amendments to the CRA regulations. Otherwise, the agencies would run the risk of having to issue *additional* amendments to any new CRA rules, which would add to the regulatory burden associated with what would be a costly and complex rulemaking.

Call Report Definition. The proposal defines Retail Domestic Deposits as total domestic deposits of individuals, partnerships, and corporations, as reported on Schedule RC-E, item 1 of the Call Report, excluding brokered deposits. We recommend that Retail Domestic Deposits be re-defined as deposits intended primarily for personal, household, or family use, as reported on Schedule RC-E, items 6.a, 6.b, 7,a(1) and 7.b(1). This approach would more accurately represent a bank's capacity to engage in qualifying activities for the benefit of individuals, small businesses, and small farms. While these Call Report items are not required for banks with $1 billion in assets or less, permitting Small and Intermediate Small banks to opt out of the General Performance Standards and exempting those institutions from the proposed geocoding requirements associated with the delineation of deposit-based assessment areas would address this issue.

Exclusions. As defined in the proposal, Retail Domestic Deposits would exclude municipal deposits, deposits of foreign governments, and brokered deposits. We agree that these exclusions are appropriate. We also recommend that the definition of Retail Domestic Deposits specifically exclude:

- Corporate Deposits. Including corporate deposits could result in significant distortions and create significant unpredictability from a CRA planning perspective. Corporate deposits fluctuate greatly, and normal changes in corporate client cash management needs, such as payroll administration or seasonal variations at the end of a firm's fiscal year, could result in unpredictable swings in terms of a bank's obligation under the CRA Evaluation Measure and the Community Development Minimum.

  Similarly, as it relates to deposit-based assessment areas, changes in corporate cash management needs could create situations where a bank meets the 50 percent or 5 percent threshold in one quarter but not the next (*See* Section V. of this letter for a discussion of these percentages). We also note that corporate deposits would be allocated to the assessment area where the corporate client's principal place of business is located. As a result, one or two large corporate depositors could create a situation where a bank would have to add an assessment area that is unrelated to or does not represent a true picture of a bank's presence or activity in that location. This approach could also exacerbate CRA hot spots.

- Sweep Deposits. Under the FDIC Brokered Deposit rule, certain affiliated broker-dealer sweeps, transactions that move cash overnight from a brokerage account at a broker-dealer into an FDIC insured deposit account, are not considered "brokered" under the Primary Purpose Exception ("Exempt Sweep Deposits").[9] Accordingly, Exempt Sweep Deposits, and those originating from a non-affiliated broker-dealer, are not considered brokered and therefore appear to be Retail Domestic Deposits under the CRA proposal.

  The proposal explains that "by further excluding brokered deposits, which are not associated with any individual or community, this definition would refine the Call Report definition to more accurately reflect the deposits a bank collects from identifiable individuals and communities." The agencies should extend this same reasoning to Exempt Sweep Deposits and other sweep deposits because like brokered deposits, they are not associated with particular communities.

  In addition, the CRA treatment of these deposits should not turn on the details of the broker-dealer's business model. Under the current brokered deposit rules, some deposits that are swept from broker-dealers are eligible for the Primary Purpose Exception and some are not, depending on the percentage of assets represented by the sweep deposits. The treatment of cash swept from a broker-dealer under CRA should be consistent regardless of the size and nature of the sweep activity within the broker-dealer. Inclusion of only "Exempt Sweep Deposits" would also lead to

[9] Brokered deposit is defined as "any deposit that is obtained, directly or indirectly, from or through the mediation or assistance of a deposit broker." 12 CFR 337.6(a)(2). The primary purpose exemption is an exception from the definition of deposit broker. "An agent or nominee whose primary purpose is not the placement of funds with depository institutions." 12 CFR.6(a)(5)(ii)(I).

unpredictability as to a bank's CRA obligation, as the volume of deposits swept into the bank is a function of market volatility and the corresponding flight to safety.

- Reciprocal Deposits. We also request that the agencies exclude reciprocal deposits from the definition of Retail Domestic Deposits. Including reciprocal deposits could impact community bank use of these deposits as an important funding source; for smaller institutions a capped amount of reciprocal deposits is excluded under the brokered deposit rules and therefore could potentially be considered Retail Domestic Deposits under the proposal.

  Under the Federal Deposit Insurance Act, reciprocal deposits are deposits that a bank receives through a deposit placement network in return for deposits that the bank places through the network.[10] Banks that receive non-brokered reciprocal deposits have a relationship with their own depositors, but ordinarily have no relationship with the individual or community from which a reciprocal deposit originates, which could be anywhere in the United States. Including these deposits in the definition of Retail Domestic Deposits could subject community banks to CRA compliance obligations in locations far distant from the communities that these banks serve. Community banks are ill-equipped to bear such long-distance compliance burdens.

  Moreover, including non-brokered reciprocal deposits in the definition of Retail Domestic Deposit would be impractical. Reciprocal deposits are typically titled in the name of a custodian or sub-custodian. As a result, the receiving bank typically does not know the identity or locations of underlying beneficial owners, which would hamper a bank's ability to geocode its non-brokered deposits as required by the proposal.

- Health Savings Accounts. Health savings accounts (HSAs) are owned by account holders and remain the account holder's property even if s/he changes jobs or health plans or retires. Under federal law, an HSA is a "trust" or "custodial account" administrated by a trustee or custodian. Trustees or custodians must be banks, insurance companies, or entities credentialed by the U.S. Department of the Treasury Department to act in this capacity.

  HSAs differ from other types of domestic deposits in that custodians do not have control over the geographic distribution of HSA deposits like banks have with traditional consumer deposits. The specific relationship between an HSA account owner and a custodian is up to the HSA account owner; banks do not necessarily maintain a direct relationship with HSA account owners. Rather, account owners may interact with third parties to open and manage HSA accounts. In that regard, but only in that regard, HSA deposits can resemble brokered deposits, which have been excluded under the CRA proposal.

- Listed Deposits. Some depositors use listing services to find the best rate available for a given deposit type and, in the case of a certificate of deposit, a term. Deposit listing services come in different forms, but all connect those seeking to place a deposit with those seeking a deposit by listing the interest rates that banks pay on deposits. As with other deposits described in this section,

[10] *See* 12 U.S.C. § 1831f(i)(2).

listing service deposits are raised nationally; therefore, the depositor is not necessarily tied to the community in which the bank maintains a footprint. As a result, such deposits should be exempt from the definition of Retail Domestic Deposits under the CRA proposal.

- Prepaid Cards. We also request that the agencies exclude from the definition of Retail Domestic Deposit funding that backs prepaid cards. Some prepaid cards do not have an address associated with the purchaser or the end user. For example, in the case of a prepaid gift card that is purchased at a retail store, no identifying information is collected at the point of sale.

2. Inclusion of Consumer Loans Should Not Be Mandatory

Today, CRA examinations typically evaluate a financial institution's consumer lending only if such lending comprises a substantial majority of the institution's business. This reflects CRA's primary focus on home mortgage, small business, and small farm loans. However, a bank may elect to have its consumer loans included in its CRA evaluation if it has collected and maintained data on such loans.

The proposed CRA regulatory framework should maintain this approach for consumer loans. Banks that offer such products should be able to continue to elect whether to have them considered as part of the bank's CRA evaluation; mandatory inclusion should not be required for all banks. Moreover, assuming the agencies adopt this recommendation, additional study and analysis would be needed to determine how this adjustment will impact the ratings benchmarks proposed for the CRA Evaluation Measure.

Notably, the proposal does not articulate a policy reason for this significant expansion of CRA, nor does it offer data showing that banks are not providing credit cards, auto loans, student loans, or other consumer loan products to LMI individuals or areas.[11] Furthermore, the proposal does not offer any public policy goals that would justify the substantial costs created by the data collection and reporting requirements that the proposal would create.

Data on auto lending, credit cards, and other revolving and non-revolving consumer credit is typically maintained on multiple origination and servicing systems. However, the proposal would require banks to collect and maintain data on "qualifying" consumer loans (which would be included in the total dollar value of qualified activities reported annually to the OCC or FDIC) *and* to collect and report annually data on *non-qualifying* consumer loans. Our members report that this would be a massive new undertaking, which would impose significant system, operational, and staffing changes because consumer loans are not included in the CRA evaluation of most banks today. While OCC staff presenting on ABA's March 6, 2020 webinar stated that the agencies do not envision a massive data reporting requirement associated with the proposed rule, the proposal is not clear on that point and could depend on the final rule provisions as well as how any final rule is implemented and interpreted by current and future regulators.

[11] In fact, we note that in urban markets with transit systems, the costs associated with purchasing an automobile (e.g., insurance, maintenance, parking, etc.) can be financially burdensome for LMI individuals. As such, banks should not be required to meet minimum CRA performance benchmarks for these loans.

We strongly recommend that the CRA maintain its focus on asset building loans and community development. Incorporating consumer loans as an *option* would continue to ensure that CRA activities focus on helping consumers and small businesses build assets. By contrast, incorporating consumer loans as a *requirement* for all banks could shift focus away from home mortgages and community development loans and investments.

Moreover, we believe that the mandatory inclusion of consumer loans could harm, rather than help, consumers. The new data collection and reporting burdens for consumer loans could lead to increased fees and/or interest rates on consumer loans, which would be contrary to bank efforts to provide a variety of products and services that help consumers manage their finances and build assets and credit histories in preparation for becoming homeowners. It is not clear whether the agencies recognized or studied the potential for these adverse impacts on consumers and communities.

On March 26, 2020 the federal banking regulators issued a joint statement encouraging insured depository institutions to offer responsible small-dollar loans to consumers and small businesses in response to COVID-19. Such products help consumers with their short-term financial needs while establishing a path to more mainstream financial products. However, because such loans are for small amounts, they would not impact a bank's CRA rating under the proposed framework. Furthermore, small dollar loans have very thin profit margins, and subjecting them to new CRA recordkeeping and reporting requirements would be a further disincentive to offering these products, which can provide an important source of funding for consumers. As such, we suggest that small dollar loans receive a significant multiplier.

3. Clarify How Out of Assessment Area Activities Would Be Factored Into the CRA Evaluation Measure

Today, a bank will not receive CRA consideration for qualified activities outside of its assessment area unless the examiner concludes that the institution has been responsive to community development needs and opportunities within its assessment area(s). Even then, the current CRA regulations and Q&A guidance generally limit consideration of community development activities to the broader statewide or regional areas (BSRA) that include the bank's assessment area(s).[12]

Many banks feel that regulatory guidance is unclear as to what constitutes the areas within the BSRA. In addition, banks do not receive confirmation as to whether they receive CRA consideration for BSRA activities until exam time, which can be years after a transaction closes. As a result, many banks are reluctant to engage in CRA activities outside of their assessment area. This framework has contributed to a concentration of community development activity in large urban areas, which has led to pricing distortions for community development loans and investments in certain locations. It is important that any modernized CRA regulatory framework address these issues.

[12] *See* Community Reinvestment Act; Interagency Questions and Answers Regarding Community Reinvestment; Guidance, 81 Fed. Reg. at 48, 529 (citing §__.12(h)-6). For banks evaluated pursuant to the community development test for wholesale or limited purpose banks, the agencies also consider qualified investments, community development loans, and community development services that benefit areas outside the bank's assessment area(s), if the bank has adequately addressed the needs of its assessment area(s). 12 C.F.R. §§ 25.25(e)(2), 195.25(e)(2))(2018).

The proposed rule appears to permit a bank to receive CRA credit for qualifying activities conducted outside of the bank's assessment area(s) when calculating the institution's bank-level CRA rating. We appreciate that the agencies seek to incentivize banks to provide funding in areas that have a demonstrated need even if those geographies are outside of a bank's assessment area. However, the proposed *regulatory text* does not state explicitly that all CRA-qualified activities would be included in the bank-level calculation regardless of location.

Furthermore, the proposed regulatory text does not expressly address whether there is a threshold of activity that a bank must meet inside of its assessment area in order for qualifying activities conducted outside of the bank's assessment areas(s) to be counted toward the bank-wide CRA Evaluation Measure. Would any such threshold apply at the assessment area level or at the bank level? If it is at the assessment area level, would banks be required to meet the threshold in each assessment area, a substantial majority of assessment areas, or a weighted average of assessment areas? If such a threshold exists, how will banks know when they have met the threshold for being able to obtain out of assessment area credit? Based on answers that OCC staff provided during ABA's webinar on the proposed rule, we understand that the OCC intends for a bank to be able to count qualifying activities outside of its assessment areas once the bank receives a presumptive rating of Satisfactory or better in a "significant portion" of its assessment areas. However, this needs to be clarified in the regulatory text. We also request that the agencies provide examples of how to quantify out of assessment area activities and incorporate them into the CRA Evaluation Measure.

These many questions regarding the proposed treatment of out of assessment area activities illustrate the need for a simpler approach. One option would be to provide CRA credit for qualifying community development activities nationwide, as long as the bank received an overall rating of Satisfactory or better on its previous CRA exam. Under this streamlined approach, banks would not be required to hit a threshold in each of their assessment areas before they are able to obtain CRA credit for activities outside of their assessment areas. By requiring a Satisfactory rating or better on the previous CRA exam, this option would preserve a bank's focus on its local community while enabling activity elsewhere to be recognized.

4. Address Other Items Needing Clarification

Several additional aspects of the proposed CRA Evaluation Measure are unclear. These ambiguities impede banks' ability to evaluate the impact of the proposal on their institutions. And, cumulatively, these questions underscore the importance of ensuring that the agencies thoroughly understand the impacts of the proposal prior to issuing a final rule.

Affiliates. If the agencies intend to include all affiliate activities, the regulatory text should be edited to expressly state that requirement. The preamble to the proposal states that "all activities conducted by the bank—including those engaged in by another party, such as an affiliate—would be considered, as opposed to at a bank's option as is done under the current framework." The preamble goes on to say that "banks also would need to provide a certification from each affiliate or other third party that the qualifying activity information collected from that affiliate or other third party is true and correct and report performance context information." In addition, the term "affiliate" is defined in the definitions section of the proposal. However, confusingly, the *regulatory text* does not otherwise contain the term affiliate. It does not describe which affiliates or which affiliate activities are covered by the proposal.

Regulators should maintain the current treatment of affiliates, which provides that affiliate activity may be considered at the bank's option. Regulators should not impose a strict requirement that a bank must report all qualifying activities from all affiliates. Moreover, any final rule should expressly permit a bank to exclude affiliate activities from the Retail Lending Distribution Test's definition of a "Major Retail Product Line" and from the Retail Lending Distribution Test's 20-loan threshold for evaluation of such a product line (*See* discussion in Section III.C. of this letter).

<u>Credit Cards and Lines of Credit</u>. As discussed above, we do not support the mandatory inclusion of consumer lending in a bank's CRA Evaluation Measure. However, for those banks that elect to include consumer loans, the final rule should clarify how credit cards and lines of credit should be treated. For instance, if a credit card has a zero balance, the proposal does not specify whether a bank would report the zero balance or the available credit amount. Similarly, the proposal does not address whether a bank would report the zero balance on a line of credit or the available amount. We recommend that a bank receive credit for the available amount.

