

**BETTER TOGETHER: EXAMINING THE
UNIFIED PROPOSED RULE TO MODERNIZE
THE COMMUNITY REINVESTMENT ACT**

HYBRID HEARING
BEFORE THE
SUBCOMMITTEE ON CONSUMER PROTECTION
AND FINANCIAL INSTITUTIONS
OF THE
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BETTER TOGETHER: EXAMINING THE UNIFIED PROPOSED RULE TO MODERNIZE THE COMMUNITY REINVESTMENT ACT

Wednesday, July 13, 2022

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CONSUMER PROTECTION
AND FINANCIAL INSTITUTIONS,
COMMITTEE ON FINANCIAL SERVICES,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:02 a.m., in room 2128, Rayburn House Office Building, Hon. Ed Perlmutter [chairman of the subcommittee] presiding.

Members present: Representatives Perlmutter, Meeks, Scott, Sherman, Green, Foster, Vargas, Lawson, Casten; Luetkemeyer, Lucas, Posey, Barr, Williams of Texas, Loudermilk, Budd, Norman, Rose, and Timmons.

Ex officio present: Representative Waters.

Also present: Representative Garcia of Illinois.

Chairman PERLMUTTER. The Subcommittee on Consumer Protection and Financial Institutions will come to order. Without objection, the Chair is authorized to declare a recess of the subcommittee at any time. Also, without objection, members of the full Financial Services Committee who are not members of this subcommittee are authorized to participate in today's hearing.

Today's hearing is entitled, "Better Together: Examining the Unified Proposed Rule to Modernize the Community Reinvestment Act."

I now recognize myself for 4 minutes to give an opening statement.

In the 1930s, the practice of redlining, intentionally refusing to extend credit to borrowers in geographic areas based on race or ethnicity, was the official policy of the United States Government. People of color were largely excluded from homeownership, small business loans, and other opportunities.

In the 1960s and 1970s, Congress passed a series of laws aimed at stopping discrimination in the housing and financial system. Among these laws, the Community Reinvestment Act (CRA) was enacted in 1977 and requires banks to meet the credit needs of their communities, including low- and moderate-income neighborhoods. The Federal banking regulators are tasked with scoring banks on how well they are meeting CRA goals and regulations around this law. But nearly a century later, we still feel the ripples of past policies holding our country back.

In research sponsored by the Federal Reserve Bank of Minneapolis, the authors found that no progress has been made in reducing income and wealth inequalities between Black and White households over the past 70 years. And in testimony before this committee in 2019, journalist Aaron Glantz shared findings from his investigation into modern-day redlining, in which he discovered that in 61 metro areas across the country, people of color were more likely to be denied a conventional mortgage than their White counterparts, even when they made the same amount of money, tried to borrow the same amount of money, and wanted to buy in the same neighborhood.

In May, the banking regulators issued a joint proposed rule making to strengthen and modernize the CRA. The last time the CRA was significantly updated was in 1995, and since then, the financial system has changed a great deal. Banks are more digital and have fewer branches, algorithms and automation play a significant role in determining credit risk, and non-bank lenders dominate the mortgage market.

The CRA rulemaking is an opportunity to ensure our financial system works for all Americans and to finally put an end to modern-day redlining. A strong CRA rule could be the catalyst we need to close the racial wealth gap. Legislation noticed with today's hearing includes, but is not limited to: H.R. 2768, the American Housing and Economic Mobility Act, from Congressman Emanuel Cleaver; a discussion draft entitled, "the American Community and Investment Reform Act,"; and a discussion draft entitled, "the Making Communities Stronger through the Community Reinvestment Act."

I look forward to today's discussion and to hearing from each of our witnesses about how to best strengthen and modernize the Community Reinvestment Act.

I would now like to recognize the ranking member of the subcommittee, Mr. Luetkemeyer, for 5 minutes for his opening statement.

Mr. LUETKEMEYER. Thank you, Mr. Chairman.

The Community Reinvestment Act was enacted in 1977 to ensure that banks are meeting the credit needs of communities, and to combat the practice of redlining, where individuals in certain geographic areas were cut off from banking services. However, after nearly 50 years, it is clear that the CRA as it currently stands is in desperate need of reform. Consumer groups, banks, multiple Administrations, and Members on both sides of the aisle understand the need to modernize and update the CRA in a meaningful way.

The banking landscape has changed since the last major reform of the CRA almost 30 years ago. The rise of mobile banking has upended the traditional CRA assessment area, and a dramatic decrease in bank branches has resulted in banking deserts. Furthermore, some groups claim the current CRA does not do a good job of driving investment in underserved areas. Other groups say the vague requirements of the CRA do not help banks or consumers understand what qualifies for CRA credit, leaving all involved parties in the dark.

It is clear a new CRA is needed that will provide transparency and accountability for the banks. It appears the Federal banking

agencies attempted to solve some of these issues in their recently-proposed rule on CRA. For example, many of the new standards in the rule establish subjective quantitative metrics to determine what activities earn CRA credit and how much each is worth. It is a critical step in modernizing the CRA so that banks, localities, and consumers all better understand the program.

The proposed rule also expands the importance of banking activities outside traditional mortgage lending. While mortgage lending remains important, there is an additional emphasis on small business, farm, and automobile lending, along with an expanded range of community service and development activities. I have said many times that it is called the Community Reinvestment Act, not the, "Housing Reinvestment Act," and banks should be given credit—to appropriately try to solve these issues. I remain very skeptical of this rule as a whole and have serious concerns regarding its direction.

According to Federal banking agencies, the CRA was established to require banks to meet the credit needs of communities, including lower- and moderate-income neighborhoods, consistent with safe and sound operations. For nearly 50 years, the CRA has examined the deposit-taking branch locations of banks and entering assessment areas. The proposed rule radically changes that approach by creating retail lending assessment areas, where assessment areas are not determined by deposits, but ultimately any geographic area where 100 mortgage loans or 250 small business loans were made.

This is a dramatic shift that would place assessment areas of financial institutions well outside of their communities. As I stated before, modernization of CRA is critical given the rise of mobile and online banking, but establishing assessment areas based on lending metrics is misguided at best. The core idea behind the CRA is that banks must serve the credit unions of the communities in which they are receiving deposits. The proposed rule upends that core tenet.

In addition, while the proposed rule does provide subjective quantitative metrics for certain CRA credit, the amount of data that banks are forced to compile under the proposed rule is truly immense. According to the estimates within the proposed rule conducted by the FDIC, the total estimated annual burden of this rule would be 225,000 hours. That is a staggering number which will place a significant burden on financial institutions and have an impact on access to credit for the very communities the CRA is attempting to help. This enormous burden ultimately means it will be more difficult for financial institutions to receive outstanding or satisfactory grades on their CRA exams.

As probably the only Member of Congress who has actually filled out one of these forms, I can tell you this is an extremely big burden for folks, and the present form is very difficult to fill out the way it is. To add more of a burden is just unconscionable.

This leads me to my final point. The CRA was intended to ensure that financial institutions are serving the credit needs of their communities. It was not intended as a way to hold banks hostage and extort money from them whenever a merger takes place. The final rule produced by the banking agencies should reflect the original intent of the CRA and look to provide access and drive investment

into lower- and moderate-income communities. If this rule does not accomplish this goal, then it has significantly deviated from the original intent of the CRA and should not go forward.

With the comment period closing on August 5th, I look forward to examining the comments and concerns from industry stakeholders, many of whom are still combing through the 679-page rule. I am also disappointed that a request to extend the 90-day comment period was flatly denied by the Federal banking agencies. A rule as important as CRA should not be done in a fly-by-night manner, and should have thoughtful, comprehensive input from industry stakeholders before and forward. I look forward to examining the proposed rule.

With that, Mr. Chairman, I yield back the balance of my time.

Chairman PERLMUTTER. The gentleman yields back.

The Chair now recognizes the Chair of the full Financial Services Committee, the gentlewoman from California, Chairwoman Waters, for one minute.

Chairwoman WATERS. Thank you, Chairman Perlmutter, for holding this hearing on the regulatory proposal to update the Community Reinvestment Act rules. Under my leadership, committee Democrats shut down the Trump Administration's efforts to undermine the law's original intent. So, I am very pleased to see the agencies work together on a new proposal to ensure that banks are meaningfully investing in all communities, not just some of them.

Although the CRA was enacted to eliminate redlining, disparities for people of color—today, for example, the Black/White homeownership gap is at a 120-year high, and the megabanks are reportedly denying Black homeowners the opportunity to refinance their mortgages at significantly higher rates than White borrowers.