<u>Existing Book of Business</u>. Neither the preamble nor the regulatory text describe how a bank should treat its existing portfolio once a final rule goes into effect. We request that the agencies expressly grandfather any activity that is still on a bank's existing book of business that qualifies for CRA credit under the current rules but would not qualify under the proposal. We also recommend that the agencies address whether banks should re-assess their entire portfolio, including activities that do *not* count for CRA credit under the existing regulatory framework. For example, if the CRA Evaluation Measure looks at qualifying loans and investments on the balance sheet, how far back can or should an institution go within on-balance sheet loans and investments to identify qualifying activities? Would a loan/investment remaining on balance sheet from 2014 continue to qualify in 2022? The answers to these and similar questions would have significant implications for the costs of data collection and for the proposal as a whole.

<u>Mergers and Acquisitions</u>. We also request that the agencies clarify how the CRA Evaluation Measure would be applied in the merger context. It is common for merging institutions to operate different systems for a period of time after a transaction closes. In this situation, it would be difficult for a bank to bring data from the two institutions together into one report.

C. <u>Revise the Retail Lending Distribution Test</u>

The Retail Lending Distribution Test is the second prong of the proposed CRA performance framework. This test, however, is inadequately explained and fails to take into account different bank business models and areas of specialization. For these reasons, we recommend that the agencies refrain from finalizing the Retail Lending Distribution Test until the regulatory text is clear, the framework is data tested, and its impacts are thoroughly understood. When regulators do issue a final rule, they should provide multiple examples of how the Retail Lending Distribution Test would work in practice and provide electronic copies/calculators of all formulas to be used by banks and examiners.

The Retail Lending Distribution Test is the second component of the agencies' proposed CRA performance measurement system. This test would assess the distribution of the number of a bank's loans in its Major Retail Lending Product Lines in an assessment area. It is comprised of two parts: (1) a geographic distribution test for small loans to businesses and farms and (2) a borrower distribution test for home mortgages, consumer loans, and small loans to businesses and farms. A bank must meet or exceed a demographic comparator *or* a peer comparator for both the geographic distribution test and the borrower distribution test. The Retail Lending Distribution Test would apply only to Major Retail Lending Product Lines with 20 or more originations in an assessment area during an evaluation period.

Significantly, the Retail Lending Distribution Test would be pass/fail; there are no gradations. In other words, a bank subject to the Retail Lending Distribution Test would not be able to achieve a presumptive rating of Satisfactory or Outstanding in an assessment area without passing all applicable distribution tests for all Major Retail Lending Product lines in that assessment area. As a result, a bank's performance on the Retail Lending Distribution Test would factor into the institution's bank-level rating since a bank will receive a Needs to Improve at the bank level if it does not receive a rating of Satisfactory or better "in a significant portion of its assessment areas and in those assessment areas where it holds a significant amount of deposits."[13] Our concerns and recommendations regarding the Retail Lending Distribution Test are described below.

1. Specify the Methodology for Setting the Distribution Benchmarks

As proposed, the geographic and borrower comparators would be set as follows:

- Geographic Demographic Comparator: 55 percent of the percentage of businesses/farms in LMI census tracts in the assessment area.
- Geographic Peer Comparator: 65 percent of the percentage of small loans to businesses/farms in LMI census tracts originated by all banks in the assessment area.
- Borrower Demographic Comparator: 55 percent of the percentage of individuals in the assessment area who are LMI, or the percentage of businesses or farms in the assessment area that are small businesses or small farms.
- Borrower Peer Comparator: 65 percent of the percentage of consumer loans to individuals who are LMI, small loans to businesses provided to small businesses, or small loans to farms provided to small farms (as applicable) by all banks in the assessment area.

We are not in a position to comment on whether the comparators are appropriately calibrated because the proposal does not describe the agencies' rationale or methodology for establishing these percentages. Nor does the proposal provide information on the extent to which the agencies tested these comparators to ensure that they would not inappropriately disadvantage certain business models, or product mixes.

[13] Proposed Rule. __.12(c) p. 1246.

Without an articulated methodology and rationale for establishing the comparators, the thresholds could be susceptible to significant fluctuation based on the policy priorities of future regulators. To reduce the potential for pendulum swings, it is important that the agencies articulate the basis for any peer comparator and fully test it against a variety of variables, such as asset sizes, areas of specialization, and geographic footprint. Major swings would reduce certainty and predictability for banks, which is one of the goals of CRA modernization.

On a technical matter, we note that the demographic comparators set forth in the proposed regulatory text use the phrase "low-***and*** moderate-income" as well as the phrase "low-***or*** moderate-income." We urge the agencies to either align this language or clarify why they chose to utilize different standards in this section of the proposal.

2. The Retail Lending Distribution Test Inappropriately Disadvantages Banks With Certain Characteristics

The Retail Lending Distribution Test could unfairly disadvantage certain banks, and it is unclear the extent to which the agencies evaluated the distribution tests to ensure this aspect of the proposed performance measurement system guards against unintended consequences for these institutions.

For example, the test would be detrimental to banks with limited assessment areas. Banks with fewer assessment areas would be at a higher risk of receiving an exam rating of Needs to Improve than banks with more assessment areas because the Retail Lending Distribution Test would be pass/fail. To receive a bank-level rating of Satisfactory or better, a bank must receive that rating in a *significant* portion of its assessment areas and in those assessment areas where it holds a *significant* amount of deposits.[14] This means that if "significant" were defined as 60 percent, a bank with two assessment areas would receive a bank-level rating of Needs to Improve if it failed the Retail Lending Distribution Test in one assessment area. By contrast, a bank with six assessment areas that failed the Retail Lending Distribution Test in one assessment area would pass the exam at the bank-level, assuming that the bank met all other performance benchmarks.

The Retail Lending Distribution Test would also be unfavorable to specialized banks. Under the proposal, a bank would determine whether a product is a Major Retail Lending Product Line based on whether the product comprises at least 15 percent of the bank-level dollar volume of total retail loan originations. If that is the case, a bank that specializes in commercial lending but does a small amount of retail lending would be subject to the Retail Lending Distribution Test. For these institutions, it would only take a few loans to reach the 15 percent mark even though those loans do not represent a significant portion of the bank's overall business. A similar outcome could result for wholesale or limited purpose institutions who make retail loans on an accommodation basis. Such arbitrary results could lead banks (already under extensive consumer compliance obligations) to decide not to offer any retail loans, thereby reducing credit availability in their communities.

[14] The agencies have not yet determined how to define "significant" for this portion of the rule. We discuss this question further in Section III.G. of this letter.

As discussed in Section V. of this letter, one option available to regulators would be to examine banks according to a distribution test based on national data as it pertains to CRA activities outside of an institution's facilities-based assessment area.

3. The Peer Comparator Would Sacrifice Context in an Effort to Standardize Performance Evaluations

Under the Retail Lending Distribution Test, a bank must meet or exceed a demographic comparator or a peer comparator for both the geographic distribution test and the borrower distribution test. As with other aspects of the Retail Lending Distribution Test, we are concerned that the proposed peer comparator methodology and benchmarks would sacrifice context in an effort to standardize CRA performance and examinations.

At the outset, we note that the peer data that the agencies will obtain will be limited. We expect that many community banks will opt out of the proposed performance standards (resulting in very limited peer data for institutions that elect to be examined under the new rules). In addition, peer data would not include any banks that are regulated by the Federal Reserve absent a joint rulemaking by all three agencies.

In addition, the proposal would not address criticisms that the existing regulatory framework compares banks with institutions that are not their true peers. The peer comparators in the proposed rule would be based on a percentage of loans originated by *all* banks evaluated under the General Performance Standards in the assessment area. Therefore, it does not appear to take into account bank size, capacity, or areas of specialization. For example, we do not understand why a $1 billion community bank should be subject to the same peer comparator standards as a $50 billion bank with far more capacity, nor do we understand why a bank that specializes in commercial lending should be subject to the same peer comparator standards as a bank that specializes in residential mortgages. In sum, the proposed peer comparator seems to elevate standardization of performance measurement at the expense of context.

Third, data to establish consumer lending peer comparators is severely limited. The proposal would establish an entirely new regulatory regime that would mandate new data collection and reporting requirements for consumer loans and would subject these loans to a distributional analysis. Today, regulators do not examine the consumer lending activities of most banks for CRA purposes. As a result, there is no peer data on these loans, and banks could only guess how they would fare under the proposed peer analysis. Furthermore, in light of this dearth of data, we presume that the agencies have not thoroughly tested the proposed consumer lending benchmarks to determine how banks with varying degrees of specialization and different business models would fare under the proposed consumer lending distribution tests. This lack of data is one more reason that consumer loans should not be included on CRA examinations on a compulsory basis.

As regulators contemplate how to adjust the Retail Lending Distribution Test in light of the comments received, we recommend that they also consider how the demographic and peer data will be made available to banks in real-time (or near real-time). The proposal indicates that the agencies plan to release aggregate information about a bank's lending on an annual basis. However, it is unclear how quickly the agencies will release peer data after it is submitted by banks. While use of prior period data would give banks needed certainty for CRA planning purposes, it runs the risk of being stale. As such, the timing of the release of current period data will be critical to enabling banks to have the most up-to-date information without waiting for that data until the exam time.

4. Establish Gradations

As described above, a bank would either pass or fail the Retail Lending Distribution Test in an assessment area. Poor performance on this component of the proposed performance measures would result in an *automatic* rating of Needs to Improve for the entire assessment area. This approach is too rigid and should be replaced with a system that establishes gradations for this aspect of the proposed ratings framework. We discuss CRA ratings more broadly in Section III.G. of this letter.

5. Revise the Definition of Major Retail Lending Product Line

In addition to having concerns regarding the overall structure of the Retail Lending Distribution Test, we have several questions regarding how it would work in practice. In particular, our members have raised numerous questions regarding what constitutes a Major Retail Lending Product Line. These ambiguities further illustrate the value that additional study and refinement of the proposal could lend to the long-term success of the modernization effort.

The proposal defines this term as "a bank's retail lending product line that composes at least 15 percent of the bank-level dollar volume of total retail loan originations during the evaluation period." While we appreciate the OCC's attempt to provide clarity on some of these issues during ABA's webinar on the proposed rule, many bankers have had difficulty assessing how this aspect of the proposal would impact their institutions. In particular, several banks were confused by how to apply the phrase "bank-level dollar volume of total retail loan originations." Any final rule should provide multiple examples of this calculation.

In addition, the agencies should specify that when identifying Major Retail Lending Product Lines, banks should count both originated loans and purchased loans, as is the case under the Lending Test that exists today. In light of various challenges for banks to originate retail loans on a consistent basis and across a wide array of assessment areas, it is crucial that banks continue to have the ability to have purchased loans as well as originated loans evaluated in all Retail Lending Distribution Tests.

Other questions regarding the definition of Major Retail Lending Product Line include:

- When identifying a Major Retail Lending Product Line, should a bank consider each of the product lines listed under the definition of Consumer Lending Product Line (automobile loan product line, credit card product line, other revolving credit plan product line, or other consumer loan product line) separately or together?
- To what extent should banks drill down within those product offerings to determine what constitutes a major Retail Lending Product Line? For example, should a bank evaluate direct and indirect automobile lending together or separately?

- With respect to lines of credit and credit cards, would banks use the amount of the line or the amount actually advanced at account opening?
- Should banks treat credit line increases as an origination for purposes of this test? For closed-end loans, how should banks treat renewals, extensions, and other modifications?

15 Percent Trigger. We also suggest that the agencies adopt a range in lieu of the 15 percent trigger. As we have emphasized throughout the modernization effort, regulators should improve certainty and predictability relative to CRA examinations. In this same vein, it is important that banks know at the *beginning* of an exam period whether they will be subject to the Retail Lending Distribution Test. Banks that cross the 15 percent threshold mid-exam cycle should not be subject to this performance measure and the data collection and reporting requirements associated with it. In place of the proposal's bright-line approach, we recommend that the agencies adopt a range—perhaps 15 to 30 percent of retail originations—and a look back period. After a product regularly falls within the specified range over a two or three year period, only then should it constitute a Major Retail Lending Product Line.

20 Loan Threshold. Under the proposal, a bank would be evaluated under the Retail Lending Distribution Test for Major Retail Product Lines with 20 or more originations in an assessment area during an *evaluation period*. We recommend that the agencies increase the trigger to 50 originations *per year*. The proposed 20 loan trigger is problematic for multiple reasons.

First, 20 loans would not be statistically valid and would not provide a sufficient number of data points, particularly for an exam that is pass/fail. The exam results for an entire assessment area should not be determined by only a few loans.

Second, the 20-loan trigger could impact the willingness of banks to conduct accommodation lending. It is possible that a motivated loan officer could bring into scope for CRA purposes a product that the bank typically offers only on an accommodation basis. Some banks could determine that the cost and burden of subjecting such loans to CRA data collection, reporting, and examination would outweigh the benefit that the loans provide. These banks may stop making loans on an accommodation basis, reducing credit availability in their communities. It would be an unfortunate unintended consequence if CRA reduced a bank's willingness to serve particular community needs.

Third, the 20-loan trigger is measured over an evaluation period, which can range from 3-5 years. As a result, banks with different examination periods would be subject to vastly different limitations for purposes of the 20-loan trigger. To remedy this problem, we suggest that the number of originations be determined on an annual basis.

The following example illustrates this problem with the 20-loan trigger. Assume that two banks originate 5 loans per year in a particular product line. Bank A received an Outstanding rating on its last exam and is subject to a 5-year exam cycle. Bank B received a Satisfactory rating and is subject to a 3-year exam cycle. Under this scenario, Bank A would trip the 20-loan trigger and be subject to the Retail Lending Distribution Test because it originated 25 loans in its exam cycle. Bank B would not trip the 20-loan threshold because it originated only 15 loans in its exam cycle. In other words, measuring the 20-loan trigger over the exam period would penalize, rather than reward, banks who achieved an Outstanding rating. This appears to be an unintended consequence of the proposal and illustrates why the agencies need to dedicate more time to considering the ramifications of the proposed rule.

D. The 2% Community Development Minimum Is Too Rigid

To obtain an Outstanding or Satisfactory rating, banks would be required to make a minimum amount of community development loans and/or investments. Specifically, community development loans and investments divided by the average quarterly value of the bank's Retail Domestic Deposits as of close of business each quarter must meet or exceed 2 percent. As with other components of the proposed performance measurement system, the agencies need to test the Community Development Minimum in a variety of geographies with varying opportunities for community development activities.

1. Factor Local Conditions into the Community Development Minimum

We are concerned that the Community Development Minimum does not sufficiently account for the varying levels of community development opportunities that result from differences in community needs and local economic conditions. Some rural areas have a limited number of organizations with whom banks can partner on community development initiatives. Other parts of the country experience inflated competition for community development loans and investments, the terms of which can price local lenders out of the markets in their own geographies. Any community development test should account for these variations *at the outset*, not just in the performance context aspect of the exam, which would be factored in after a bank calculates its presumptive CRA rating. If these considerations about market conditions are left to performance context and an examiner's adjustment of a bank's presumptive CRA rating, CRA modernization will not address criticisms that CRA ratings are unpredictable.

In light of these market variations, we are particularly concerned about the pass/fail nature of the Community Development Minimum. Poor performance on the Community Development Minimum alone should not be a reason for a bank to fail its CRA exam. As with the Retail Lending Distribution Test, the Community Development Minimum should be rated on a graduated scale, not a pass/fail basis.

2. Community Development Does Not Always Occur Within a Bank's Assessment Area

It is also important to recognize that banks often provide community development financing in areas that do not fall within a bank's assessment area. Some banks must go outside of their assessment area in search of community development activities, while other banks partner with nonprofits or governments on community development projects that cover a wide geographic area. We are concerned about how this reality would impact bank performance under the Community Development Minimum at the assessment area level.

As discussed in Section III.B.3, above, the agencies intend for a bank to be able to receive credit *at the bank level* for qualifying activities outside of its assessment areas, *after* the bank receives a presumptive rating of Satisfactory or better in a "significant portion" of its assessment areas. Restricting out of assessment area credit to the bank level, in conjunction with a Community Development Minimum in each assessment area that is pass/fail could result in situations where a bank does not meet the Community Development Minimum and therefore fails the CRA exam in that assessment area. We presume that this is an unintended consequence of the proposal, yet it underscores the manner in which various aspects of the proposed rule are interconnected and must be thoroughly understood prior to adopting a final rule.

3. Permit Banks to Classify Small Business Loans as Community Development Loans or as Small Business Loans

Today's CRA rules define small business loans as loans with an origination amount of $1 million or less. The regulation also defines community development activities to include activities that promote economic development by financing businesses or farms that meet the certain eligibility standards established by the Small Business Administration or that have gross annual revenues of $1 million or less.[15] The regulations further provide that a bank may not count a loan as a community development loan if the loan meets the definition of a small business loan. Thus, banks currently count small business loans with originations over the $1 million cap as community development loans, if they meet the size and purpose test in §__.12(g)(3).

As discussed in Section VI., the proposed rule would redefine loans to small businesses as those having an origination balance of $2 million or less. Banks are concerned that the proposed rule would likewise prohibit counting a loan as a community development loan if that loan meets the definition of a small business loan. If this were to be the case, banks might not meet the Community Development Minimum because loans between $1 million and $2 million could no longer be counted as community development loans.

The proposed rule does not address this issue, nor does it explain whether the agencies studied whether the change in the definition of loans to small businesses would impact the ability of banks to meet the Community Development Minimum. Based on discussions with OCC staff, we understand that a bank *would* have the option to include a small business loan in either its Retail Lending Distribution Test, or to its Community Development Minimum. We urge the agencies to state this explicitly in the final rule.

[15] Under today's regulations, small business loan means a loan included in "loans to small businesses" as defined in the instructions for preparation of the Call Report. The Call Report defines such loans as loans with an original amount of $1 million or less. *See* Community Reinvestment Act; Interagency Questions and Answers Regarding Community Reinvestment; Guidance, 81 Fed. Reg. at 48,533 (citing § __ 12(v)). Community development activities include "activities that promote economic development by financing businesses or farms that meet the certain eligibility standards established by the Small Business Administration (the SBA)", (13 C.F.R. § 121.301) or that have gross annual revenues of $1 million or less." Community Reinvestment Act; Interagency Questions and Answers Regarding Community Reinvestment; Guidance, 81 Fed. Reg. at 48,526 (citing § Id. at 48526 (citing __.12(g)(3)).

E. Adjustments to the Benchmark Run the Risk of Lagging Behind the Economic Cycle and Subjecting Banks to Political Volatility

The proposal would permit the agencies to periodically adjust the proposed performance standards. In doing so, they would consider factors such as the level of qualifying activities conducted by all banks, market conditions, and unmet needs and opportunities. Any proposed adjustments would be subject to public notice and comment.

While we remain supportive of the agencies' efforts to develop performance measures that are more objective than those that exist today, we remain concerned that discretionary adjustments to the performance measures are unlikely to keep pace with the economic cycle.

We also note that any type of quantifiable performance measure that is set by regulation could subject banks to political volatility because it could be adjusted up or down based on changes in the political winds. In addition, when adjusting the benchmarks, the proposal would permit the agencies to consider the level of qualifying activities conducted by all banks as well as unmet needs and opportunities. This approach recalls the adjustments to the affordable housing goals applied to the housing government sponsored enterprises in the lead up to the housing bubble and its subsequent deflation.

F. Continue to Apply Different Evaluation Standards for Banks with Different Asset Sizes and Business Models

Tailored regulation works well and should continue to be part of the CRA regulatory framework. Current CRA regulations recognize that a one-size-fits all approach to CRA is undesirable. The regulations apply different tests based on a bank's asset size and permit wholesale and limited purpose banks to be evaluated under the community development test. Banks also have the option to develop a regulator-approved strategic plan for addressing their responsibilities with respect to CRA.

The diversity of bank business models comprising the U.S. banking system is greater today than it was in 2005—the last time the agencies substantially revised the CRA regulations. However, the proposal does not reflect these variations even though the agencies' goal is modernization. With few exceptions, the proposed benchmarks—particularly when coupled with pass/fail tests—would treat all banks as if their communities, business models, and areas of expertise are the same. For example, wholesale banks should not be subject to the same metric that applies to retail banks. Likewise, it is inappropriate to use the same benchmarks to assess community banks and large, branchless banks that operate nationwide. A better approach would be to develop metrics tailored to the different strategies and business models of banks that comprise the U.S. financial system.

We acknowledge that the agencies retained a performance context component that would allow examiners to adjust a bank's presumptive CRA rating. However, examiners would factor in a bank's performance context only *after* a bank calculates its presumptive CRA rating. Also, the proposal does not clearly explain how regulators will analyze and take performance context information into account, such as a bank's effort, business model, community needs, and local economic conditions and opportunities. For these reasons, the proposal would not achieve the goals of predictability and objectivity that all stakeholders embrace.

We recognize that developing tailored benchmarks would be a substantial undertaking, but believe that taking additional time to ensure that a metric-based framework works well for a wide range of bank business models will be critical to the longevity of a final rule. This is particularly important as the financial services landscape continues to evolve at an ever faster pace as customers embrace—and demand—new ways of conducting their banking business.

As a starting point, we offer the following suggestions pertaining to small banks, wholesale and limited purpose banks, and strategic plans.

1. Increase the Small Bank Threshold

As discussed throughout this letter, our members are concerned about the cost and complexity associated with the proposed rule. It would be a significant drain on CRA departments, and banks as a whole, for banks of all sizes. We are especially mindful of the extent to which these burdens would impact community banks, many of which have only one or two employees devoted to CRA. In some cases, CRA is only one of several responsibilities for these employees. Accordingly, we offer the following recommendations for minimizing the regulatory load on these institutions.

First, the agencies should permit Intermediate Small Banks to opt out of the General Performance Standards. Under the current CRA regulations, a Small Bank (defined as a bank with less than $313 million in assets) is assessed under a streamlined method that focuses on the bank's lending performance. An Intermediate Small Bank (defined as a bank with at least $313 million and less than $1.305 billion in assets) is assessed under the Small Bank lending test as well as a community development test that evaluates community development lending, qualified investments, and the community development services the institution provides to its communities.

The proposal appears to recognize that some level of differentiation is desirable, as it permits banks with assets of $500 million or less to elect to be evaluated under the existing Small Bank performance standards rather than the proposal's General Performance Standards. However, the proposal's accommodations for community banks are insufficient and would create enormous regulatory burden for institutions with assets between $500 million and $1.305 billion that are examined under the Intermediate Small Bank test today.

For example, Intermediate Small Banks are not required to collect and report CRA loan data for small business, small farm, and community development loans. Yet, under the proposed rule, hundreds of Intermediate Small Banks would be subject to the same data collection, maintenance, and reporting requirements as the largest banks in the country. The FDIC estimates that compliance with the General Performance Standards would cost each of these institutions approximately $665,802 annually (an estimate that we believe is far too low). This would likely exceed the cumulative annual salaries of an Intermediate Small Bank's existing employees responsible for CRA compliance—an extraordinary price for a community bank to pay for regulatory modernization that is largely untested.

Confusingly, the agencies do not explain their rationale for adopting the $500 million threshold, nor do they offer any public policy reasons as to why certain Intermediate Small Banks should be subject to the General Performance Standards. To address this disproportionate regulatory burden, we suggest that *both* Small Banks and Intermediate Small Banks be permitted to opt out of the General Performance Standards. Institutions electing to do so would be examined under the Small Bank and Intermediate Small Bank performance standards that exist today.

Second, we also recommend that the agencies increase the Small Bank and Intermediate Small Bank thresholds to $500 million and $2.5 billion, respectively.

The existing Small Bank and Intermediate Small Bank thresholds have worked well for many institutions. However, regulators should update these thresholds. The definitions for Small Bank and Intermediate Small Bank were established in 2005 and are adjusted annually for inflation based on changes to the Consumer Price Index. While it was wise to recognize that Small Banks and Intermediate Small Banks grow over time, the Consumer Price Index does not take into account the major changes, including consolidation, that have occurred in the banking industry over the past 15 years. For example, at the end of 2005, there were 7,655 banks consolidated by holding company. The median asset size was $124.5 million, while the average asset size was $1.42 billion. Today, there are 4,854 banks consolidated by holding company with median assets of $247.2 million and average assets of $3.85 billion.

We recommend that the Small Bank and Intermediate Small Bank thresholds be adjusted to reflect these changes. When the thresholds were established in 2005, 70.8% of banks qualified for the Small Bank test and 21.8% qualified for the Intermediate Small Bank test. Applying those same percentages to the distribution of bank asset sizes today, eligibility for the Small Bank test should be capped at $500 million and the Intermediate Small Bank should be capped at $2.5 billion.[16]

In addition, the Dodd-Frank Act and other statutes have increased banking regulation, and banks today must comply with significantly more regulations than in 2005. The final rule should take these developments into account if the agencies want to achieve the goal of modernization.

2. Assess Wholesale and Limited Purpose Banks According to the Community Development Test

Our concern regarding the need for a more customized approach to measuring CRA performance also extends to wholesale and limited purpose banks. Currently, these institutions are subject to a community development test, but the proposal would subject these institutions to the same General Performance Standards that would apply to traditional retail banks.

Confusingly, the proposal does not articulate a public policy need for this change. The proposed General Performance Standards simply are not compatible with the business models and operations of these

[16] This data is based on consolidated assets by holding company.

institutions. Therefore, we request that wholesale and limited purpose banks continue to be examined according to a community development test, as is currently the case under the existing CRA regulations.

By way of background, wholesale banks and limited purpose banks have been granted distinct CRA treatment for the last 25 years because their business models are specialized and can differ markedly from banks with a retail focus. Wholesale banks typically provide specialized services to sophisticated clients such as pension funds, governments, institutional investors, and mutual funds. They also serve as custodians that are responsible for safeguarding the financial assets of their clients. Designation as a wholesale bank means that the bank *cannot* be in the business of extending home mortgage, small business, small farm, or consumer loans to retail customers. However, it is common for wholesale banks to engage in limited retail lending to their wealth management clients on an accommodation basis.

Limited purpose banks also require distinct CRA treatment. For designation as a limited purpose bank, an institution must offer only a narrow product line (such as credit card or motor vehicle loans) to a regional or broader market. For example, certain limited purpose banks channel their banking services through partnerships with other corporations. The customer base of these institutions will heavily reflect the attributes of their partners' customer base; these banks are not marketing to specific neighborhoods, counties, or metropolitan statistical areas to generate customers of their own. As a result, the proposed rule would create bank obligations to serve customers in a manner that the bank does not fully control.

The agencies based the General Performance Standard benchmarks on a conventional bank's balance sheet (i.e., a mix of mortgage, small business, credit cards, and consumer lending). Many wholesale and limited purpose banks do not have this product mix and do not offer retail products to the general public. As such, it is inappropriate to apply the proposed benchmarks to these institutions. The wholesale and limited purpose designations serve an important purpose for banks that are not involved in traditional retail activities, and that designation should not change.

3. Encourage the Strategic Plan Option

The current CRA regulations permit banks to be assessed under a strategic plan, which must be developed with public input and receive regulatory approval. Strategic plans enable banks to customize their CRA responsibilities to better reflect their communities, product offerings, business strategy, and expertise.

We are pleased that the proposed rule would retain the strategic plan option. The ability to develop a strategic plan will be particularly important if the agencies do not further refine the proposed performance measures to reflect the diverse business models of banks and the unique characteristics of their communities. In addition to preserving strategic plans, regulators should take care not to discourage (directly or indirectly) banks from pursuing a strategic plan. In some cases, regulators have implied that community banks should not submit strategic plans because this option was intended for larger or non-traditional institutions. However, any bank—and its community—could benefit from the certainty and flexibility of design that strategic plans provide. Therefore, we recommend that regulators make improvements to the strategic plan approval process to make the option *more* accessible. Below are our recommendations for improving the strategic plan framework.

First, the final rule should maximize strategic plan flexibility. The proposal does not address whether banks submitting strategic plans would be required to adhere to the general framework established by the proposed performance standards (i.e., the CRA Evaluation Measure, distribution tests, and a Community Development Minimum). Regulators should clarify that banks requesting strategic plans will not be confined to the performance measurement framework applicable to banks subject to the General Performance Standards. The strategic plan process should allow banks to establish CRA performance goals that are fully customized to their institution. Restricting strategic plan applicants to only "turning the dials" on the three prongs of the General Performance Standards would not be consistent with the spirit of the strategic plan option and would limit its effectiveness.

Second, the agencies should help banks understand how to draft a strategic plan. Collectively, the agencies have not provided guidance regarding the development of a strategic plan or on the adequacy of measurable goals. This approach does not facilitate the development of strategic plans that will receive regulatory approval. We appreciate the guidance contained in OCC Bulletin 2019-39 and request that the agencies incorporate this information into an interagency CRA modernization effort.

Third, the final rule should clarify the role that public comments will play in the approval of a strategic plan. The proposal would require that banks post proposed strategic plans on their website and allow for public comment. It would be helpful for banks and the public to know what topics are in scope and how they would be weighted. The agencies must ensure that strategic plans do not become a *de facto* community benefits agreement.

Fourth, the final rule should reduce the timeline for approvals, extensions, and amendments. The proposed 9-month timeframe for regulatory approval of strategic plans is too long and should be shortened to 90 days. The current regulatory framework provides a 60-day approval period. If banks determine that the proposed General Performance Standards are too rigid for their institutions, demand for strategic plans may increase, which could strain the ability of the agencies to respond within the existing 60-day time period. However, increasing the agency response to 9 months is not reasonable. This time period would create substantial uncertainty for institutions pursuing the strategic plan option and is incompatible with the goal of making the strategic plan option more accessible. The proposal would also permit regulators to extend the approval period for an additional 90 days for good cause. This is too long and should be shortened to 30 days. We further request that regulators approve amendments to strategic plans within 90 days. Finally, a strategic plan that is up for renewal should normally be approved absent significant change in a bank's strategy or business model.

Fifth, we note that the proposed annual data reporting requirements create risk for strategic plan banks that does not exist today. Banks operating under strategic plans would be required to collect and file the same data as banks operating under the General Performance Standards. We are concerned that if the data of a strategic plan bank becomes public, consumers of that data could misinterpret that information because they would not be aware that the bank is operating under a strategic plan and would lack the appropriate context. Therefore, we request that any such data release specify whether a bank is operating under a strategic plan.