I look forward to the hearing, and I am hoping that our witnesses can help shed some light on what is going on.

I yield back the balance of my time.

Chairman PERLMUTTER. The gentlelady yields back.

I now want to introduce our panel, and I am pleased to welcome each of our witnesses, some of whom are here in person and others are on the platform. So, thank you all.

Ms. Seema Agnani is the executive director of the National Coalition for Asian Pacific American Community Development. Ms. Agnani has more than 25 years' experience in community development, capacity building, and immigrant rights, and was previously a member of the Consumer Financial Protection Bureau's Community Advisory Board.

Ms. Catherine Crosby is the board chairperson of the National Community Reinvestment Coalition. Ms. Crosby is currently the town manager for Apex, North Carolina, and has played an important role in negotiating bank public benefit agreements with community, regional, and national banks.

Mr. Quentin Leighty is the chief financial officer and president of the First National Bank of Las Animas, Colorado, and we are glad to have a Coloradan on this panel, thank you, sir. He is testifying today on behalf of the Independent Community Bankers of America. Mr. Leighty has been with the First National Bank since 2005, and is an alumni advisory board member at the Graduate School of Banking at Colorado.

Dr. Darryl E. Getter is a specialist in financial economics at the Congressional Research Service. Dr. Getter has also served as a visiting economist at the Consumer Financial Protection Bureau, and as a financial economist at the Department of Housing and Urban Development.

Mr. Meeks is walking in right now, and I know he would like to introduce Mrs. Yoselin Genao-Estrella. So, I am going to give him that opportunity before he catches his breath.

Mr. MEEKS. Mr. Chairman, you are absolutely right. I ran over here for this opportunity, because I am so pleased to introduce Yoselin, who is the executive director of the Neighborhood Housing Services of Queens, and provides excellent and critical resources to constituents of Queens, back in my district. They have been working very closely with our office. They testified at local hearings that we have had, and the job they do to make sure that those who are less fortunate than others have housing is just absolutely tremendous.

And so, I wanted to run over here to introduce her and say thank you for all the work that you do in the city, and particularly, in the Borough of Queens.

Chairman PERLMUTTER. Thank you, Mr. Meeks.

And also, I would like to thank Ms. Genao-Estrella. She was in a car accident yesterday, I think, and is so intrepid that she still wanted to testify for us today. So, thank you very much for being here.

And thank you to all of our witnesses.

For those of you on the platform, I would ask you on behalf of the older members of this committee, like me, to please take your time. Speak slowly. Speak as distinctly as you can so that we can better understand your testimony.

Ms. Seema Agnani, you are now recognized for 5 minutes to give an oral presentation of your testimony.

STATEMENT OF SEEMA AGNANI, EXECUTIVE DIRECTOR, NATIONAL COALITION FOR ASIAN PACIFIC AMERICAN COMMUNITY DEVELOPMENT (NATIONAL CAPACD)

Ms. AGNANI. Thank you. Chairwoman Waters, Chairman Perlmutter, Ranking Member Luetkemeyer, and members of the subcommittee, thank you for this opportunity to testify on this important joint rule on modernizing the CRA.

National CAPACD is a coalition of about 100 organizations working across the country in low-income Asian American, Pacific Islander, and Native Hawaiian communities. They employ a diverse set of strategies from affordable housing to community organizing and supporting small businesses in order to advance equities and create vibrant healthy communities. As has been said, I have been working in the community development sector for—essentially since the inception of my career.

In fact, had read the CRA legislation on my flight to my first job interview in New York City in the early 1990s. This landmark legislation was established to address redlining, discrimination, and disinvestment in communities of color. And unfortunately, it has been well documented that income and equality and the wealth gap have continued to widen, as has been said. This is the result of lack

of access to safe, affordable financial services, access to credit, and of course, investments in affordable housing and support for micro-businesses.

Despite this, 98 percent of banks passed their CRA exams. As has also been said, the Black homeownership rate is really unacceptable. And the overall homeownership rates for families of color in this country are 30 points lower than that of White families. Abusive payday lenders as well as online lenders are increasingly concentrated in communities of color and are charging unspeakable interest rates, leading to further wealth stripping of our communities.

Simultaneously, our communities are being pushed out of neighborhoods that they have long occupied as a result of gentrification and rising rents, as well as predatory investments and lack of access to affordable credit. So, the CRA really must be modernized to address the broad range of financial entities that now exist, and should be evaluated on the actual and direct benefit to low-income communities of color, as well as to disincentivize the types of investments that promote displacement of low- and moderate-income communities of color.

Today, that is the biggest threat to housing: disability displacement due to rising rents and evictions. And the COVID pandemic has only exacerbated that situation. For the Asian American, Native Hawaiian, and Pacific Islander communities, the majority of those who are living in poverty are concentrated in the highest-cost housing markets, leading to these communities being at disproportionate risk of displacement at this time in history.

In addition to this, the limited English proficiency rates that are extremely high among low-income Native Hawaiian and Pacific Islander (NHPI) communities puts them at a particular disadvantage in terms of navigating the mortgage process or being able to understand what loan products are being offered to them. This was clearly evidenced through the rollout of the Payment Protection Program in the aftermath of the pandemic, particularly the first round, where our communities were really not able to access those resources that were made available because of the lack of language access, as well as the lack of relationships with mainstream financial institutions. Many of them turned to payday lenders and other alternative lenders due to lack of access.

We would like to see race and ethnicity centered at the evaluation of CRA evaluations. The current proposed rule really does not go far enough. In addition, we would like to see CRA evaluation being based on ensuring that further displacement does not occur as a result of these investments and loans. In addition, it should further create affordable housing. We would like to see incentivization of preservation of existing affordable housing, naturally occurring affordable housing, and in order to ensure we don't advance homelessness. And unfortunately, the definition of affordability is still too high. The majority of our communities are unable to access those affordable units under the current CRA.

Finally, we would like to see language access incentivized in the CRA. When financial institutions make the effort to reach those with limited English proficiency, they should qualify for CRA cred-

its for things like recruiting employees who speak the languages of the local communities.

Thank you for the opportunity to testify today.

[The prepared statement of Ms. Agnani can be found on page 40 of the appendix.]

Chairman PERLMUTTER. Thank you, Ms. Agnani.

And I didn't give the witnesses the speech that I was supposed to give at the beginning of your testimony. You get 5 minutes. The screen will show when you are down to one minute. And we try to keep it to 5 minutes and not go too far.

I would now recognize Ms. Crosby for her 5 minutes of testimony.

**STATEMENT OF CATHERINE CROSBY, BOARD CHAIRPERSON,
NATIONAL COMMUNITY REINVESTMENT COALITION (NCRC)**

Ms. CROSBY. I am honored to testify before you today on the proposed regulatory reform of the Community Reinvestment Act. I am the board chairperson of the National Community Reinvestment Coalition (NCRC). NCRC is a coalition of 600 community-based organizations. Our members do CRA on a daily basis, and increase lending, investment, and services for our country's underserved communities. I am also the town manager for Apex, North Carolina, home to approximately 73,000 residents, and prior to that, I served in Dayton and Toledo, Ohio.

The notice of proposed rulemaking issued by the Federal bank agencies represents the most significant changes to the CRA and exams in 27 years. CRA will be more effective in bolstering bank reinvestment activity in underserved communities, and in ensuring underserved groups' ability to move into high-opportunity communities the more rigorous CRA exams and ratings are. The NCRC proposed some significant improvements and tests, but the improvements are not across-the-board on all aspects of the exam.

I am pleased with the discussion draft, Making Communities Stronger through CRA, circulated by the committee today. The bill would require banks to establish community advisory committees, which would be consulted by providing input on banks CRA strategies, plans for meeting the needs of people of color, and on bank mergers and branch plans. In addition, the bill would increase oversight, meeting important needs such as those with small dollar mortgages.

Finally, NCRC is pleased we are able to influence the bill's proposal for periodic inner-agency statistical studies on racial disparities. We are pleased that the American Community Investment Reform Act of 2022 would require CRA exams for security companies and affect their community development financing activities. We do not support the presumption that a financial institution with an outstanding rating satisfies the convenience and needs of communities as part of its merger application. We outline our views about this in recent comments to the FDIC.

We strongly support applying CRA to independent mortgage companies, as the American Housing and Economic Mobility Act would do. In a previous report, we described how the application of CRA by the State of Massachusetts to mortgage companies is a model for Federal law.