Finally, we request that regulators grandfather existing strategic plans. If the agencies adopt new CRA regulations, banks with existing strategic plans should not be required to adopt a new strategic plan until the existing plan expires.

G. Revise the CRA Ratings System

As described below, we have several concerns with the proposed CRA ratings system and recommend that the agencies develop a ratings framework that accounts for the nuances that are inherent to CRA and the work that banks do in communities with varying needs. Any CRA ratings system must be flexible and avoid using pass/fail components.

1. Articulate the Rationale for Establishing Specific Performance Benchmarks

Any final rule should explain the agencies' rationale in setting the proposed benchmarks for the three tests comprising the General Performance Standards. In doing so, the agencies should provide sufficient data to support the selection of these proposed thresholds, particularly in light of the scope of the collective changes contemplated by the proposal, including revisions to qualifying activities, haircuts on mortgages, changes to the definition of small business/small farm lending, etc.

In fact, the preamble seems to acknowledge that adjustment of the benchmarks will be necessary due to the lack of data. Accordingly, an explanation of the regulators' reasoning would provide important context for banks and other CRA stakeholders as well as important historical material for future regulators who may contemplate the need to adjust the benchmarks.

Along these same lines, it would be helpful to understand the agencies' rationale in establishing the threshold for an Outstanding rating (11 percent of Retail Domestic Deposits) relative to the threshold for obtaining Satisfactory rating (6 percent). A bank rated Satisfactory would have to nearly double its CRA activities to obtain an Outstanding rating. For these reasons, we urge the agencies to create additional variations within the ratings system for all three components of the General Performance Standards that parallel the ratings system that exists today. For example, the agencies could institute additional benchmarks for high Satisfactory, Low Satisfactory, etc. for the individual components of the exam.

2. Develop a Ratings Framework that is More Flexible

Under the proposal, a bank could not receive a presumptive rating of Satisfactory or Outstanding at the bank level unless the bank also received that rating in a significant portion of its assessment areas and in those assessment areas where it holds a significant amount of deposits. The agencies request comment on how the term "significant portion" should be defined and suggest thresholds of perhaps 50 percent or 80 percent.

As discussed above, we have s serious concerns regarding the pass/fail aspect of the Retail Lending Distribution Test and the Community Development Minimum. These concerns impact our view regarding how the term "significant portion" should be defined. By nature, CRA is nuanced and does not lend itself to a rigid pass/fail approach to the Retail Lending Distribution Test or the Community Development Minimum. A bank's CRA performance must account for several factors that vary from bank to bank and community to community, including, but not limited to, the bank's lines of business, competition in assessment areas (from banks and nonbanks), opportunities for community development, local economic conditions, as well as the broader economy. As a result, poor performance on one element of the CRA performance measures should not automatically result in a rating of Needs to Improve for the entire assessment area.

If the ratings system were more appropriately graduated, it might be possible to have a higher standard regarding what constitutes satisfactory performance at the bank level. However, if the agencies are unwilling to establish a more graduated rating system for the component tests, the term "significant portion" should not constitute more than 50 percent. While we generally support the establishment of objective performance measures, we are concerned that an inflexible and untested system of metrics and benchmarks would create significant unintended consequences.

3. Clarify How Bank-Level Ratings Would Be Calculated

Under the proposed framework, a bank would receive a CRA rating for each assessment area as well as an overall CRA rating at the bank level. Our members have questions regarding the practicalities of how the assessment area ratings would come together into an overall bank-level rating. Therefore, we request that any final rule provide multiple examples of how ratings would be determined at sample banks.

For example, we have questions regarding how the "significant portion" standard would be applied. Would the assessment areas where a bank holds a significant portion of deposits have to be ordered according to the percentage of deposits that each assessment area contains? In other words, would those with the highest percentage of a significant amount of deposits be counted first? Or would any combination of assessment areas that have an Outstanding rating and that hold a significant amount of deposits suffice?

4. Explain How Performance Context Would Be Factored into CRA Ratings

While quantitative performance measures could go a long way to providing needed certainty regarding regulatory expectations, it is unclear how the proposed CRA benchmarks and associated ratings system would incorporate performance context, or how performance context would be used to adjust a bank's presumptive CRA rating. Any final regulations should explain clearly how banks can provide, and how regulators will analyze, information regarding relevant factors such as effort, community needs, local economic conditions, and business model considerations.

At the same time, our members are concerned that the proposed framework could result in an agency downgrading a bank's CRA rating even though the institution meets all of the quantitative performance measures. If this were to occur, it would defeat the purpose of establishing objective performance measures. Therefore, we request that the agencies specify that performance context factors could only be considered as additive to a bank's overall CRA score.

Similarly, we suggest regulators clarify that any institution that obtains a rating of Satisfactory or better on its most recent CRA examination and is seeking regulatory approval of a merger, acquisition, or other application will not be subject to regulatory delays caused by negative community group comments on a proposed application. Delays in such circumstances would be incompatible with the concept of establishing a quantitative system of performance benchmarks.

5. Codify PPM 2018-23 Regarding Impact of Illegal and Discriminatory Credit Practices

Regulators take CRA ratings into consideration when evaluating a bank's application to engage in certain activities, such as opening branches, relocating the main office or a branch, and making acquisitions. However, the FDIC and the Federal Reserve have not issued guidance or policy statements describing how an unsatisfactory exam rating will impact an agency's decisions on such applications. Similarly, these agencies have not articulated how compliance issues involving laws or regulations other than CRA will impact a bank's CRA rating. The OCC's 2018 additions to its policies and procedures manual describe the factors that the agency will consider in these types of situations. This OCC issuance illustrates the type of helpful clarifications that agencies can provide in this regard.

Regulators should develop consistent policies clarifying that CRA will not be used as a general enforcement tool. Moreover, the agencies should describe the factors that they will take into account when considering applications of a bank with a rating of Needs to Improve and should clarify that such a rating will not be a *de facto* bar to opening new branches or engaging in other activities requiring regulatory approval.

IV. The Proposed Data Requirements Are Not Compatible With Bank Systems and Would Create Significant, Ongoing Burden

The proposal would make monumental changes to rules for CRA data collection and reporting (*See* Appendix A, Summary of Data Requirements Under the Proposed Rule).[17]

The agencies explain that these data would help them better understand a bank's CRA activity and "better measure, assess, and understand CRA activity across various areas and across the industry over time."

[17] The proposal would require all banks to collect and maintain data on balances and the location of their retail domestic deposits. For lending, banks subject to the general performance standards would be required to collect and maintain data on each "qualifying" retail loan, including mortgages, consumer loans, small loans to businesses and farms, and community development loans. Data on non-qualifying mortgage and consumer loans would also be required to be collected and reported to the agencies. Home mortgages would be defined by reference to the Call Report instead of HMDA, as would small loans to businesses and farms and consumer loans.

Banks subject to the General Performance Standards would also be required to collect and maintain data on each community development investment and service. For community development investments, and for retail and community development loans, banks would collect and maintain data on balances at certain points in time. Banks would also collect and report certain aggregate data to their prudential regulators annually, including the dollar value of the bank's qualifying activities – loans, investments, and services, and their average quarterly Retail Domestic Deposits. Banks would perform their own assessments using their data and report the results to their regulators.

The agencies go on to say that such reporting would improve the speed and efficiency of CRA examinations and would "bring greater predictability to agency actions that consider CRA performance."[18]

Although the agencies acknowledge that the proposal would impose one-time costs on banks, particularly for smaller banks, they believe that the costs will decrease over time through development and use of automated systems. They also state that most of the data are already available and the rest could be obtained without undue cost. Finally, the agencies believe the benefits of the proposal, including certainty for what activities count, would offset some, if not all, of the costs of the proposed rule.

We fundamentally disagree with this conclusion based on regular and extensive conversations with our members regarding the proposal. In addition to these discussions, we conducted a very informal survey of our members, asking questions about the costs that would be involved in the data collection.[19] We describe some of the responses under the relevant headings below.

Banks of all sizes believe that the proposed data requirements would create substantial burdens. The proposal does not reflect the manner in which bank systems are structured, nor does it adequately address the costs that would be associated with implementing the new data requirements. We are particularly concerned about the proposal's impact on banks with more than $500 million in assets that are classified as Intermediate Small Banks today, but would be subject to the proposal's General Performance Standards.

A. The Balance Sheet Approach is Incompatible with the Structure of Bank Systems

One of our primary concerns is that the proposal does not recognize that the required data generally do not reside in a single system within a bank. In addition, banks' systems are not set up to retain loan-level information in monthly and quarterly intervals. Members noted that although the proposal refers to the Call Report for much of the lending data, the Call Report line items are created from multiple data feeds from several lines of business or departments across a bank. Some of the data required under the proposal will reside in core systems; other data may be in loan origination and servicing systems, and most banks have multiple loan origination systems (e.g., banks may use one loan origination system for mortgages and another for auto loans). Similarly, banks may use different systems to service different types of loans. For example, a mortgage servicing system may not be used to service credit card accounts. None of these systems are integrated, requiring hours of labor to identify where various data elements are housed, extract the data, and combine it in a single report or file.

For example, one member with assets over $50 billion described the steps for data collection on loans, using the Call Report definitions in the proposal. These would be new procedures; the bank does not pull data this way today.

---

[18] 85 FR at 1209.

[19] Many banks did not have time to calculate and provide firm cost estimates, as most were still working through all parts of the proposal and trying to identify all of the systems they would have to tap to collect the data. Those who provided rough estimates of hours needed to collect and retain the data on an ongoing basis identified hours ranging from numbering from the hundreds to the thousands.

1. Identify accounts tied to each required line of the Call Report;
2. Identify the loan systems;
3. Gain access to the loan systems and pull all of the records containing the identified accounts;
4, Geocode loans based on this pool of data;
5. Identify borrower income;
6. Pull the CRA reportable loans based on geocoding and borrower income;
7. Store values monthly; and
8. Calculate monthly average at end of each year.

Members also emphasized that, even if they already have the required data, more effort will be needed to scrub it for accuracy. Data validation for currently required CRA and HMDA data collections is a significant and ongoing effort, and once validated, data must be stored off a bank's operating system so that it cannot be overridden or modified. The proposal would require banks to take these same steps to verify the data integrity of *all* categories of loan data that would be required under the proposal.

B. There Are Several Practical Challenges in Collecting and Maintaining Retail Domestic Deposit Data

The proposal would require all banks to collect and maintain data on the value of each Retail Domestic Deposit account and the physical address of each depositor as of the last day of each quarter. A bank would use this depositor address information to geocode its deposits to determine whether it is required to delineate a deposit-based assessment area. Examiners would use a bank’s retained data to validate the institution’s delineation of any deposit-based assessment areas. [20]

Banks with less than $500 million in deposits expressed significant concern with the burden of collecting, geocoding, and maintaining deposit data. Some of these banks have only one person devoted to CRA and HMDA, along with general regulatory compliance. One bank with assets between $250 million and $500 million indicated it would have to hire at least one full-time employee (FTE) to collect the data and geocode deposits. Another small bank stated it would require two FTE’s a year and about 4,000 hours per year. Several banks stated that they could not estimate how many hours it would take but stated they would need to add staffing. They also expressed general concerns about the hours needed to manually geocode records that fail the automated systems.

Quarterly Value of Deposits**.** The requirement to capture the quarterly value of deposits would impose costs on banks, as they must collect and retain the value of each deposit account on the last day of each quarter. Because the proposal defines Retail Domestic Deposits as excluding brokered deposits, banks would need to identify those deposits and back them out of the quarterly deposit value. The value of each account as of the end of the quarter must be captured, validated, retained and not modified during the 3-

[20] §__.19(g); §__.20; §__.23(g).

or 5-year exam cycle. Generally, that means moving the data out of core systems and into another system that is secured. We believe most banks are not currently set up to do this for deposit data.

Physical Addresses. While banks have much of the deposit data in their systems, the proposal would impose significant costs on banks because it would require banks to capture and retain certain data. A bank must capture a depositor's new address each time the depositor moves, and then retain the addresses as of the last day of each calendar quarter. For almost all banks this will be an expensive and time-consuming exercise, especially for banks with millions of deposit accounts.

In addition, the proposal appears to require a street address for each depositor. Banks do not have street addresses for many older accounts on their books. Although banks have been required to obtain a street address for each new depositor since the enactment of the USA Patriot Act in 2001, accounts opened before 2001 were grandfathered and may only have P.O. Boxes. Some of our members told us they may have thousands of accounts with only P.O. Boxes. To comply with the proposed rule, these banks would have to identify those accounts and get a street address for each depositor.

Geocoding Deposits. In discussing deposit data collection with our members, several noted that to determine whether they receive 50 percent or more of their Retail Domestic Deposits from outside their facilities-based assessment areas, and then determine whether at least 5 percent are concentrated in a given geography, they will have to geocode their deposits. This raises a host of burdensome issues. While some banks told us that they currently geocode deposits, many small banks do not have the experience or software to geocode, as they do not report data under CRA or HMDA. Still others have geocoding systems, but even those above the small bank threshold stated that geocoding deposits would be very burdensome, especially in rural areas.

Geocoding deposits requires a street address. As noted, several banks said they have older accounts – these number in the thousands for some banks - that have only P.O. Boxes, which cannot be geocoded, and will have to try to get street addresses. In addition, banks are particularly concerned about geocoding depositor addresses to the census tract level. Based on their experience with CRA and HMDA geocoding, more errors occur when geocoding tools attempt to locate the census tract, and banks must engage in manual research to get the correct census tract location. A small bank informed us that it would be a "massive undertaking" to geocode deposits by census tract, stating:

> We would have to manually research each address and then transfer the code to our core system unless we purchased software. If we could do this by county, it would be easier to figure out which zip codes correspond to each county and then use Excel to figure percentages.

Even geocoding deposits to the county level would be difficult, according to some banks. A bank with assets of $1 billion to $3 billion explained that:

> Our assessment areas are still primarily rural and we have several counties where zip codes may overlap into the neighboring county. These are consistently geocoded incorrectly because our system geocodes it based on the county where the majority of the zip code lies when it cannot find the exact address. We have to manually change all of these after researching the correct location. I think we could easily have to add one person who primarily handles this task.

Another bank with assets of $1 billion to $3 billion described how they would geocode deposits:

> [We would] export data from core software regularly in order to capture any address changes that occur, import to our software, geocode records, manually geocode any records that cannot be automatically matched. All records that have to be manually geocoded would require comparisons to maps, which is a challenge in our rural areas due to many county and private roads. Once we have found the correct location and geocoded it, we would create a PDF of the FFIEC output map and save the document to our imaging system for data integrity purposes.

C. Collecting and Maintaining Data on Qualified Activities is Complicated and Costly

Collecting and maintaining data on qualified activities is substantially more complex than simply entering a few commands on a bank's existing core system. The frequency of pulling the data, capturing and storing it, ensuring the integrity of the data, and conducting the requisite geocoding will create substantial costs for banks—both initially and on an ongoing basis.