Persistent racial and ethnic disparities in lending should compel the agencies to incorporate race and ethnicities into the CRA exam. An NCRC national-level analysis shows continuing disparities, and in loan denials by race among people of color who received home loans, their equity accumulation was less. NCRC has asserted in a paper that it is possible for changes to CRA to comply with legal standards if CRA exams lending by race and ethnicity in geographic areas experiencing ongoing discrimination. By including race, CRA could address the racial disparities and have a direct impact on quality-of-life and health outcomes.

The COVID pandemic disproportionately affected communities of color in terms of unemployment, rates of COVID, and disclosure. In part, this is a legacy of 80 years of redlining. NCRC studies have shown that communities of color which were identified as risky on redlining maps produced by the Home Owners' Loan Corporation remain economically depressed, and experienced a higher incident of adverse health outcomes.

I represent communities that have been distressed for decades due to redlining. The NCRC is helpful in that it proposed that CRA exams would assess lending separately in low-income and moderate-income tracks. This would help the distressed in lower-income communities. I also urge the agencies to go a step further and to examine lending in underserved neighborhoods with the lowest levels of lending.

As documented by NCRC, these tracts are disproportionately communities of color. I was formally the chief of staff in Toledo, Ohio, which is located in Lucas County. CRA reform was needed there because in that county, low- and moderate-income (LMI) neighborhoods are receiving low levels of lending. NCRC documented that from 2018 through 2020 in Lucas County, just 12.4 percent of home purchase loans were made in LMI neighborhoods despite 32 percent of people living there. No lender in Lucas County is doing an adequate job of serving the Hispanic population.

Among the top 20 lenders, the percentage of loans for Hispanic applicants varied from 1 percent to 3 percent, despite being 7 percent of the County's population. In Wake County, where the town of Apex is located, 20 percent of the population is African American. Of the top 20 lenders in the County, only 2 make 20 percent or more of their loans to African Americans. The rest make 8 percent or less of their loans to African Americans. And none are providing loans to the Hispanic community proportionate to their representation.

These disparities make a compelling case to examine lending by race or CRA exams in areas experiencing ongoing discrimination. We ask that the agencies reconsider their decision not to do that.

Thank you.

[The prepared statement of Ms. Crosby can be found on page 46 of the appendix.]

Chairman PERLMUTTER. Right at 5 minutes. Thank you very much.

I now recognize Ms. Genao-Estrella for 5 minutes for her testimony.

STATEMENT OF YOSELIN GENAO-ESTRELLA, EXECUTIVE DIRECTOR, NEIGHBORHOOD HOUSING SERVICES OF QUEENS CDC INC.

Ms. GENAO-ESTRELLA. Good morning, Chairman Perlmutter, distinguished guests, and our very own Congressman Meeks.

My name is Yoselin Genao-Estrella, and I am the executive director of a tiny but mighty organization, Neighborhood Housing Services (NHS) of Queens. Although imperfect, CRA has been a lifeline for investment in underserved communities. The notice of proposed rulemaking (NPR) to modernize the CRA represents a step in a positive development, and it is a step in the right direction. However, with the current proposal, CRA will remain far from effective and likely incapable of reaching its goals.

Although there is no silver lining to fully address centuries of racial disparity or redlining, a comprehensive cross-sector approach is urgently needed. We appreciate all of the regulators for getting together and putting forth this collective NPR, as well as our legislators in Congress for introducing legislation that could potentially complement the overarching goals of a straining CRA.

However, we need a bold holistic approach instead of a piecemeal approach. For CRA to actually address redlining, it needs to consider this goal. It is threatening the role of community input, to provide access to banking, emphasize homeownership as a path to wealth creation, and explicitly include race. We appreciate the regulators' emphasis on the importance of community input. However, it is not just important to allow community input in this process; regulators must center the needs and voices of communities of color and LMI people in the exam and ratings.

In addition, acknowledging the increase in digital banking and regulating this practice cannot negate the importance of maintaining and opening new bank branches in already-underbanked LMI communities and communities of color. Access to banking and affordable, accessible products is critical to building wealth through savings and assessing credit, yet banks continue to expand and grow their branches as branches close and communities are constantly left out of the financial system.

We see this phenomenon in our own backyard where financial institutions create self-fulfilling prophecies by not providing adequate products and services in LMI bank branches and then justifying branch closures due to the lack of business activity. Immigrant communities, for example, are often left behind in the banking system because of language, culture, and identification barrier.

Homeownership remains an important path to wealth creation and developing intergenerational wealth for communities of color. Yet, too often these communities are left out of the homeownership opportunities, are targeted by predatory products and are given limited opportunities to accumulate wealth due to lower appraisal values.

We appreciate the proposed data-driven framework and acknowledge that it could combat great inflation, but we are concerned about the overall impact without significant changes. We are deeply disappointed that the regulators failed to push for regulations that will have CRA live up to the intended purpose of addressing redlining. Despite acknowledging the law's origins and how mod-

ern-day redlining persists, all of the regulators' proposals regarding race within the examination framework would do is to disclose already-public data, and would have no public impact on final ratings.

As a nation, we are in the crossroads as we strive for racial equality and economic mobility, especially as we recover from COVID-19. With intentionality, CRA can be one of the engines to end racial disparity and finally combat redlining. The time is now.

Thank you for the opportunity to be here, and I am happy to answer questions. Thank you.

[The prepared statement of Ms. Genao-Estrella can be found on page 62 of the appendix.]

Chairman PERLMUTTER. Ms. Genao-Estrella, thank you for your testimony.

Now, I would like to recognize a Coloradan on the panel, Mr. Leighty, for 5 minutes.

STATEMENT OF QUENTIN D. LEIGHTY, CHIEF FINANCIAL OFFICER AND PRESIDENT, FIRST NATIONAL BANK OF LAS ANIMAS, TESTIFYING ON BEHALF OF THE INDEPENDENT COMMUNITY BANKERS OF AMERICA (ICBA)

Mr. LEIGHTY. Chairman Perlmutter, Ranking Member Luetkemeyer, and members of the subcommittee, I am Quentin D. Leighty, CFO and President of the First National Bank of Las Animas in Las Animas, Colorado. I am testifying today on behalf of the Independent Community Bankers of America (ICBA), where I am the chairman of the policy development committee and a member of the Federal delegate board. Thank you for the opportunity to testify today.

The inclusive community focus on lending and service required by CRA is the essence of what community banks do. For this reason, CRA has not required us to shift or tailor our banking practices, but only to document what we are already doing. The First National Bank has served the communities of Southeast Colorado since 1901. Today, we are a \$580 million bank, and most of the communities we serve are low-, moderate-, or middle-income, and some are designated as either distressed, underserved, or both.

I am proud that my bank has consistently received CRA ratings of outstanding. We are an intermediate small bank with 2 assessment areas and our last examination was in 2020. My written testimony includes a detailed discussion of how we achieved our outstanding score, by serving borrowers at different income levels and businesses and farms of different sizes, particularly within the distressed and underserved communities.

Our exam also found excellent responsiveness to the community development needs and recognized our donation of funds, employee time, and expertise to critical community development services. Our performance was typical of thousands of community banks.

ICBA has developed the following recommendations for CRA modernization. Current thresholds do not reflect the extensive consolidation and growth that has occurred in the industry since 1977. Updated thresholds would partially ease the CRA regulatory burden for most community banks without impairing agency CRA assessments.

The agency should create a list of CRA qualifying activities. While the list should not be exhaustive, it would provide banks with greater clarity. CRA regulations should exempt minority- and women-owned financial institutions and Community Development Financial Institutions (CDFIs) from documentation and full-scope examinations. This change would be fully consistent with the spirit of CRA.

Finally, ICBA recommends that all institutions that serve consumers be subject to CRA. In the absence of CRA, credit unions are not held accountable for their service to LMI communities. Moreover, the increasing trend of credit union bank acquisitions is removing CRA-covered institutions from the marketplace. We ask that this committee hold a hearing on credit union and community bank acquisitions and CRA.

As you know, the OCC, the FDIC, and the Federal Reserve recently released proposed rules to modernize CRA. I will use this opportunity to make some broad and preliminary observations. On asset thresholds, the proposal would increase the small bank threshold to \$600 million, and the intermediate small bank threshold to \$2 billion, which is short of our recommendation of \$2.5 billion. Banks with assets of more than \$10 billion would be subject to additional requirements. This would provide welcome regulatory relief for small banks, including mine.

The opt-in approach. The proposal would allow small banks to opt in to the new retail lending test or continue to be evaluated under the current test. We strongly support the opt-in approach. As any new test requires banks to overhaul their compliance management systems and retrain their staff, this disruptive change comes at the expense of community service. We urge the agency to extend the opt-in approach to intermediate small banks as well.

The out-of-area activities. The proposal would allow banks to receive CRA credit for beneficial loans and investments made outside their assessment area. ICBA strongly supports this.

The list of eligible activities. The proposal requires the agency to maintain a non-exhaustive list of activities eligible for CRA credit. As I had mentioned, ICBA strongly supports this change, which would create more transparency and predictability in CRA evaluations.

My written statement provides more detailed analysis of the proposal. Thank you, again, for convening this hearing today and for the opportunity to hear the community bank perspective. I am happy to answer any questions you may have.

[The prepared statement of Mr. Leighty can be found on page 83 of the appendix.]

Chairman PERLMUTTER. Mr. Leighty, thank you for your testimony.

Dr. Getter, you are recognized for 5 minutes for your testimony, sir.

STATEMENT OF DARRYL E. GETTER, SPECIALIST IN FINANCIAL ECONOMICS, CONGRESSIONAL RESEARCH SERVICE (CRS)

Mr. GETTER. Chairman Perlmutter, Ranking Member Luetkemeyer, and members of the subcommittee, thank you for the opportunity to testify today.

My name is Darryl Getter, and I am a specialist in financial economics at CRS, focusing on financial regulation in the mortgage, consumer, and small business credit markets. At CRS, our role is to provide Congress with objective and nonpartisan research and analysis. Therefore, any arguments presented in my testimony are for the purposes of informing Congress and not to advocate for a particular policy outcome.

My testimony begins with a brief background of the Community Reinvestment Act. It then highlights some of the aspects of the proposed CRA rule that was jointly announced on May 5, 2022, by the OCC, the Federal Reserve Board, and the FDIC.

Congress passed the CRA in response to concerns that federally-insured banks were not making sufficient credit available in local areas where they were chartered and acquiring deposits. Specifically, the expansion of bank operations across State borders led to concerns that local deposits were being used to fund out-of-State and international lending activities, as opposed to housing, agriculture, and small business credit needs at more localized levels.

In addition, there was concern about redlining practices in which a bank may refuse to provide financial services to all residents in a local area, perhaps due to discrimination. For this reason, the CRA requires Federal bank regulators to evaluate the extent that banks effectively meet the credit needs within their designated geographical areas, including low- and moderate-income neighborhoods, in a manner that is consistent with prudential safety and soundness regulations.

The bank regulators award CRA credits and issue performance ratings, which are subsequently taken under consideration when banks apply for various activities that would require regulatory approval. In 1995, the CRA framework was updated to clarify and standardize the examination process. For example, the concept of an assessment area was introduced primarily with a geographical definition. In other words, a bank's lending activities would be evaluated within the geographical location of its main office, branches, and deposit-taking ATMs, as well as surrounding areas where it may have originated and/or purchased a substantial portion of its loans.

The definition of community development was also revised to include the promotion of community welfare, and the definitions of a small business and a small farm were also revised. The CRA examinations were also customized to account for differences in bank sizes and business models. Under the current CRA framework, geographical issues have recently emerged, this time as banks have increasingly adopted technology to conduct digital payments and other online transactions.

For the purposes of CRA compliance, a bank may be able to provide electronic and digital financial products to low- and moderate-income communities outside of its designated geographic assess-

ment area, but whether it receives CRA credit may depend upon an examiner's interpretation of the circumstances.

The joint proposed rule that would update the current CRA framework includes the following provisions. The definition of a CRA assessment area would be updated and expended to allow for evaluating more activities that occur outside of a bank's primary assessment area. Furthermore, the proposed rule clarifies that all activities meeting the expanded community development definition would be eligible for CRA consideration, regardless of whether they occur in the designated assessment area.

The proposed rule also expands the definition of community development, which is aimed to encourage partnerships with financial entities that promote greater access to financial products and services to traditionally-underserved populations and geographies.

The proposed rule also incorporates greater use of the data and documentation of a bank's lending and investment activities for measuring CRA effectiveness. Over time, these metrics may allow regulators to better gauge average and above-average CRA activity levels. Collectively, these updates are intended to promote financial inclusion efforts, and they may also result in the evaluation of more community development activities initiated by banks that may not have been evaluated under the current CRA framework.

Thank you for your time, and I am happy to answer any questions.

[The prepared statement of Dr. Getter can be found on page 71 of the appendix.]

Chairman PERLMUTTER. Dr. Getter, thank you for your testimony.

We expect to have votes called on the House Floor around 11:30, so will get as many questions in as we can. Hopefully, we can get through everybody who wants to ask questions, but if not, then we will have to recess and then come back to finish things up.

I will now recognize myself for 5 minutes for my questions.

Ms. GENAO-ESTRELLA, one of the new categories of revitalization and stabilization activities in the proposed rule is disaster preparedness and climate resiliency. What types of needs do you see in your community for building more resiliency, and how might directing CRA investment help in those efforts?

Ms. GENAO-ESTRELLA. Thank you so much for the question, especially since our communities in Queens have experienced different type of disasters.

And as we look to continue being able to provide resiliency, there are not a lot of resources available. Our communities cannot continually depend on disaster relief efforts from the government. We need short-term and long-term solutions. And we are very pleased that the climate resiliency is included, because it would provide to the very same communities that often get the brunt of the disasters that happen constantly due to climate change, but being able to provide investments that are needed in our communities. It is urgently needed. We also are very cautious about being able to include community input in the—in making community plans available and working in tandem with the government as well.

Chairman PERLMUTTER. Thank you. And obviously, we all know that communities in New York, and outside of New York, got clobbered by Hurricane Sandy.

Mr. LEIGHTY, I have a question for you. What role do you think banks in Colorado can play in investing in disaster resiliency efforts? Not so much out around Las Animas, but you have brush fires and wildfires out there, and obviously in the foothills and in the mountains, we had them too.

Can you also comment on your bank's experience in disaster recovery?

Mr. LEIGHTY. Sure. Unfortunately, we have had a lot of experience with fires in the area, and of course, we are close to the Black Forest fires that occurred here not that long ago. We got active in helping finance the rebuilding of those areas, and we have been very active in helping fire departments, both with renovation loans and new equipment, and just being prepared for the growth that has occurred in our State as well. And so, we are very active with the municipalities in making sure fire departments have the equipment they need and the financing available to get that. And that is the role that we have played directly.

Chairman PERLMUTTER. Thank you.

Mr. LEIGHTY. We also have a couple of volunteer firefighters who work for us, who leave the job from time to time to go help fight those fires.

Chairman PERLMUTTER. Thank you, and I thank them for their service.

I have another question for you. Many bankers have asked for more clarity around what counts as a qualifying activity for CRA credit. Under the proposed rule, the agencies would maintain a publically-available list of activities eligible for CRA credit.

Would having such a list of qualifying activities be helpful for community banks in making decisions regarding strategies in reaching low- to moderate-income communities?

And I want this to be answered by Ms. Agnani and Ms. Crosby as well.

Mr. LEIGHTY. I believe it would be helpful. The more clarity we can have, the more efficient we can be, and the more we can spend time on community development and lending versus wondering what is coming at us on the regulatory side. And so, I think it would be very helpful and something we would certainly use.

Chairman PERLMUTTER. Ms. Agnani?

Ms. AGNANI. Thank you. Yes. I do believe it would be helpful. Although, I think a comprehensive list—there will be always be additional needs. However, explicitly stating things like language access and ensuring that things like displacement do not occur would definitely reinforce and help strengthen the CRA.

Chairman PERLMUTTER. Thank you.

Ms. Crosby?

Ms. CROSBY. I agree with both Mr. Leighty and Ms. Agnani. I think that also creates greater opportunities for the institutions to work with their community partners to identify opportunities that would help strengthen communities.

Chairman PERLMUTTER. Thank you.

I have another question for you, Ms. Crosby. Your testimony highlights the need for CRA exams to consider lending to both neighborhoods and individual borrowers by income and race.

Can you please explain why this is important, and do it in 14 seconds?

Ms. CROSBY. That is a little bit unfair, but I will try. I think it is really important to be working in two very different communities, one community where lending is not happening at all, and there is significant divestment. That is the importance of tracking by place, and then working in a more affluent community where we want to as to the diversity of our community it is really important to be able to track how people are able to access financial services to be able to live in our community, and that is where you track by individuals. So, the importance of mobility as well as the importance of making investments in communities that are underserved is why you need to track by both.

Chairman PERLMUTTER. Thank you. And my time has more than expired.

I will now recognize the ranking member of the subcommittee, the gentleman from Missouri, Mr. Luetkemeyer, for 5 minutes for his questions.

Mr. LUETKEMEYER. Thank you, Mr. Chairman.