1. A "CRA Eligible" Flag Would Not Address the Primary Burden Associated With the Proposed Data Requirements

As an initial matter, we want to address the notion that core system providers can reduce the data collection burden by creating a CRA eligible flag in their systems. We understand that the OCC has held discussions with banks' core service providers about such a flag. The OCC has indicated that during an exam, examiners would select a sample of flagged activities in a bank's core system to validate the data.

While we welcome the OCC's efforts to streamline data collection, validation, and examinations, the CRA eligible flag in a bank's core system will not address the primary burden associated with the proposed data collection requirements. As explained above, the data required does not reside entirely in a bank's core system – instead, it is housed in several different systems, including but not limited to loan origination systems and servicing systems. To comply with the proposal's data collection requirements, banks would have to identify where all the required data reside and then build processes and systems to extract the data, validate them, and store them in a secure system until the examination. In addition, our members noted that loan officers and similar staff do not have the requisite knowledge to flag activities as qualifying. Compliance and audit staff will have to verify that each flagged activity is a qualifying activity.

2. The Data Requirements for Mortgage, Consumer, Small Business/Small Farm, and Community Development Loans Would Be Significant

Under the proposal, banks subject to the General Performance Standards would have to collect and maintain the following information on qualifying loans until the bank's next CRA exam:

1. Loan number;
2. Loan type;
3. Date of, as applicable:
    - Origination, if the bank originated the loan;
    - Purchase, if the bank purchased the loan; and
    - Sale, if the loan is a retail loan and the bank sold it within 90 days of originating it
4. Whether the loan was originated or purchased;
5. The loan amount at origination or purchase;
6. The outstanding dollar amount of the loan, as of the close of business on the last day of the month, *for each month* that the loan is on-balance sheet;
7. The loan location and the code for the:
    - MSA
    - State
    - County/county equivalent, and
    - Census tract

    The income or revenue of the borrower; and
8. The criteria the loan satisfies to be a qualifying activity, or that it is on the illustrative list and whether it serves a particular assessment area, if applicable.[21]

In general, our members believe this data collection burden would be significant. A member with assets of $1 billion to $3 billion described the compliance burden for collecting data on qualified loans in this way:

> All loan staff would need to be retrained on the new requirements, software would need to be analyzed to determine if updates are necessary, additional staff would be required to perform data integrity scrubs due to huge increase in volume and the huge maintenance burden associated with file cleanup as reportable loans fall off the balance sheet when they are paid off. As it is, two full- time and one part-time employee are responsible for data validation scrubs for approximately 3,000 HMDA and CRA records. The added burden of validating data of consumer loans would add at least three FTEs to our staff, if not more. Policies and procedures would need to be developed to address all areas of the bank affected by the changes – front line lending staff, loan processing staff for both mortgage and consumer, and compliance at a minimum.

A larger bank with assets between $10 million and $50 billion stated that the loan data collection would pose an "enormous workload" requiring it to hire 6 to 10 people or spend an additional $300,000 per year. A bank with assets over $50 billion stated that it would have to collect data from source systems, geocode

[21] §__.19(c)(1). This extensive list of data requirements is stands in stark contrast to the data requirements that Large Banks (banks with over $1.305 billion in assets) must report today. These institutions are subject to a lending test that evaluates the bank's home mortgage, small business, small farm and community development lending. Large banks are required to collect and maintain certain data on each loan to small businesses and small farm. These data include the loan amount, loan location by census tract, and whether the borrower's gross annual revenues were $1 million or less. Large banks are also required to report aggregate information about their small business and small farm lending, and community development loans, to their prudential regulator. The FFIEC publishes each large bank's aggregate data along with tables that show all reported CRA lending by State, County, and MSA.

loans via a third party vendor, and review samples for accuracy. The bank estimated that it would need 5 new hires as well as new reporting systems, data analysis, and risk oversight.

Data on Loan Balances**.** Collection and maintenance of monthly loan balances will impose burdens on banks. Even banks that are currently CRA and HMDA data reporters do not currently collect and maintain monthly balance information for each loan, as required by the proposal. One banker told us that,

> To ensure that balances are connected to the other loan level data required, we would want them to reside in the same system. This would require systems updates and functionality that we do not currently have. Today, we send records to a vendor to append geocoding to the records. These systems work to record one-time events but not ongoing balance information.

A bank with assets between $1 billion and $3 billion stated it would have to export loan data on a monthly basis from three loan origination systems, import the data into software, geocode it and prepare it for data integrity scrubbing. Another bank with assets between $10 billion and $50 billion discussed the difficulties of capturing accurate monthly loan balances:

> The timing of posting new loans to the core versus the date of the credit agreement will also be a consideration, as a new origination may not be posted to the core and reflected in the month end balance during the month it is originated. Effective dating of loan payoffs and payments will be a factor in the month end balances as well. A tracking system will need to be developed in order to maintain the balance and additional quality control processes will need to be put in place.

Mortgage Loans. The proposal defines mortgage loans by reference to the Call Report. Making changes to collect and retain mortgage data based on the Call Report will be costly, yet the proposal does not present a clear rationale for the change. As noted, data that feeds into the Call Report comes from multiple systems in a bank, and banks will have to identify those systems and build a way to collect all the mortgage data for CRA purposes. For banks that report HMDA data, it may be somewhat simpler for a bank to pull some of the data from its HMDA report. However, data on monthly loan balances will have to be pulled from other systems.

In addition, we note that the proposal would require banks to collect and maintain data on the number of mortgage and consumer loans originated and the number of such loans made to LMI borrowers, by county.[22] For all banks, these would be new data collection requirements for consumer loans. For banks that are not currently HMDA reporters, these would be new data requirements for mortgage loans. Such banks tend to be small and to operate in rural areas, and are already struggling to contend with extensive regulations that apply to mortgage lending.[23]

---

[22] §__.19(c)(3).

[23] For mortgage loans, the current CRA rules do not require data reporting. Instead, banks subject to HMDA data reporting provide their data to examiners for analysis. Banks not subject to HMDA may, but are not required to provide mortgage loan data to examiners. A bank's consumer loans are analyzed in the lending test only if consumer lending is a substantial majority of the bank's business. In addition, a bank may opt to have its consumer lending considered, if the bank has collected and maintained data for each consumer loan, including loan amount, loan location to the census tract, and the borrower's income.

Consumer Loan Data. Our members are especially concerned about the burden of collecting data on consumer loans, which include auto loans, credit cards, revolving lines of credit, and other consumer credit products. Although the proposal refers to certain Call Report lines to define consumer loans, the data feeding into the Call Report comes from several places. The products listed in the proposal as consumer loans are generally separate lines of business, and the information the proposal requires sits on several different loan origination and servicing systems that are not integrated. Banks will have to expend significant resources to extract the necessary data from these various systems, harmonize it, and validate it.

The proposal would require banks to geocode consumer loans, something that is not required under current rules. As discussed previously, banks may lack complete address information for all loans. One member stated that it explored geocoding consumer credit cards and found that between 3-5 percent of loan records had to be manually researched. Geocoding may be particularly costly for smaller banks serving rural communities, as discussed in our comments regarding deposit data collection. Some members noted that for HMDA and CRA data they find that about 4-5 percent of addresses must be manually geocoded. For members with thousands or millions of consumer loans, the prospect of geocoding is daunting.

In addition, the proposal would require banks to collect data on borrower income. While banks generally collect some data on borrower income in the application process for consumer loans, the data are not collected for regulatory purposes. Data validation would be a new cost, both one-time and ongoing, for all banks with assets of $500 million or more.

Community Development Loans. The proposal would require banks to geocode the location of community development loans, which can be difficult to pinpoint as community development loans may serve multiple locations. The proposal provides that the location of a community development loan is the address of a particular project if the bank can document that the funding was allocated to that particular project. However, if the bank cannot document that the funding was allocated to a particular project, the proposal provides a complex method for allocating the loan's location across several areas. The funding is to be allocated across all of the bank's assessment areas and other geographic areas, "treating the bank's deposits in the region served by the activity as if they were all of the bank's deposits . . . ."[24] This aspect of the proposal is highly confusing. The agencies should, at a minimum, clarify that the bank would or would not be expected to list all of the various geographic areas for the particular loan.

Small Loans to Businesses and Farms**.** The proposal would require reporting by county on the number of small loans to businesses and farms, the number made in LMI census tracts, and the number made to small businesses or small farms.[25] While these data can be extracted from the data on qualifying activities discussed above, this will all be new for Intermediate Small Banks that would be above the proposal's $500 million small bank threshold, and currently do not report CRA data and may not have a system in place or trained staff.

[24] §__.21(b)(2).
[25] §__.19(c)(4) and (5).

3. There Are Difficulties in Geocoding Bank Investments

For community development investments, the proposal would require a bank to collect and maintain the following data:

1. A unique number to identify the investment;
2. Investment type;
3. The date of investment;
4. The outstanding dollar value of the investment as of the last day of month, for each month the investment is on balance sheet;
5. The value of the monetary donation, or in-king donation, as appropriate;
6. The investment location by
    - MSA;
    - State;
    - County or county equivalent; and
    - Census tract
7. The criteria the investment satisfies to be a qualified activity, or that it is on the illustrative list of qualifying activities.

As discussed for loan data, we are concerned about the burden and cost of identifying all of the information required for investments that lies in different systems, and in geocoding and tracking the dollar value outstanding as of the end of each month. Geocoding is particularly difficult for investments, however, because an investment may not have a single identifiable "location." The proposal provides that the location of a community development investment is the address of the particular project that is funded, however, if the bank cannot identify a particular project then it must allocate the investment across all of its assessment areas *and* areas outside its assessment areas where the bank collects deposits. In general, this is another example of the proposal's multiple layers of complexity. At a minimum, the agencies should clarify whether the bank would be expected to list all of the MSAs, states, counties, and census tracts over which it believes the investment should be allocated.

4. The Data For Qualifying Services Would Be Costly And Would Pose Geocoding Challenges

The proposal would require banks to collect the following data on community development services:

1. The dollar value of the service;
2. A description of the qualifying activities;
3. The date the service was performed;
5. The service location by:
    - MSA;
    - State;
    - County or county equivalent;
    - Census tract; and

6. The criteria the service satisfies to be a qualified activity, or that it is on the illustrative list of qualifying activities.

Our members provided varying estimates of the cost of collecting and maintaining service hour information. One bank with assets of $500 million to $1 billion estimated software costs of $12,000 annually, based in part on the cost of geocoding, and the need to hire an additional person with annual wages of $35,000, plus $10,000 for additional time from existing employees. A bank with assets of $3 billion to $10 billion stated that it would cost about $105,270 for two FTEs to calculate the value of services and geocode addresses. A bank with assets of $10 billion to $50 billion stated that calculating and retaining dollar figures will add at least 100 staff hours or the purchase of software to automate the process. Still another bank in the same size range said they received a quote of $25,000 per year to provide a system to collect and maintain service hours. A bank with over $50 billion in assets stated that it would cost $50,000 per year to collect data on service hours.

In addition to these cost estimates, we also have concerns about geocoding that are largely the same as for community development loans and investments. The location of a service may not be simple to identify, and geocoding will be subject to the same problems noted for loans and deposits.

D. Banks Should Not Be Required to Collect And Report Data on Non-Qualifying Mortgage and Consumer Loans

The proposal would require banks to collect and report data to the OCC or FDIC on non-qualifying mortgage and consumer loans. The following data would be required on each non-qualifying loan:

1. Loan number
2. Loan type
3. Date of origination
4. The loan amount at origination
5. The loan location and:
    - MSA
    - State
    - County or county equivalent; and
    - Census tract

As discussed, our members have serious concerns about the burden and cost of collecting data on consumer lending, including geocoding such loans and providing income information that meets regulatory standards. These concerns are discussed above, and the agencies should consider them applicable to the data collection and reporting for non-qualifying loans as well. However, more importantly, we strongly object to having to report data on non-qualifying loans. This requirement would add unnecessary burden to what is already a very costly and complex proposal.

E. The Impact to Community Banks Would Be Particularly Acute

We generally support the agencies' stated goals of improved CRA assessments and better stakeholder dialogue, but we have serious concerns about the burden the new data collection rules would impose on all banks, particularly community banks. Although the current rules require some data collection and reporting, banks with assets under $1.305 billion are not required to collect and report CRA data. Thus, the proposal's data collection requirements would particularly impact banks with assets over $500 million and under $1.305 billion. In addition, banks under $500 million will have to bear the burden and costs of collecting data on retail deposits.

The agencies did not provide an estimate of the one-time costs of the data collection burden. In their regulatory flexibility analyses, they discussed some of the *ongoing* costs for small banks. The FDIC stated that the "recordkeeping, reporting, and disclosure burden" for each small, FDIC-supervised bank would be 1,030 hours per year, and the annual cost related to labor would be $93,000 per year. For each bank subject to the General Performance Standards, the FDIC estimated that the annual burden for recordkeeping, reporting and disclosure would be 7,631 hours per year and the annual cost related to labor would be $665,802.45.

In addition, the FDIC noted that the proposed increase in the small business loan origination cap from $1 million to $2 million would cause small banks to "incur some regulatory costs" to change their systems. The OCC stated in its regulatory flexibility analysis that small banks collect most of the deposit data: "data collection and recordkeeping requirements related to deposits would be limited to data that small banks, for the most part, already collect and maintain."[26]

The agencies did not provide detail on how they arrived at the hours and dollar figures for ongoing recordkeeping and data collection. Based on conversations with our members, it appears that the FDIC's estimates of staffing needs are the minimum amount needed, and that needs will vary greatly according to bank size.

As a general matter, banks that are currently Intermediate Small Banks do not currently collect and report data under CRA and may not be HMDA reporters. Intermediate Small Banks with assets of $500 million and less than $1.305 billion will be subject to the data collection requirements but are not collecting and reporting data on small business and small farm loans, so they will not have the systems and software to needed to collect and maintain these data. Once they acquire the systems, they will have to expend resources to train staff on data collection, validation and maintenance, and on system upgrades. They will have higher one-time costs than other banks, and these costs will not be insignificant. For these reasons, we reiterate our recommendation that both Small Banks and Intermediate Small Banks be able to elect whether to be examined using the existing CRA framework or under any new General Performance Standards.

F. Provide Adequate Time to Scrub the Data

The proposal does not indicate when banks must report data to the agencies. The current rules require CRA data reporting by March 1 of the calendar year immediately following the calendar year the data were collected. This three-month lag gives banks time to scrub data before submitting it. It will be critical to afford banks time for data scrubbing before reporting – or an examination – takes place.

[26] 85 FR at 1235.

G. Data Reports Should Protect the Privacy of Borrowers and Banks

The agencies state that "certain information" would be published to allow stakeholders to detect trends and monitor banks' CRA performance.[27] The proposal states that the agencies would publish a bank's individual disclosure statement showing the quantified value of all qualifying retail loans, community development loans, and community development investments.[28] In addition, the agencies would publish aggregate reports of certain lending by each county, adjusted for privacy of the borrower or the bank, showing the number of mortgage loans, the number of consumer loans for each product line, the number of small loans to businesses and farms, and where appropriate, the number of loans made to LMI borrowers or in LMI census tracts.[29]

We support the agencies' decision to adjust the disclosure reports to protect the privacy of borrowers and banks. Banks value the trust their customers place in them to keep their data private, and our members want to retain that trust. If bank customers can be re-identified in public data sets, banks could face legal and reputational backlash. We strongly urge the agencies to retain these important protections in the final rule.