Mr. Getter, as someone who has studied the CRA, have assessment areas ever been based on lending activity instead of physical branches or deposits prior to this proposed rule?

Mr. GETTER. As far as I know, the assessment area has been based on lending activity. Although, deposits are very important.

Mr. LUETKEMEYER. Right. To me, you are looking at what the name of this Act is, it is the Community Reinvestment Act.

Mr. GETTER. Yes.

Mr. LUETKEMEYER. You want to take the dollars that are being deposited into the bank and then reinvest those in the community, and to make sure that money goes back into the community. I think we have a problem here.

I am the ranking member of the House Small Business Committee, and we set up a small business plan for the restaurateurs of this country. The problem with it was that they highlighted and prioritized women, minorities, and veterans. And that was taken to court and declared to be unconstitutional because it prioritized these three groups over everybody else.

But by the same token, everybody needs to be aware that when you start prioritizing things like this on race, I think we are going down a rabbit hole here. I think we need to look at this for low- and moderate-income folks, and I think the way to do this is to say that all of the money that comes out of a neighborhood needs to go back into it in some way, whether it be in housing, small businesses, churches, or community projects like community centers, and food pantries, things like that. That money needs to go back in there, and there needs to be a threshold on that to make sure it does. Otherwise, the money gets taken out.

I think this is the argument most people are making this morning, that money is coming out of the community and not going back. I think if we make the argument that the money needs to go back to the very community that it is being taken from, I think we

get to where we need to go, because I am concerned that if we go down this hole of, it has to be only on race, I think we are setting this whole Act up to be thrown out of court as unconstitutional, based on what I have seen already in the Small Business Committee.

Would you agree with that, sir?

Mr. GETTER. Yes. And the statute even requires the regulators to focus on geography. So, I don't know if the regulators could even extend by race.

Mr. LUETKEMEYER. Mr. Leighty, you are in the banking business. Would you agree with my assessment, there, that we need to have a threshold, and make sure all of that money goes back into the community, to make sure that we protect all of the folks who have been depositing with the institution so they can get their community—that is what this whole thing is all about.

Do you agree?

Mr. LEIGHTY. I would agree. That is how we reinvest. One of the things that we look at is our loan and to deposit ratio, and ours is very high, and historically has been, because we are reinvesting those dollars back into the community.

Mr. LUETKEMEYER. As a former examiner, I can tell you that is something that we always looked at is whether the bank was actually servicing its area by reinvesting in the community in all sorts of ways, whether it be home mortgages, auto loans, or small businesses, as well as community service things like churches and food pantries and community centers. To me, that is where this whole bill should be going.

The Housing Resource Center of the National Housing Conference put out a paper, "Could the future of CRA be in doubt," and one comment in there was, "Community development, investment, and lending are essential to repairing communities. Yet under the proposal, community development performance would not affect most large banks' overall CRA rating because retail test performance weighs heavier, 60 percent, than community development performance, 40 percent."

This is from the National Housing Conference, and Mr. Chairman, I would like to ask unanimous consent to have this entered into the record.

Chairman PERLMUTTER. Without objection, it is so ordered.

Mr. LUETKEMEYER. Thank you, sir.

Mr. Getter, would you like to comment on that?

Mr. GETTER. No, sir. I decline to comment at this time. I'm sorry.

Mr. LUETKEMEYER. Okay.

Mr. Leighty, would you like to comment on that, that the CRA rating is going to be weighed too far to the retail test performance section rather than the community development preference? Is that a better problem with this bill or this proposed rule?

Mr. LEIGHTY. I guess I am not sure I am ready to comment on that. I apologize.

Mr. LUETKEMEYER. Okay. I see I have 18 seconds left, so with that, I will yield back to the Chair, and we can hopefully get everybody back before the vote.

Thank you, Mr. Chairman.

Chairman PERLMUTTER. I thank the gentleman.

The gentleman from New York, Mr. Meeks, who is also the Chair of the House Committee on Foreign Affairs, is now recognized for 5 minutes.

Mr. MEEKS. Thank you, Mr. Chairman.

And just briefly, in response to Mr. Luetkemeyer, the reason why we have to have a CRA is because for over 200 years, this country has focused on race. And the CRA was done as a civil rights bill to correct the historic racism in the United States of America. And I would say that particularly in housing, it still exists today. The injustices and disparities in housing, based upon the history of this country, are prevalent and alive, and that is why we need CRA. And we know from the time that CRA was initially enacted, things have changed, because banking has changed. And as a result of that, we have to make sure that we continue to correct the disparities and the racism that this country was built on.

Ms. Crosby, we know that relying on data just around LMI communities does not address these racial disparities, and studies show that we need to make sure that it is addressed. How do you recommend enhancing CRA so that racial equity is at the forefront of the work that we are doing so that we can get rid of racism and redlining?

Ms. CROSBY. I think that there are a number of examples of how this could be done, but we propose an interagency statistical study that would identify metropolitan areas and rural counties experiencing ongoing dissemination. In those areas, CRA exams would include metrics such as percent of loans to African Americans or Hispanics or Asians, and the racial or ethnic subgroups on CRA exams would be based on the results of the statistical study.

Mr. MEEKS. Thank you for that.

Let me go to Ms. Genao-Estrella, because you talked about, again, in certain LMI communities and communities of color, banking deserts starting to happen. And so, people don't have access to it.

How do you suggest the CRA could address just that issue, the closing of branches in low- to moderate-income communities and communities of color? How would CRA address those issues?

Ms. GENAO-ESTRELLA. Thank you so much for the question. It's very pertinent to the communities that we serve.

We see banking deserts in our community, and one thing that CRA can do is to be able to regulate, and also that there will be consequences for closing branches that are in LMI communities and communities of color. And there will be repercussions because we see when these branch closures, and also this bank desert, when we see the repercussions on our small businesses, we see the repercussions that happen and there is a correlation between branches and also being able to have economic opportunities and access to banking in those communities that need it the most.

Mr. MEEKS. Thank you for that.

And I want to also try to get to Mr. Leighty. I have been supportive of innovation in the fintech space, because I believe that they have the ability to provide significant access to communities that have historically been shut out of the financial system, but fintechs and nonbanks that may not have charters, are not FDIC-insured. But they do provide core financial tools to their con-

sumers. However, the CRA only applies to FDIC-insured banks. So, these nonbanks and fintechs, which I, at times, applaud for making LMI a priority, are outside the scope of the CRA.

What do you think the role of the CRA should be as it relates to these nonbanks? And how do you think CRA regulation of the nonbanks could be beneficial to curing racial inequalities?

Mr. LEIGHTY. We certainly support a level playing field and also equality in that CRA space, because they are providing great services. But we have seen many times when a shadow industry comes in and gets into an environment that doesn't have the same regulatory rules, it affects everybody. And so, we would support CRA rules for them, for credit unions and other financial services.

Mr. MEEKS. My time has expired.

Chairman PERLMUTTER. The gentleman's time has expired. The gentleman yields back.

The gentleman from Oklahoma, Mr. Lucas, who is also the ranking member on the House Science, Space, & Technology Committee, is now recognized for 5 minutes.

Mr. LUCAS. Thank you, Mr. Chairman.

While the banking community has changed substantially in the last decade, the Community Reinvestment Act has not been meaningfully revised since 1995. And we are certainly in a different world now than we were 27 years ago. And we can all agree that CRA can be updated to better serve lower- and moderate-income communities.

Dr. Getter, could you discuss how this proposed rule attempts to provide clarity on whether CRA credit applies to digital financial products and services that benefit an area outside of a CRA assessment area?

Mr. GETTER. Yes. And I have had a moment to also think about the previous question, so I think I can do both of them at the same time.

Mr. LUCAS. Please.

Mr. GETTER. For the most part, the CRA does provide—the proposed rule does provide more clarity on the specific community development activities. They came up with 11 new categories that will let banks know that these loans will be eligible for CRA consideration.

The issue is, that category would only count 30 percent instead of 45 percent for the retail lending area. Now, with the retail lending area, they did say you can—if you do a substantial amount of lending in these areas outside of your assessment area, you can create an assessment area and that will be included.

What I would say might be something to think about or an issue to think about is that because the statute says we want you to cover lending in a geographic area, the regulators have to give 45 or higher weight to loans in the retail assessment area. Whereas in the community development area, they can include all loans in all areas, but it is given less weight because it is not directly in the assessment area.

So, the CRA incentivizes lending to LMI areas. It just gives heavier weight to loans within those assessment areas and areas in which they are doing a substantial amount of lending.

Mr. LUETKEMEYER. It is my understanding that the CRA rule will have a 1-year implementation period following the publication of the final rule.

Mr. Leighty, could you give us your perspective on the evaluation process and compliance changes that would be needed by a bank once this rule goes into effect? Basically, is 1 year a sufficient amount of time?

Mr. LEIGHTY. We always like more time versus less. A lot of us wear a lot of different hats. There are very few of us who are siloed in community banking, so it does take time to get our arms around legislation, especially legislation that has nearly 700 pages to decipher.

So, the extra time would certainly be helpful. I would say a year at a minimum. And it is going to cost us. We are going to need consultants and lawyers and maybe even some software to make sure that we implement those changes correctly. The more time we have, the less expense on those ends we can have, because we can digest that internally without needing to go to a third party.

Mr. LUETKEMEYER. This proposed rule offers a list of examples of qualifying activities that are eligible for CRA credit, which should help reduce uncertainty around which activities will receive credit. It is important that this rule provide clarity to banks before they commit to potential CRA activities.

Dr. Getter, can you discuss how comprehensive this list is and if this list includes a process for banks to seek approval in advance regarding whether an activity is eligible for CRA credit?

Mr. GETTER. The list, from what I could tell, was very comprehensive. Where there was uncertainty was, if a bank made a loan outside of the area, if they would get credit for it. And I do think that is one of the issues with CRA. It is not just the digital of reaching out to people that has improved with the technology, but also the way loans are funded has changed over time. And the CRA sort of has a preference for loans that are funded in portfolio.

So if a bank wanted to fund just a piece of a loan, or get into a loan participation, let's say, with a CDFI that was not in its assessment area, they may get some credit, but not the same amount of credit that they would get if it was in the assessment area.

Mr. LUETKEMEYER. If the Chair will indulge me for one second, do you see a process by which banks could get advanced approval in the rule?

Mr. GETTER. Yes, they can have a discussion with the regulator. Normally, they make the loan and then go to the regulator for approval, but I don't believe there is anything that is stopping the bank from going to the regulator first and getting some clarification.

Mr. LUETKEMEYER. Thank you, Mr. Chairman.

Chairman PERLMUTTER. I always indulge my friend from Oklahoma.

The gentleman from Georgia, Mr. Scott, who is also the Chair of our Housing, Community Development, and Insurance Subcommittee, is now recognized for 5 minutes.

Mr. SCOTT. Thank you, Mr. Chairman.

Ladies and gentlemen, race is a serious issue. It has been that way since the very foundation of this country. I would mention

those brilliant words by Thomas Jefferson, “All men are created equal, endowed with certain unalienable rights, among those are life, liberty, and the pursuit of happiness,” and this man wrote that when he owned slaves. The reason I am saying that is we have to stop being shy about dealing with race.

Ms. Crosby, I want to direct this question to you. We have a current framework within our rule, but it bases discrimination only on credit. Now with the new rule, I suppose, and you tell me, we are finally putting it in a category of any racial activity, of any type of discrimination.

So, Ms. Crosby, it is my hope that you can shed a little light on whether or not these new requirements that we have will have the effect that is needed. Would it have little or no effect on the impact of ratings of a bank and it would not constitute a lending analysis for the purpose of evaluating redlining risk factors?

First, I want you to tell me if this is true. Are you as a person satisfied with the—not the current rule but this proposed rule? Will it do the job of dealing with racial discrimination head on?

Ms. CROSBY. Thank you. I think at NCRC, we believe it could be stronger. The agencies propose to use Home Mortgage Disclosure Act (HMDA) data to produce exam type of prescribing lending in rates but it is not incorporating those findings into the banks’ exam.

In addition to that, it is possible for changes to CRA to meet current legal standards if CRA examined lending by race and ethnicity in geographic areas experiencing ongoing discrimination or exhibiting significant racial disparities in lending.

We also propose including analysis of lending in underserved neighborhoods with low levels of lending, which are disproportionately communities of color. The agency should at a minimum bolster fair lending reviews of company CRA exams for banks that perform poorly in HMDA data analysis of lending by race. In addition, the agencies propose to use Section 1071 small business and farm lending data by race and gender in CRA exams when Section 1071 data becomes available.

I think there is an opportunity to strengthen the proposed rules so that race can play a greater role in addressing the needs of underserved communities.

Mr. SCOTT. Can you explain why it is important that the rule does go further and includes information on a bank’s lending data in these underserved areas?

Ms. CROSBY. In short, I will summarize it by saying that when there were Federal policies that encouraged redlining by race, that disproportionately impacted communities, and we are seeing that today, even through our analysis of health outcomes from COVID, when you correlate the data of communities that were most significantly impacted by COVID with the data of communities that were redlined, you see the direct correlation of the impact of those policies that actually discriminated against communities of color and are still persistent today.

So, there were intentional efforts to discriminate against people of color by putting them in certain communities. There needs to be intentional efforts to correct that.

Mr. SCOTT. Thank you, Ms. Crosby.

Chairman PERLMUTTER. The gentleman's time has expired. The gentleman yields back.

The gentleman from Florida, Mr. Posey, is now recognized for 5 minutes.

Mr. POSEY. Thank very much, Chairman Perlmutter.

Dr. Getter, what do you understand to be the objectives of the Community Reinvestment Act?

Mr. GETTER. I'm sorry. Would you please say that again?

Mr. POSEY. What do you understand to be the objectives of the Community Reinvestment Act?

Mr. GETTER. Oh, okay. Thank you.

The objective is to make sure that banks are lending where they accept deposits or where they were chartered, as stated in the statute. That is what the banks are usually evaluated on, how well they are reinvesting back into their communities.

Mr. POSEY. Okay. This hearing finds much disappointment with the Community Reinvestment Act in achieving those objectives. What does your study of this Act suggest for the sources of the disappointment?

Mr. GETTER. The banks say that they were making loans but it wasn't getting counted. So, they wanted to make sure that they got credit for the CRA lending that they were doing.

Mr. POSEY. Okay. The hearing memo speaks about modern-day redlining, and this phrase appears widely in discussions of the Community Reinvestment Act on the internet and in policy circles.

Can you describe what the modern-day redlining is, and how it differs from prior forms of redlining?

Mr. GETTER. Previously, redlining may have meant not getting a loan, whereas today, redlining could mean higher prices. So, the HMDA is really trying to capture both. How much credit is being denied, and is the credit being priced correctly?

Mr. POSEY. Very good. Thank you.

In your research paper, "The Effectiveness of the Community Reinvestment Act," you point out that compliance with the CRA does not require adherence to lending quotas or benchmarks, and that in the absence of benchmarks, evaluating the effectiveness of the Community Reinvestment Act is difficult.

Could you expand a little bit on that theme for me?

Mr. GETTER. Right. The regulators are careful. They don't want to say how much lending is enough. Ultimately, the regulators are also the prudential regulators of the banks. So, they don't want to say, you have to make this loan, or this many loans, and then if the loans don't perform, turn around and have to say, well, now, you have to hold all of this capital.

So, the regulators do try to give banks flexibility. And, again, they are just trying to make sure that the lending is covered in the assessment area, which is what the statute requires.

Mr. POSEY. Very good.

Do you believe that given our country's emphasis on free market economics and finance, it would be possible or even desirable to remedy the problem by providing benchmarks for the Community Reinvestment Act based on lending quotas and quotas for other services?

Mr. GETTER. I will say that CRA loans are profitable loans. So, it is not like the regulation is forcing them to make a loan that is not profitable. That is why the loan can be eligible for CRA credit. The banks go out and lend and then they get their exam and see how many of those loans are eligible for CRA credit. And sometimes it is hard to separate out that the bank made the loan because it was profitable or did they make the loan because they were trying to comply with CRA?

Again, the prudential regulators do not want banks to make unprofitable loans. I would say that they do have a choice in making loans, and it is just a matter of doing enough documentation to show that this loan made a difference in the LMI communities.

Mr. POSEY. The composition of lending portfolios and other bank services are subject to tradeoffs with other criteria like risk-return, and capital requirements. How does the implementation of the Community Reinvestment Act account for these tradeoffs in rating banks under the Act?

Mr. GETTER. Indirectly, because they have to cover their assessment areas, and it may be an inadvertent consequence that they get credit for holding whole loans rather than sharing risks.

So in a world where you can securitize and you can do loan participations and things like that, they tend to get less credit, even if they are helping low- to moderate-income communities outside of their assessment area, because the law states, we want to know what you are doing inside your assessment area.

Mr. POSEY. Thank you.

My time has expired.

Mr. Chairman, thank you very much.