V. The Proposed Assessment Area Concepts Warrant Further Study

The manner in which modernized CRA regulations implement the statute's concept of "community" will have significant implications for banks and communities. We appreciate the agencies' recognition of the need to update the assessment area concept to take digital lending channels into account, while retaining a focus on the communities in which bank branches are located. While we agree that the CRA framework should reflect the proliferation and consumer use of online and mobile delivery channels, we have significant concerns regarding the deposit-based assessment area as proposed.

In enacting CRA, Congress established that banks must demonstrate that their deposit facilities serve the convenience and credit needs of the communities in which they are chartered to do business. Because the CRA statute does not define "community" regulators created assessment areas to define the geographic locations that serve as the basis for a bank's CRA evaluation. Today, the CRA regulations require that a bank's assessment area include the institution's main office, its branches, and its deposit-taking ATMs, as well as surrounding geographies in which the institution has originated or purchased a substantial portion of its loans. This definition was developed when banking was based largely on physical branch locations as the primary means of delivering products and services.

Today, branch traffic is decreasing as customers utilize direct deposit, remote deposit capture, peer-to-peer transactions, and online/mobile banking to conduct deposit-related transactions. Customers are also using specialized bank apps to assist with household and small business cash management. On the loan

[27] 85 FR at 1227.
[28] §__.24(a).
[29] §__.24(b).

side, online lending platforms enable customers to submit loan applications and to obtain approvals without ever setting foot in a branch. The emergence and growth of the financial services technology sector—particularly in the lending and payments arena—further illustrates consumer appetite for digital financial products and services.

While branches will continue to play a role in the delivery of financial products and services and will remain a channel for serving customers' banking needs, that role will continue to shrink and be replaced by technological alternatives. Today, branchless banks engage with their customers exclusively online and hybrid banks have a few branches but take deposits and make loans in several states or even nationwide. Regulators should update the CRA framework to reflect the proliferation and consumer use of online and mobile delivery channels.

To address concerns that the existing CRA regulations place too much emphasis on a bank's physical locations, the proposal would establish two types of assessment areas:

- Facility-Based Assessment Area. A bank must delineate a facility-based assessment area encompassing each location where the bank maintains a main office, a branch, or a non-branch deposit-taking facility as well as the surrounding locations in which the bank has originated or purchased a substantial portion of its qualifying retail loans.
- Deposit-Based Assessment Area. In addition, a bank that sources 50 percent or more of its retail domestic deposits from outside its facility-based assessment area(s) would be required to designate deposit-based assessment areas that include the non-overlapping geographies in which the bank sources 5 percent or more of its Retail Domestic Deposits (*See* Section III. of this letter for a discussion of Retail Domestic Deposits).

A. Analyze Assessment Area Changes Together With the Proposed Performance Measures

Revisions to the assessment area concept and the proposed performance measures would constitute significant changes to the way that banks administer and are evaluated on their CRA programs. Together, they would revolutionize CRA regulation. Prior to issuing a final rule, regulators should evaluate the *combined* impact that these reforms would have on banks and communities. The preamble to the proposal does not describe the extent to which the agencies analyzed the cumulative aspect of the proposed changes.

B. Revise the Minimum Geography Required for Delineating Facility-Based Assessment Areas

The proposal would require that facility-based and deposit-based assessment areas be no smaller than a county. This requirement would curtail the ability of banks to adjust their assessment areas based on the area that they can reasonably serve. Some counties are quite large and can encompass significant geographic areas that would be unreasonable for some banks to serve. The preamble does not discuss why this change would be required; however, we presume the agencies proposed this approach with the goal of standardizing CRA performance evaluations and associated peer data. We urge the agencies to not to adopt this minimum requirement in any final rule.

We also reiterate our concerns regarding the challenges associated with sourcing community development loans and investments in some areas and the impact those circumstances could have on a bank's ability to meet the proposed Community Development Minimum. One way to alleviate this challenge would be to permit (but not require) banks to select a larger assessment area for community development purposes.

C. Re-evaluate the Concept of Deposit-based Assessment Areas

While we appreciate the agencies' work to address the digital revolution and its impact on banking, we have several concerns with the proposed deposit-based assessment areas.

First, the agencies do not discuss why they selected the 50 percent/5 percent thresholds, how many banks would be affected by this approach, or how the number of impacted banks is likely to evolve based on deposit trends. Much of the discussion and debate regarding the nexus between the digital revolution and CRA has focused on the rise of well-known internet banks and oft-discussed regions that have become CRA hot spots. However, as a practical matter, *all* banks are migrating to the digital channels that consumers demand. Increasingly, bank customers are shopping less based on physical location and are placing a higher value on interest rate and the convenience of technology-driven service. The agencies should explain how any final rule would take these industry and deposit trends into account.

In particular, the agencies should analyze how updated assessment area requirements would impact banks that have an established branch network but are growing based on deposit relationships generated via digital channels. For example, we have heard from members whose physical locations are limited to a handful of states on the East Coast, but anticipate that they would have to add assessment areas in Texas and California. The potential for these situations illustrates the need for the agencies to ensure that updates to the assessment area construct will be practical and manageable for all institutions. Furthermore, as discussed in Section III. of this letter regarding the definition of Retail Domestic Deposits, over the years, new funding mechanisms have evolved that allow banks to generate deposits without marketing to specific customers or communities, which further lessen the geographic ties on which CRA has historically been based. CRA modernization should take these developments into account when defining the meaning of "community" and a bank's obligation to it.

Second, the deposit-based assessment area concept would focus CRA activities in population centers that are typically already well-served by banks, thereby reinforcing—not reducing—the CRA hot spot problem. Deposit-based assessment areas will add significant CRA obligations in these areas without any regard for levels of community need or whether there are a sufficient number of viable community development opportunities. This additional CRA activity could crowd out local banks, including smaller banks, who have to meet their own local CRA obligations.

Relatedly, the proposal would not address the CRA desert problem because banks will not have large concentrations of deposits in areas that could benefit from additional CRA loans and investments, such as rural areas, Indian Country, or areas with persistent poverty. A modern CRA framework should provide meaningful incentives that encourage banks to engage in CRA activities in economically challenged locations that are outside of their assessment areas. Therefore, the agencies should provide a multiplier—perhaps 3x or a 4x—to incentivize banks to reach into these regions. The agencies could also consider requiring that banks receive a rating of Satisfactory or better on the prior exam in order to count out-of-assessment area activities.

Finally, as discussed in Section IV. of this letter, the data collection and maintenance required by deposit-based assessment areas would impose substantial data costs on *all* banks and needs to be reconsidered. These burdens would be particularly difficult for Small and Intermediate Small Banks, which should be exempt from geocoding requirements associated with the deposit-based assessment area concept.

In light of these concerns, we suggest that the agencies revisit deposit-based assessment areas as proposed. One alternative that merits further evaluation would be to maintain facility-based assessment areas, but permit a bank to receive CRA credit for activities outside of its assessment area once non-assessment area deposits reach a specified percentage of a bank's Retail Domestic Deposits. Banks engaging in these out of assessment area activities could be evaluated on a Retail Lending Distribution Test that is based on national distribution benchmarks. While this concept needs further study and analysis, it could prove to be a streamlined alternative that (1) avoids the extraordinary costs and burdens that deposit-based assessment areas would impose on all banks; (2) addresses both CRA hot spots and CRA deserts by allowing banks to engage in CRA activities outside of their physical locations; and (3) recognizes that the concept of community has evolved substantially in recent years.

D. Clarify Whether Geocoding to the Census Tract Would Be Necessary To Delineate Deposit-Based Assessment Areas

The proposal states that a bank that receives 50 percent or more of its Retail Domestic Deposits outside of its facilities based assessment area(s) must delineate a deposit-based assessment area in the "smallest geographic area" where a bank receives at least 5 percent of its retail domestic deposits. The proposal lists the geographic areas to be used to delineate a deposit-based assessment area, and the list does not include a census tract.[30] The smallest geographic unit in the list appears to be a county or county equivalent. Therefore, it appears banks will have to geocode to the county or county equivalent level, and not to the census tract level, to determine whether they must delineate deposit-based assessment areas. If the agencies move forward with the deposit-based assessment area concept, the agencies need to clarify whether coding to the census tract level would be required.

VI. Qualifying Activities

A. We Support the Creation of a Pre-Approved List

Under the proposed rule, the agencies would establish a publicly available, non-exhaustive, illustrative list of CRA-qualified activities, as well as a list of activities that do not meet the regulation's criteria for being CRA-eligible. We strongly support this aspect of the proposal. Such a resource would improve

[30] §__.08(c)(2).

certainty and consistency across agencies and within the same agency. By providing clear standards and an illustrative list of qualifying activities, the proposed rule would reduce uncertainty regarding what counts for CRA credit and would give banks greater confidence as they plan their CRA activities. We offer the following suggestions for enhancing the administration of the qualified activities list.

1. Develop and Maintain a Single, Interagency List

It is unclear whether each agency would create its own qualified activities list or whether the agencies would act in coordination to develop and maintain a single list that applies to both OCC-regulated and FDIC-regulated banks. To avoid conflicting interpretations and ensure consistency across agencies, we strongly urge that the agencies develop a single list. Such an approach would be consistent with the spirit of a joint rulemaking and would allow banks and their community partners to benefit from updated information associated with the pre-clearance process and associated updates to the qualified activities list.

2. Clarify That the List is Illustrative

Activities on the qualified activities list should be strictly illustrative; they should not be viewed as exclusive, nor should they create an expectation that banks engage in all or some of the approved activities. Moreover, the agencies should make clear that examiners should not view CRA-eligible activities as being limited to those that are on the list. Regulators should solicit public comment on the types of activities that would receive automatic credit.

3. Specify That Activities Removed from the List Will Receive CRA Credit as Long as They Remain on a Bank's Books

If the agencies determine that a qualifying loan or community development investment no longer meets the qualified activities criteria, that loan or community development investment will not be considered a qualifying activity for any subsequent purchasers. While it is implied, we urge the agencies to expressly state that a bank holding a loan or investment that is removed from the qualified activities list will continue to receive CRA credit as long as that loan or investment is held on the bank's books. In other words, removal from the qualified activities list should not be retroactive.

4. Develop a List That is Searchable

We urge the agencies to develop a list that is searchable and organized by topic (rather than by date). This approach would be significantly more helpful than a list that is organized chronologically.

5. We Agree With the Public Notice and Comment Process

We are pleased that the agencies plan to update the qualifying activities list on an ongoing basis in response to pre-clearance requests. Banks, their community partners, and examiners will benefit from the most current information regarding qualifying activities. This will be an additional step in helping to improve consistency. In addition, the agencies would also publish the qualifying activities list for public notice and comment at least every three years. We agree with this approach.

B. We Strongly Support the Pre-Approval Process

We are very supportive of the proposal's establishment of a processes that would allow banks to confirm with their regulator whether a proposed activity would receive CRA credit. This mechanism would address current impediments to engaging in new and innovative CRA projects that benefit communities by giving banks confidence that activities qualify for CRA credit before they invest time and resources in those activities.

While the preapproval process has the potential to remedy aspects of the current regulatory and supervisory framework that artificially limit the scope and type of banks' CRA activities, the success of the preapproval mechanism hinges on the timeliness of regulators' response to a qualifying activity confirmation request. Pursuant to the proposed rule, an activity will be confirmed as a qualifying activity if the bank is not informed of an agency's objection within six months of submission of a complete Qualifying Activity Confirmation Request Form. We recognize that the pre-approval process could require additional agency resources. However, the proposed 6-month time period is unworkable and would not provide significant value. The window of opportunity to engage in community development activities can pass quickly, and in many instances would close within the proposed 6-month approval period. For these reasons, we recommend a 30-day approval period.

C. Refine the Qualifying Activities Criteria

The proposal would also establish qualifying activities criteria that identify the types of activities that meet the credit needs of banks' communities and, thus, would be considered qualifying activities. These criteria would both encompass the activities that currently qualify for CRA consideration and include additional activities that meet the credit needs of economically disadvantaged individuals and areas in banks' communities. We offer the following comments on this aspect of the proposal.

Economic Development, Workforce Development, and Job Creation. The preamble to the proposal states that "the intended effect of the proposal is to expand the type of activities that qualify for CRA credit. Although the agencies chose not to include in the proposal certain ambiguous or unclear terms used in the current regulations, the agencies do not intend to reduce the activities that qualify for CRA credit."[31] However, activities related to workforce development and job creation that receive credit today would not receive credit under the proposed rule simply because they do not fit neatly into the proposed balance sheet approach.

Today, banks receive positive CRA consideration under the community development test for activities that promote economic development by financing businesses or farms that meet both a "size" test and a "purpose" test. An institution's loan, investment, or service meets the ''size'' test if it finances, either directly, or through an intermediary, businesses or farms that either meet the size eligibility standards of the Small Business Administration's Development Company (SBDC) or Small Business Investment

[31] 85 FR at 1213.

Company (SBIC) programs, or have gross annual revenues of $1 million or less. To meet the purpose test, the institution's loan, investment, or service must promote economic development. These activities are considered to promote economic development if they support:

- Permanent job creation, retention, and/or improvement:
    - for low- or moderate-income persons;
    - in low- or moderate-income geographies;
    - in areas targeted for redevelopment by Federal, state, local, or tribal governments;
    - by financing intermediaries that lend to, invest in, or provide technical assistance to start-ups or recently formed small businesses or small farms; or
    - through technical assistance or supportive services for small businesses or farms, such as shared space, technology, or administrative assistance; or
- Federal, state, local, or tribal economic development initiatives that include provisions for creating or improving access by low- or moderate-income persons to jobs or to job training or workforce development programs.

The agencies will presume that any loan or service to or investment in a SBDC, SBIC, Rural Business Investment Company, New Markets Venture Capital Company, New Markets Tax Credit eligible Community Development Entity, or Community Development Financial Institution that finances small businesses or small farms, promotes economic development.[32]

The Interagency Q&A also note that community development "also includes…workforce development or job training programs targeted to low- or moderate-income persons…and activities that revitalize or stabilize low-or moderate-income areas, designated disaster areas, or underserved or distressed nonmetropolitan middle-income geographies."[33]

The proposed rule, however, "does not include the more general aspect of economic development that involved a bank having to demonstrate that its activities that finance businesses or farms that met the size test to support job creation, retention, and improvement for LMI individuals, LMI census tracts, and other areas targeted for redevelopment by Federal, state, local, or tribal governments." The agencies did not articulate a legal or policy reason for excluding these aspects of economic development other than noting

---

[32] § __.12(g)(3)—1.

[33] The agencies note that only one of the examples in the final Q&A explicitly refers to permanent job creation, retention, and/or improvement for low-or moderate-income persons. The agencies encourage activities that promote economic development through opportunities for low- and moderate-income individuals to obtain higher wage jobs, such as through private industry collaborations with workforce development programs for unemployed persons and are clarifying that examiners will consider the qualitative aspects of performance related to all activities that promote economic development. In particular, activities will be considered more responsive to community needs if a majority of jobs created, retained, and/ or improved benefit low- or moderate-income individuals.

The agencies proposed that permanent job creation, retention, and/ or improvement is supported ''through the creation or development of small businesses or farms'' and, therefore, such activity would be considered to promote economic development and meet the ''purpose test.'' The agencies proposed this example in an effort to recognize the impact small businesses have on job creation in general, and to address industry concerns that activities in support of intermediary lenders or other service providers, such as business incubators that lend to start-up businesses and help businesses become bankable and sustainable, are often not considered under the purpose test.

that the agencies *could not identify an objective method for demonstrating job creation, retention, or improvement for LMI individuals or census tracts or other targeted geographies, other than by determining if the activity would create additional low-wage jobs*" (emphasis added).[34]

Instead, the proposal enumerates criteria to capture the type of activities that currently qualify as economic development activities, such as activities that finance (1) SBDCs, SBICs, New Markets Venture Capital companies, qualified Community Development Entities, or RBICs; (2) businesses or farms that meet the size eligibility standards of the SBDC or SBIC by providing technical assistance and supportive services; or (3) Federal, state, local, or tribal government programs, projects, or initiatives that partially or primarily benefit small businesses, or small farms.   Similarly, the proposed qualifying activities criteria would no longer use the current regulatory phrase ‘‘revitalize and stabilize'' to describe the activities that would qualify in targeted areas, such as distressed or underserved areas; instead, the proposal describes in greater detail the criteria for activities that would qualify in these locations.

Under this approach, it appears that activities that formerly qualified as economic development or neighborhood revitalization would not constitute a qualified activity under the proposed rule unless such activities are contained in the enumerated list of activities qualifying as community development. Moreover, the proposal is silent on its deletion of activities that support permanent job creation, retention, and/or improvement by financing intermediaries that lend to, invest in, or provide technical assistance to start-up or recently formed small businesses or small farms.

We appreciate that the proposed rule attempts to address the subjectivity and inconsistency that has dogged the existing CRA rules and accompanying Q&A pertaining to economic development. However, the proposed approach is flawed. Excluding these activities would not represent a true picture of a bank's activities to promote the economic health and vitality of its communities. Financing small businesses that create/retain jobs is an essential component of a bank's reinvestment in the community, and there is no sound policy reason for removing that as an activity for which banks can receive CRA credit. Furthermore, several banks invest in innovative non-SBIC equity funds that finance small businesses that meet the meet the "size" and "purpose" tests outlined in the Q&A. All three agencies have received extensive documentation over the past 15 years and have given CRA credit for investing in these funds.

We recommend that banks continue to receive community development credit for (1) financing small businesses that promote job creation, retention, and/or improvement for LMI individuals and LMI communities, and areas targeted for redevelopment and (2) by financing intermediaries that invest in or lend to start-ups or recently formed small businesses. These "economic development" provisions should be added back into the proposal in their entirety, both in the text of the regulation and also to the list of qualifying activities. In light of the devastating COVID-19-related damage to small businesses and their millions of LMI employees, it is more crucial than ever that banks continue to receive CRA for all of the activities that currently qualify as "promoting economic development" through job creation as currently outlined in the Interagency Q&A Section __.12(g)(3)– 1.

[34] 85 FR 1213.

Small Business Lending. For several reasons, the current CRA rules do not accurately reflect the extent to which banks are financing community and economic development through small business lending. As such, our members generally support the proposed definition of "small loan to a business" as a loan of no more than $2 million reported on the Call Report and the proposed definition of "small business" as a business having gross annual revenues (GAR) of $2 million or less. [35] The agencies would adjust the $2 million origination cap and the $2 million GAR limit for inflation every year. These changes are needed to reflect inflationary changes since these dollar amounts were set, and to more accurately capture a bank's support for small businesses in the bank's CRA evaluation.[36]

However, our members expressed the following concerns related to small business lending:

- Annual adjustments for inflation are too frequent. Although we support adjustments for inflation, annual adjustments will require frequent reprogramming for what are likely to be relatively small changes. We request the agencies consider adjustments for inflation less frequently than annually—perhaps every 5 years.

- The performance standards should count small business loans secured by residential real estate. The proposal continues to rely on specific Call Report lines that exclude loans to small businesses secured by personal real estate. Thus, the proposal would arbitrarily exclude from a bank's CRA assessment loans to small businesses secured by personal real estate, unless the bank could show it took the real estate as collateral out of an abundance of caution.[37]

---

[35] Full definition: reported on the Call report Schedule RC-C, Loan and Lease Financing Receivables, Part 1, Item 1.e, Secured by nonfarm nonresidential properties, or Item 4, Commercial and industrial loans . . . ." §__.03, 85 FR at 1242.

[36] The proposal further provides that a small loan to a business would be a "qualifying activity" if it is made to (i) a small business; (ii) a LMI individual or family; (iii) a business that is located in a LMI census tract; or (iv) to a business that is located in Indian Country. §__.04(b)(1)-(4). These loans would be counted in the performance metrics, which consider the quantified value of a bank's qualifying activities. §__.07(a); 85 FR at 1217. Some of these loans would also be considered in the bank's Retail Lending distribution test. Specifically, small loans to businesses in LMI census tracts are part of the retail lending borrower and geographic distribution tests in each assessment area, if such loans are a "major retail lending product line" and at least 20 such loans have been originated in the assessment area during the evaluation period. §__.11(a)(1), (b)(1).

It also appears that the proposal would include some small business loans as community development loans, which are included in the quantified value of a bank's qualifying activities, and in meeting the Community Development Minimum. Specifically, a community development loan would include a loan that "provides financing for or supports" small businesses that meet the Small Business Administration's size-eligibility standards, "by providing technical assistance or supportive services such as shared space, technology, or administrative assistance through an intermediary."

This provision seems to mean that loans to businesses would count toward community development even if the loan exceeds $2 million at origination and is made to businesses with gross annual revenues in excess of $2 million, so long as the business otherwise met the SBA size standards. The SBA size-eligibility standards differ by the industry involved, and runs to 39 pages, making the size eligibility standards difficult to use in the lending process. Our members would prefer the option to rely on the business's gross annual revenues, as is the case under the current definition of community development.

[37] The proposed definition of small loan to a business refers to loans reported on the Call Report Schedule RC-C, Loans and Lease Financing Receivables, Part 1, Item 1.e, Secured by nonfarm nonresidential properties, or Item 4,

- The final rule should clarify what small business loans count as community development and that banks may opt to count them instead as retail loans in the Retail Lending Distribution Test. Regarding community development loans involving small businesses, the proposal would remove the option to identify the business size by its GAR and the economic development criterion, noting that the agencies could not identify an objective test for economic development. Additionally, the proposal would limit consideration to loans that provide "technical assistance and support services, such as shared space, technology, or administrative assistance through an intermediary."[38] We have multiple concerns with the interplay between small business loans and community development loans, discussed below.

  We are concerned that the proposal will require banks to use the SBA's size-eligibility standards to determine whether a loan to a business is a community development loan. Under the current rule, banks may opt to use a simple GAR test to determine if a business is small. Using the SBA standards imposes significant burden, as they vary by industry type, and consider either number of employees or annual receipts in determining whether a business is small. We urge the agencies to include the option to identify a business as small by cross-referencing to the proposed definition of a small business as a business with GAR of $2 million or less.

  Second, we are confused about the proposal's apparent limit on loans that "provide technical assistance and support services." We recognize that the agencies may have included this limitation in the place of the "economic development" prong, which the agencies view as ambiguous. However, it is not clear what types of loans would meet the new language. Although we generally support clear, objective requirements, the new language would severely limit banks' incentives to foster community development through loans to small businesses. Such a result seems contrary to the agencies' statements that they intend to expand the type of activities that qualify for CRA credit.[39] We request that the agencies eliminate the reference to technical assistance and support services, or revise it so that these activities are examples and not required uses of loan funds.

  Third, as previously discussed, currently a loan that meets the definition of a small business loan cannot be counted as a community development loan. Thus, banks currently count small business loans with originations over the $1 million cap as community development loans, if they meet the size and purpose test in §__.12( ). Banks are concerned that the proposal will prohibit counting a loan that meets the small business loan definition as a community development loan – and given

---

commercial and industrial loans. §__.03. These line items do not include loans secured by a business owner's personal real estate unless the real estate was taken as collateral in an abundance of caution. *See* Glossary, entry for "Loan Secured by Real Estate," p. A-58. https://www.fdic.gov/regulations/resources/call/crinst/2018-03/031-041-318-gloss-033118.pdf

[38] 85 FR at 1243, §__.04(c)(3).

[39] Regarding removal of the economic development prong and similar terms from the regulation, the agencies stated: "Further, as stated above, the intended effect of the proposal is to expand the type of activities that qualify for CRA credit. Although the agencies chose not to include in the proposal certain ambiguous or unclear terms used in the current regulations, the agencies do not intend to reduce the activities that qualify for CRA credit." 85 FR at 1213.

the increase in the origination cap to $2 million, banks may have difficulty meeting the Community Development Minimum.

- The agencies should coordinate on multiple rulemakings involving small business lending. Our members are also concerned about friction between the definition of small business loan for CRA purposes and a definition for purposes of Dodd Frank Act section 1071, which will require financial institutions to collect and report data on lending to women-owned and minority-owned small businesses. This year, the CFPB is poised to begin rulemaking that will define a small business for purposes of section 1071. In addition, the banking agencies are considering changes to the definition of a small business loan in the Call Report. Banks are very concerned about implementing overlapping and inconsistent definitions of "small business loans" under different regulations. We urge the agencies to coordinate closely with the CFPB, and to coordinate CRA reform with any revisions to the Call Report definition of a small business loan.

Pro Rata Credit. We strongly support the assignment of pro rata credit to activities that partially benefit LMI areas or individuals. However, the proposal is silent on how banks and examiners should quantify such activities. Also, in some cases, it may be challenging to determine the percentage of LMI benefit, as some community organizations do not collect income data (e.g., a battered women's shelter). Regulators should provide examples on how pro rata credit is determined for different types of activities.

Revolving Lines and Letters of Credit. Footnote 28 to the preamble of the proposed rule states that banks would continue to receive CRA credit for the funded portions of lines of credit but generally would not receive CRA credit for other legally-binding commitments to lend, such as revolving credit lines and letters of credit. We strongly urge the agencies to reconsider this approach and to factor revolving lines and letters of credit into a bank's CRA performance.

Once a bank issues a letter of credit, the institution is legally bound to it. Moreover, in the capital context, banks must hold capital against unconditionally cancellable lines.

We also note that some housing authorities mandate having letters of credit. In certain markets, particularly in New York City, letters of credit are vitally important to the financing of affordable housing as some issuers do not allow for direct bank loans to finance affordable housing, but look to sell bonds in the capital markets to do so. In order for this financing to work, a bank or other entity must provide a letter of credit during the construction period in order to achieve necessary credit ratings that will be amenable to investors. In this context, banks are allocating funds and holding capital for the benefit of maintaining or creating affordable housing. In an ultra-competitive CRA market like New York City where almost all affordable housing lending is done through New York City Housing Development Corporation and New York State Housing Finance through their parity resolution bond issuances, letters of credit are the most effective ways in which banks can help create affordable housing lending. These should be considered for CRA in order to encourage this activity to help create and maintain affordable housing. Without these letters of credit, these important projects would not be viable and otherwise may not receive necessary financing.

Financial Literacy. Financial education programs and homebuyer counseling would be considered qualifying activities under the proposed CRA regulation. We strongly support this approach. All financial literacy initiatives should receive CRA credit; credit should not be limited to providing financial education to LMI individuals or schools where more than 50 percent of students qualify for free or reduced-price meals. In addition, banks should receive credit for creating financial education materials, whether in print or digital form.[40]

Frequently, children—regardless of their parents' income bracket—do not receive training at home regarding how to manage a checking account, distinguish between needs and wants, establish short-term and long-term financial goals, or determine the pros and cons of applying for a loan.

In addition, requiring financial literacy initiatives to have a principal purpose of serving LMI is inconsistent with school boundaries in many communities. Rural schools typically draw students from a wide geographic area, and many rural counties have only one high school. Moreover, some school districts in small cities and suburban areas intentionally draw their attendance maps so that the student population is economically diverse. In both of these scenarios, CRA regulations fail to give due and proper recognition to the efforts of banks to partner with schools to provide financial literacy instruction.

Banks also are important providers of financial education for adults. This may take the form of housing counseling, budgeting instruction, or programs to prevent elder financial exploitation. Today, a bank does not receive CRA consideration for making these presentations to organizations that do not qualify as having a community development purpose (e.g., Rotary Club, Lions Club, Chamber of Commerce, etc.). Senior citizens in all income brackets are at heightened risk financial abuse, and policymakers, including the Bureau of Consumer Financial Protection, encourage banks to participate in programs to prevent financial exploitation. As such, these activities should receive CRA credit.

Banks also provide instruction pertaining to financial services innovation, such as information regarding merits of different types of payment processors or the use of digital wallets. Digital financial literacy is important for individuals from all income levels—not just those who are low income. We also note that digital outlets can be very effective in improving financial literacy, but examiners give very little CRA consideration for this.

Volunteer Service. Under current rules, community development services must meet the definition of community development and must be related to the provision of financial services. The Interagency Q&A explains that such services are limited to the provision of financial expertise, such as credit counseling, financial planning, or other types of financial education. In addition, services reflecting an employee's role at the bank, such as human resources, information technology or the provision of legal services, will

[40] We note that an April 3, 2018, Memorandum from the U.S. Department of the Treasury on CRA modernization implied that banks should implement research-based strategies into their financial education activities that include measurements of effectiveness. As a practical matter, determining impact would have to occur over time and would require hiring a third-party to test recipients and analyze the results. Any such requirement would create significant red tape that would discourage banks from pursuing financial literacy initiatives—a policy outcome that would be highly undesirable.

receive positive CRA consideration.[41] These restrictions artificially limit a bank's options for addressing needs in its community. For example, banks are unable to receive positive CRA consideration for volunteer hours to construct a home sponsored by Habitat for Humanity.

We are very appreciative that the proposed rule would remedy this problem. In general, community development services would include bank employee time spent volunteering as a representative of the bank on activities that meet the proposal's qualifying activities criteria and would no longer be limited to the provision of professional services. This approach would broaden the scope of benefits that banks provide and would empower them to deploy CRA resources to meet the unique community development needs of their areas.

Loans to Non-LMI Borrowers in LMI Areas. Under the proposed rule, loans to non-LMI borrowers residing in LMI areas would not receive CRA credit. We oppose this change and urge the agencies to reconsider this restriction. First, this limitation runs counter to the plain meaning of the CRA statute. The CRA, since its passage in 1977, has required banks to serve the credit needs of their *entire* community, including (but not limited to) LMI individuals.[42]

Second, communities, and particularly LMI individuals, benefit when individuals from a mix of incomes live, work, shop, and go to school in the same area. As noted in a 2010 study by the Urban Institute, "lower-income families also have reported benefits associated with moving to mixed-income developments or neighborhoods in terms of employment, mental health, and educational opportunities, although findings are not consistent across studies. Benefits tend to stem from positive aspects of place rather than from interactions with other residents or neighbors."