Chairman PERLMUTTER. Thank you, Mr. Posey.

The gentleman from Texas, Mr. Green, who is also the Chair of our Subcommittee on Oversight and Investigations, is recognized for 5 minutes.

Mr. GREEN. Thank, Mr. Chairman.

Mr. Chairman, I kindly associate myself with the remarks of Chairs Meeks and Scott.

And I contend, Mr. Chairman, that the current CRA legitimizes invidious discrimination. As evidence, in his 2019 testimony before this committee, journalist Aaron Glantz shared a finding from his investigation into modern-day redlining which included the following:

“In 61 metro areas across the country, people of color were more likely to be denied conventional mortgages than their White counterparts, even when they made the same amount of money, tried to borrow the same amount of money, and wanted to buy in the same neighborhood.”

He goes on to say, “Despite these disparities, 99 percent of national banks received a satisfactory or outstanding grade on their inspections under the Community Reinvestment Act.”

It legitimizes invidious discrimination. One of the things that we must do would be to establish strong standards, with meaningful sanctions. It is not enough to have standards if you don't have sanctions that are meaningful.

When I was the president of the NAACP, we engaged with a bank that wanted to merge. That was the point where you could

get the attention of a bank that was out of compliance. That is not enough. We need stronger standards, and we need stronger sanctions.

I am currently considering legislation to increase the Fed Fund Rate on a bank that is out of compliance with the CRA under stronger standards until that bank presents some sort of action plan and begins to implement it such that we will know they are moving towards compliance.

We have suffered long enough. The status quo intends to protect the status quo. There is a desire to have a CRA that would allow 99 percent of the national banks to receive a satisfactory or outstanding grade when they have engaged in invidious discrimination.

So, again, in his findings, people of color were likely to be denied a conventional mortgage more so than their White counterparts, even when they made the same amount of money, tried to borrow the same amount of money, and wanted to buy in the same neighborhood. That says it all. We have to make a change.

Ms. GENAO-ESTRELLA, how do you respond to my comments?

Ms. GENAO-ESTRELLA. This goes to the heart of the communities that we serve, in which I see it vividly. This is not about 40 years ago. We see it in our communities, not only constantly being denied but also there is a pattern. For example, in New York City, 22 percent of the population is Black, but fewer than 5 loans by CRA-regulated banks go to Black borrowers.

We see patterns after patterns. And right now, we go to the intention. By intention, it just needs to be an action and we see also that—

Mr. GREEN. Permit me to intercede with 31 seconds left.

What do you think of my idea to increase the standards, of course, but also to impose sanctions that are much stronger? What are your thoughts on that?

Ms. GENAO-ESTRELLA. Yes. It is very important that there are repercussions for banks, for bank institutions if there is a pattern, and they are not providing the products and services that the community needs, especially communities of color and also LMI communities.

Mr. GREEN. Thank you, Mr. Chairman.

I yield back.

Chairman PERLMUTTER. The gentleman yields back.

The gentleman from Kentucky, Mr. Barr, is recognized for 5 minutes.

Mr. BARR. Thank you, Chairman Perlmutter, and thanks to our witnesses.

One of the pieces of feedback I receive frequently from my constituents in the banking business is that it is difficult to invest in low- to moderate-income communities when there is a lack of clarity in the examination process for CRA.

Let me start with Dr. Getter. Do you believe that banks will best serve and invest in communities when they have a clear understanding of expectations from regulators, where it is objective, as opposed to subjective, in the exams?

Mr. GETTER. Sure. And also with credit histories from the borrowers in those communities, so income alone is not the only un-

derwriting criteria. Credit history is important, and there are also fair housing laws and equal credit opportunities.

Mr. BARR. Back to the point, it is the lack of clarity that is a problem. And to Mr. Leighty's testimony—and I will just quote directly from his written testimony—"Community banks experience inconsistencies in the examination process. The inconsistent manner in which loans receive CRA credit occurs between examinations within an agency, as well as between agencies. This makes it incredibly difficult for community banks to plan and implement their CRA requirements responsibly."

Dr. Getter, do you believe that this interagency proposal sufficiently addresses that concern?

Mr. GETTER. It definitely addresses that concern. Now, again, if a bank wanted to partner, let's say, with a CDFI, they would not get as much credit as if they held that loan on the books.

Mr. BARR. Let me get specific. And I will ask Mr. Leighty to comment on this, too.

I think it is great that the interagency proposal adopts former Comptroller Otting's proposal that an investment could receive a binding decision or a proposed investment or proposed loan could receive a binding decision about whether or not that loan or investment would be eligible for CRA credit. I think that provides the certainty that we need.

However, on this illustrative list of activities, which I think is a good idea, a safe harbor, one of the problems that one of my constituent banks has brought to my attention, a bank that does a great job with CRA and invests in low- and moderate-income communities quite a bit, is this issue on revitalization.

And what my constituent said to me, and this is the compliance officer, the CRA compliance officer of a bank who was concerned that the revitalization among the 11 categories that were listed in the proposal only counts if it is under a government program.

And she said there are a lot of private groups or projects that revitalize areas, especially in rural areas. Most of our current community development activities in the revitalization bucket would no longer count.

Do you believe, Dr. Getter and Mr. Leighty, that this is a flaw in the proposal?

Mr. GETTER. I would have to review that. I wouldn't call it necessarily a flaw.

Mr. BARR. Mr. Leighty, what do you think?

Mr. LEIGHTY. I would have to look at the details, but I would say a lot of the CRA lending we do is direct without government programs. We had a great example—

Mr. BARR. Right. That is the problem. I think the proposal should revise that. There should be an opportunity for credit, even when a government program is not involved.

Let me also ask Mr. Leighty a question about an alternative to CRA. Rather than breathing new life into an antiquated mechanism like CRA, why not supercharge Opportunity Zones and incentivize capital formation in underserved areas through tax relief?

Tax relief for community banks' retained earnings can promote lending to the underserved in rural areas, and this tax relief would

strengthen community banks' capital and their ability to lend and to create a more level playing field in the financial ecosystem and increase capital in underserved areas around the United States.

Mr. Leighty, would providing tax relief for community banks' retain earnings increase access to capital in communities that are traditionally underserved?

Mr. LEIGHTY. Absolutely, it would. If we have more capital to deploy, we want to efficiently deploy that. And so, that would certainly help us have more to disburse, no question.

Mr. BARR. I am exploring legislation to do just that. I think it is a suitable alternative or at least a supplement to CRA, and I am going to be introducing legislation to that effect.

Final feedback and this is—I don't have to time elicit a comment. But one of my constituent bank compliance officers said that the proposal's multiple new tests, subtests, and factors would subject numerous discrete areas of bank operations to evaluation, and the complexity and vast new data collection reporting requirements would not facilitate the issue of determining whether or not an activity would result in CRA credit.

That is why there needs to be a longer implementation period for this, and certainly a longer comment period. This is a highly complex proposal and we need more time to—

Chairman PERLMUTTER. Your time is up, speaking of needing more time. The gentleman's time has expired.

Mr. BARR. Thank you.

I yield back.

Chairman PERLMUTTER. And he yields back.

I will now yield to the gentleman from California, Mr. Sherman, who is also the Chair of our Subcommittee on Investor Protection, Entrepreneurship, and Capital Markets, for 5 minutes.

Mr. SHERMAN. Thank you.

The last questioner put forward the idea that we should cut taxes on banks or certain banks. And I would just say that at a time when we have an enormous Federal budget deficit, for us to do that, unless the gentleman has some pay-fors, would simply expand that deficit further.

Mr. Leighty, the rules that we have now tend to be somewhat vague, and it tends to matter what a particular examiner decides to give you credit for, count against, et cetera.

Do the changes that are being proposed eliminate examiner roulette, where what matters is which examiner you get? And do they provide the clarity necessary so that you know what the rules are and that the rules are published and not just something kind of everybody knows but they are not in the written rules?

Mr. LEIGHTY. We think it would be very helpful. That list would just release some of that uncertainty. And then, this accountability, when we—if we had a channel to get in front of our regulators and say, hey, we are looking at this project, what is your perspective, would that qualify for CRA? And to have a time period where they have to respond back would be very helpful for us to march forward. In most cases, we are going to do those loans anyway, but it is helpful from the efficiency standpoint to make sure we are documenting those appropriately and have them as part of our report.

Mr. SHERMAN. So, you are saying that the rules are unclear and you would like loan-by-loan advice from your regulatory agencies, because you can't just look at the rules and determine what is and is not going to qualify?