We recognize and share the regulators' concerns over gentrification and displacement but do not believe that denying CRA credit for loans to non-LMI borrowers is an appropriate way to address potential gentrification. We urge the agencies to study this issue further prior to making such a drastic change that carries important public policy ramifications. One alternative course of action would be for the agencies to monitor on an ongoing basis the average sale price of homes in an LMI area and calibrate that with the average annual income of area residents to define an "affordability tipping point," which could be used to determine whether a bank should receive CRA credit for loans to non-LMI borrowers.

Opportunity Zones. We agree with the proposal's approach to Opportunity Zones. Specifically, CRA credit would be given to investments in Opportunity Zones in LMI areas, but credit would be apportioned based on the degree to which such investments benefit LMI residents. This approach would help to encourage investment in designated Opportunity Zones while helping to ensure that such investments benefit LMI individuals.

At this juncture, it is important to address our rationale in treating investments in Opportunity Zones differently from mortgage lending to non-LMI individuals in LMI areas. Mortgage lending to

---

[41] *See* Community Reinvestment Act; Interagency Questions and Answers Regarding Community Reinvestment; Guidance, 81 Fed. Reg. at 48, 530 (citing §__.12(i)).
[42] 12 USC Sec. 2903(a).

individuals—whether they are LMI or not—benefits an LMI community by fostering a mix of incomes in that entire community, including LMI residents. Therefore, this lending should receive CRA credit. By contrast, investment in Opportunity Zones *can* benefit the entire community, but is not guaranteed to do so. For example, an Opportunity Zone investment that provides funds to remodel a corporate office for the benefit of executives or higher income workers should not receive CRA credit. However, an investment that develops community-wide amenities such as a fitness center or performing arts venue and provides jobs and services to LMI individuals in the community should receive CRA credit apportioned appropriately to reflect the benefit provided to those LMI individuals.

Activities with CDFIs and MDIs. We strongly support the addition of activities with a CDFIs and MDIs as an explicit qualified activity. With this change, CDFI and MDI banks seeking CRA-motivated deposits and investments will be empowered to collaborate with other banks located throughout the United States regardless of whether or not they have overlapping assessment areas. We recommend modifying the proposed language to include "capital investment, **deposits, loans**, loan participations, **other financial and nonfinancial support**, or other venture undertaken…" We believe this will eliminate any ambiguity with examiners that the full range of bank support of these institutions is a qualified activity. We also suggest that the agencies provide a multiplier for capital investments in CDFIs and MDIs.

Indian Country. We suggest broadening the definition of Indian Country to include any work with or support of a tribal housing authority (e.g., LOC to tribal housing authority). In addition, the agencies should clarify whether the definition of "Indian Country" includes lands *not* in reservation and no longer in a state of original allotment. In other words, does the term "Indian Country" include those lands that were once the boundaries of the native nations even if such lands were not technically "reservations" or allotments?

Clarifications Regarding FHA Loans. There are some Single Family FHA Loan products not mentioned in in the proposal. The agencies could address this by either (1) adding all other FHA loan programs including: 203h (Disaster Loans); 203c (Condominium), FULL 203(k) etc.; or (2) adopting clarifying language that would capture all FHA lending such as: any home mortgage loan guaranteed by the Federal Housing Administration (FHA) under its Title I or Title II Forward Mortgage Program to an LMI Individual as found in the HUD Handbook 4000.1. The HUD Handbook 4000.1 is the comprehensive list of all FHA single family mortgage loan products available along with all underwriting guidelines applicable to them.

Public Welfare Investments. With the change in the term "qualified investment" to "community development investment," it appears the proposal would expand the range of investments eligible for CRA credit to encompass investments that would not be permitted as a public welfare investment. If the term "community development investment" is finalized as proposed, the regulations governing public welfare investments would then need to be amended by, perhaps, replacing the current cross-reference to "qualified investment" with a reference to "community development investment."

VII. Transition Period

A. Extend the Implementation Periods

The agencies propose to incorporate a transition period of varying compliance dates in order to allow banks to revise their systems for collecting, maintaining, and reporting data and to establish processes for calculating their qualifying activities values and CRA Evaluation Measures and determining their presumptive CRA ratings. We request that the agencies provide at least two years for banks to implement the proposed data collection, recordkeeping, and reporting changes. The implementation dates for all categories – assessment area, data collection, recordkeeping and reporting – should begin January 1 of the appropriate year. One year is simply insufficient to implement the proposed changes given the systems work that will be needed. In addition, although small banks are not required to collect and maintain data on lending, investments and services, they will likely need more than a year to assess the resources they will need to accurately collect the deposit data, including retaining vendors and hiring and training staff.

In addition, we urge the agencies to ensure that all necessary format and submission requirements are published with the final rule. The proposal states that data must be kept in machine readable format, that certain forms will be available on their websites, and that the agencies will provide more guidance on data collection.[43] If the agencies cannot publish all of these materials with the final rule, they should extend the compliance dates accordingly.

We appreciate that the agencies recognize the need for staggered implementation dates. However, the existence of varying dates can be confusing. Accordingly, we request that the agencies provide examples of how the transition period would be implemented. Such examples should include examples of Small Banks that opt in to the General Performance Standards as well as examples of the transition period for institutions that no longer meet the definition of a small bank. We also request the examples include a description of when the sample banks would be subject to an examination under the new standards.

B. Provide Industry Training and Support

When regulators get to the point of issuing a final rule, they should describe the support, if any, that will be provided to banks during the transition period as they grapple with new assessment areas and new substantive data collections, while also being evaluated under the current CRA regulation. During this transition period, regulators should provide outreach and training via webinar that would demonstrate to all interested parties how the revised rule would be applied and implemented. This should be done on an interagency basis. Examiner training should also be conducted on an interagency basis.

Finally, as we submit this comment letter, our nation is grappling with the COVID-19 pandemic, which is anticipated to have deep and far-reaching economic impacts. We strongly urge the agencies to take these impacts into account when considering how to proceed with CRA modernization. Even under normal circumstances, the cost of a modernized CRA framework would be a major added expense for the industry. During the pandemic, the banking industry is marshalling its resources to help consumers and

[43] 85 FR at 1209, 1227.

small businesses deal with significant economic impacts associated with our public health crisis. As the COVID-19 situation evolves, we strongly urge the agencies to consider whether it would be prudent to require banks to make costly changes to adopt what is largely an untested CRA framework.

VIII. Apply CRA-Like Requirements to Credit Unions and Other Financial Firms

One of the primary goals of the Federal Credit Union Act, and a justification for credit union exemption from taxation, is to make credit available to people of modest means. However, credit unions are not required to document their service to these individuals. In fact, a 2006 Government Accountability Office report found that credit unions were more likely to serve middle- to upper-income individuals than the banking industry.[44]

The requirements to meet the financial services needs of all income demographics, including LMI individuals, should apply to all federally insured depository institutions. In particular, credit unions, which receive significant government benefits to serve LMI individuals, should be required to demonstrate through measurable standards that they are meeting their service obligations. We recognize that applying CRA to credit unions would require an act of Congress. However, in furtherance of serving CRA's goals, we recommend that the agencies share best practices or other information with the National Credit Union Administration (NCUA) to provide the NCUA with concepts it might apply through regulation.

Similarly, as the financial services industry evolves and regulators explore the provision of special purpose charters to financial technology firms, any such charter should ensure that these entities meet the convenience and credit needs of their particular communities, just as banks are expected to do under CRA. Moreover, any such CRA-like responsibilities should be enforced through examination.

IX. Looking Forward

Thank you for the opportunity to provide comment on the proposed revisions to the regulations that implement the Community Reinvestment Act. We are grateful for the agencies' leadership in soliciting ideas to modernize these regulations and in crafting a proposal. Updates to these regulations are long overdue. While our letter identifies significant concerns with the proposed rule, we remain optimistic that it is possible to improve the effectiveness and administration of CRA on an interagency basis following additional study, scenario analysis, and perhaps the creation of a pilot program to test a new framework before it becomes final.

We welcome the opportunity to provide additional information and input as the reform effort proceeds. Should you have any questions regarding our comments, please contact Krista Shonk at kshonk@aba.com.

[44] U.S. Gov't Accountability Office, GAO-07-29, Greater Transparency Needed on Who Credit Unions Serve and on Senior Executive Compensation Arrangements (2006).

Sincerely,

American Bankers Association
Alabama Bankers Association
Alaska Bankers Association
Arizona Bankers Association
Arkansas Bankers Association
California Bankers Association
Colorado Bankers Association
Connecticut Bankers Association
Delaware Bankers Association
Florida Bankers Association
Georgia Bankers Association
Hawaii Bankers Association
Idaho Bankers Association
Illinois Bankers Association
Indiana Bankers Association
Iowa Bankers Association
Kansas Bankers Association
Kentucky Bankers Association
Louisiana Bankers Association
Maine Bankers Association
Maryland Bankers Association
Massachusetts Bankers Association
Michigan Bankers Association
Minnesota Bankers Association
Mississippi Bankers Association
Missouri Bankers Association
Montana Bankers Association
Nebraska Bankers Association
Nevada Bankers Association
New Hampshire Bankers Association
New Jersey Bankers Association
New Mexico Bankers Association
New York Bankers Association
North Carolina Bankers Association
North Dakota Bankers Association
Ohio Bankers League
Oklahoma Bankers Association
Oregon Bankers Association
Pennsylvania Bankers Association
Puerto Rico Bankers Association
Rhode Island Bankers Association
South Carolina Bankers Association
South Dakota Bankers Association
Tennessee Bankers Association
Texas Bankers Association
Utah Bankers Association
Vermont Bankers Association
Virginia Bankers Association
Washington Bankers Association
West Virginia Bankers Association
Wisconsin Bankers Association
Wyoming Bankers Association

Appendix A: Summary of Data Requirements Under the CRA Proposed Rule

Data to be Collected and Maintained for the Exam Period (3 to 5 years) by ***All*** Banks	
✓ **Deposit account data**	*All* banks collect and maintain for each retail domestic deposit account (requires bank to identify and remove brokered deposits and other excluded deposits), as of the end of each quarter: • The account balance • The depositor's "physical address" (street and number, city, county, MSA, state)

Data to be Collected and Reported Annually (Banks With Assets ≥ $500 million)	
✓ **Deposit account data**	• The average quarterly balance of retail domestic deposits (requires bank to identify and remove brokered deposits and other excluded deposits)
✓ **Performance results**	• The results of retail lending distribution tests for each major retail lending product line – mortgage, consumer, small loans to businesses and farms – evaluated in each assessment area • The CRA evaluation measures, at the bank-level and at the level of each assessment areas (banks have an average of x assessment areas) • The bank's presumptive ratings
✓ **Quantified value of qualifying activities**	The average balance, with any multipliers or adjustments applied, for each month the loan or investment is on balance sheet, for: • Qualifying retail loans, i.e., **mortgage**,[1] consumer, **small business and small farm loans**[2] • **Community development loans**[3] • Community development investments Note: For loans sold within 90 days of origination, the bank counts only 25% of the aggregate value at origination • Community development services Note: the bank must determine the dollar value of the service by multiplying the employee's salary by the number of hours spent

[1] Banks that report HMDA data already report (and will continue to report under HMDA) numerous data points about each loan origination and purchase [which is used to evaluate the bank under CRA's lending test] and application even if it does not result in a loan, however, they do not report on the outstanding balance but rather they report the loan amount at origination (or at purchase if that is what the bank has done).
[2] Banks with assets of $1.3 billion and above report small business and small farm loans for CRA, but do not report on the average balance but rather the amount at origination.
[3] Banks with assets of $1.3 billion and above currently report data on CD lending, but these data are limited to the aggregate number and dollar amount of CD loans originated or purchased.

Appendix A: Summary of Data Requirements Under the CRA Proposed Rule

Data to be Collected and Reported Annually (Banks With Assets ≥ $500 million)	
	Adjustments required for community development loans, investments and services – if the activity only partially benefits community development, the quantified value calculated as set out above must be adjusted downward accordingly.

✓ **Assessment areas**	• A list of the bank's assessment areas[4]
	• For each assessment area, the following information, as applicable:
	  o County/county equivalent
	  o Metropolitan division
	  o Nonmetropolitan area
	  o MSA, or
	  o State

✓ **Non-qualifying loan data**	For **mortgage loans**[5] and consumer loans originated by the bank during the annual period, the following:
	• The loan number
	• Loan type
	• Date of origination
	• Loan amount at origination
	• Loan location and FIPS code for:
	  o MSA
	  o State
	  o county/county equivalent
	  o census tract
	• The borrower's income

✓ **Number of small loans to businesses**	For each county or county equivalent, the following:[6] • Number of loans originated • Number of loans originated in LMI census tracts • Number of loans originated to small businesses
✓ **Number of small loans to farms**	For each county or county equivalent, the following:[7] • Number of loans originated • Number of loans originated in LMI census tracts • Number of loans originated to small farms

[4] Currently banks are required to report this same information about their assessment areas to their regulator.
[5] See Footnote 1, above. Will duplicate HMDA reporting.
[6] Banks with assets of $1.3 billion or more report data on small business loans and small farm loans—that data could be used to create the reports required here.
[7] See Footnote 6, above.

Appendix A: Summary of Data Requirements Under the CRA Proposed Rule

Data to be Collected and Maintained for the Exam Period (3 to 5 years) (Banks with Assets ≥ $500 million)	

✓ **Qualifying retail loan data**	For <u>each</u> qualifying loan (**mortgage,**[8] consumer, **small loans to businesses and farms**) the following data points:
	• The loan number;
	• Loan type;
	• Date of, as applicable:
	    o Origination, if the bank originated;
	    o Purchase, if the bank purchased; and
	    o Sale, if the loan is a retail loan and the bank sold within 90 days of origination
	• Whether the loan was originated or purchased;
	• The loan amount at origination or purchase;
	• The outstanding dollar amount of the loan, as of the close of business on the last day of the month, <u>for each month</u> that the loan is on-balance sheet;
	• The loan location and the FIPS code for
	    o MSA
	    o State
	    o County/county equivalent, and
	    o Census tract
	• The income or revenue of the borrower; and
	• The criteria the loan satisfies to be a qualifying activity, or that it is on the illustrative list <u>and</u> whether it serves a particular assessment area, if applicable.

✓ **Community development service data**	For <u>each</u> community development service offered by the bank, the following:
	• the dollar value of the service
	• date of service
	• description
	• location and FIPS codes for
	    o MSA
	    o State
	    o County/county equivalent
	    o census tract
	• The qualifying criteria that the service satisfies or that it is on the illustrative list of qualifying activities.

✓ **Community development investment data**	For <u>each</u> community development investment, the following data points: • Investment number (to identify the investment) • Investment type • Date of investment • Outstanding dollar value, for each month the investment is on balance sheet • Value of monetary donation • Value of in-kind donation • Investment location and the FIPS code for: o MSA

[8] See Footnote 1.

Appendix A: Summary of Data Requirements Under the CRA Proposed Rule

Data to be Collected and Maintained for the Exam Period (3 to 5 years) (Banks with Assets ≥ $500 million)	
	o State o County/county equivalent o Census tract • The qualifying criteria that the investment satisfies or that it is on the illustrative list, and whether it serves any particular assessment area.