Mr. LEIGHTY. I think there are just some that are in the gray area, and those are ones that would come into effect. We would want to have that dialogue and know the timeframe when we will hear back. I wouldn't say that is the average loan, but I would say there are circumstances where it would be good to have that clarity on the front end, especially when we are looking for participant banks to come into the deal as well, so they could know that they would have a CRA component to that.

Mr. SHERMAN. Okay. And I would just say democracy works better where rules are published, and the rules are clear, rather than there are things in a gray area and an individual bank getting an individual nod or ruling on an individual loan.

I have another question for you. The new types of qualified activities specifically outlined in the framework are activities that help communities prepare for natural disasters. Given the increased frequency and severity of wildfires in the West—and as the planet warms, those are only going to get worse—do you believe there will be an increased demand for loans designed to improve resiliency? And do you see banks like yours able to fill that need?

Mr. LEIGHTY. I think we are well-positioned to help with the fire mitigation, to help with some of the new equipment that helps them more efficiently fight fires. A lot of our communities are very small, and so we have volunteer fire departments only in several of our communities. And we play a really crucial role in making sure that they have the equipment they need and the financing at a low price so that they can afford to continue to grow, and that includes the Black Forest area of the Colorado Springs market as well.

Mr. SHERMAN. I'm going to squeeze in one more question for Ms. Genao-Estrella. We have seen the number of bank branches decrease, some 13,000 closing between 2008 and 2020, and another 4,000 during the pandemic era. So, we see an awful lot of banking taking place by banks that either have no branches or that service the vast majority of their customers online. The branches are irrelevant to most of their customers.

Does the proposed rule do enough to make sure that these increasingly-important online-mostly or online-only banks are meeting their CRA responsibilities? And I am particularly concerned that we say, well, you have a responsibility in the areas in which you lend, but there may be online banks that only lend in well-to-do areas.

How do these rules properly meet that objective?

Ms. GENAO-ESTRELLA. Thank you so much for the questions.

We see that in our communities as a problem, and we also see it as being able to have—we really want to make sure that financial institutions have a responsibility, and also that we see it in different nonbank activities in the communities.

And we want to be able to have regulators that increase access to banking and address the digital divide on all banking, not just banks over \$10 billion, and we want to be able to—

Chairman PERLMUTTER. I—

Ms. GENAO-ESTRELLA. I'm sorry.

Chairman PERLMUTTER. I am going to cut you off, because the gentleman's time has expired.

Mr. Williams from Texas is now recognized for 5 minutes.

Mr. WILLIAMS OF TEXAS. Thank you for that nice introduction.

Chairman PERLMUTTER. He is also a small business owner.

Mr. WILLIAMS OF TEXAS. You are bleeding into my time.

Chairman PERLMUTTER. And he has owned a car dealership for a long time. He coaches the soft—the baseball team. I was going to say the softball team.

The gentleman from Texas is recognized for 5 minutes.

Mr. WILLIAMS OF TEXAS. I reclaim my time. Thank you.

I will have a short question. But I am sitting here and thinking we should be talking about the things that I am hearing from my people back home in Texas, including out-of-control inflation, border issues, interest rates, crime, and food. And today, the Consumer Price Index (CPI) numbers came in at over a year increase of 9.1 percent. I am one of the few today in this hearing who remembers 1981, when we had runaway inflation heading toward these numbers.

This is not simply a transitory problem like the Fed claimed, or the high-class problem that the White House wants to deflect it to. This is having a real impact on all Americans, even the ones we are talking about. Main Street America is being affected, and this is eating away at wages for workers, and profit margins for businesses. And this is going to force the Federal Reserve to once again hike interest rates to reverse this inflationary cycle.

These actions will make the cost of capital increase. And that will leave small businesses, homeowners, home buyers, and anyone who is looking to get a line of credit in worse financial shape than they were.

So, I think we should be doing everything we can to help people right now with the inflation crisis instead of discussing a proposed rule, for example, that is still being developed as we debate it here today, because it is still about these issues I am talking about. It is about inflation. It is about the border. It is about crime. It is about food. And we need to fix that.

I just have a quick question for you, Mr. Getter. When we talk about this rule—as the chairman said, I am a businessperson; I employ people. And costs going up can sometimes hurt service to your customers, can hurt margins, and so forth.

So when we talk about this rule, do you think the way it is currently drafted, it would impose a relatively large new cost on banks that, again, could drive up rates to try to offset the heavy costs? What do you think this is going to do to the banks and their daily budgets with which they deal?

Mr. GETTER. The data collection requirements will definitely increase. Now, how that translates into rates, I am not sure. It depends on the competition or when the borrowers shop. But the data collection requirements definitely—

Mr. WILLIAMS OF TEXAS. So, we are going to see a higher cost to do this, which could come back and hurt the consumer. In my

time that is left, I would ask our private sector banker from Colorado, Mr. Leighty, what he thinks.

Mr. LEIGHTY. There is no question that more regulation flows down and costs the consumer. And regulation is important. We are all for it, and we know that this market needs to have regulation. But it does get to a level where it is cost-prohibitive, and it kind of contradicts trying to take care of the communities that we serve.

Mr. WILLIAMS OF TEXAS. In your industry—and in my industry, too—you have had to hire, I am sure, many more regulators and loan officers, haven't you?

Mr. LEIGHTY. We have enhanced our audit side of things and compliance side, for sure.

Mr. WILLIAMS OF TEXAS. Well, anytime there is more cost and regulation, it affects the consumer. And in my business, I have even had to hire—my business is built on commissions, the car business, as you have heard. And I have even had to hire compliance officers, and I haven't found a compliance officer yet who will work on commission.

So, anyway, Mr. Chairman, I have some time left that I will yield back to you.

Chairman PERLMUTTER. I thank the gentleman for yielding back.

The Chair will now recognize Mr. Casten from Illinois, who is also the Vice Chair of our Subcommittee on Investor Protection, Entrepreneurship, and Capital Markets, for 5 minutes.

Mr. CASTEN. Thank you, Mr. Chairman.

I am generally very supportive of the CRA, but it has always struck me that it has some sort of inherent structural flaws.

Ms. Crosby, I would like to start with you, and just see if you can confirm my judgment and then sort of get to some possible fixes.

Let's say that I am a bank, and I have someone I can provide a \$300,000 mortgage to, who is in an LMI community. They qualify for the CRA credits. Do I get any CRA credits if I forgave \$300,000 of debt to that same individual? I think you are muted.

Chairman PERLMUTTER. Yes, you need to do whatever you did before.

Ms. CROSBY. I am on my phone and the internet, so I get confused. I apologize about that.

You get CRA credit for activity that is in an LMI track, as well as what is made to an LMI individual. If I understand your question correctly, if there is a loan made in an LMI track, the bank would get credit for that. In terms of loan forgiveness, I will have NCRC staff follow up than.

Mr. CASTEN. Let me give you another example.

Same track, same individual, I give them a \$100,000 student loan. What if I gave that individual a \$100,000 scholarship? Would I get any CRA credit for that?

Ms. CROSBY. I am going to defer to NCRC staff. But I believe if that falls—if that is in an LMI area, the loan would not or the grant would not get CRA credit. But I will have NCRC staff—I have them with me and they will follow up with a response to that.

Mr. CASTEN. We could go on to other examples. My understanding to both of those is that the answer is no, and I say that because I am fortunate enough that I do not live in an LMI com-

munity. A lot of my neighbors, like me, were fortunate. We made the best life choice we ever could have made: We were born to wealthy parents. And so, I didn't come out of college with a lot of student debt. A lot of my neighbors got help getting their first home, and we have built equity.

And we use CRA to try to invest in LMI communities by giving debt to people who in some cases are already overindebted. And we don't give them—we are not giving banks the incentive to get them out from under debt traps. We are giving banks incentives to give them more debt. And I am not saying we should mandate. I understand how banks make money.

But I am wondering, Ms. Crosby, if we were to change the CRA so that banks had the option to give people more equity, do you think that would be an effective way to meet the goals of the CRA and make our LMI communities stronger, and more fiscally independent? And how might we do that?

Ms. Agnani, I would love to get your take on this with the 2 minutes I have left as well.

But I will start with Ms. Crosby.

Ms. CROSBY. I am going to actually have NCRC staff follow up with a response on that.

Mr. CASTEN. Okay. Ms. Agnani, any thoughts from you?

Ms. AGNANI. In terms of loans versus equity investments, I think it depends on who the beneficiaries are of those equity investments and whether the affordable housing and/or investment in small businesses are really reaching low- and moderate-income communities and communities of color. So, I think it would depend on the type of investment and who would ultimately benefit.

Mr. CASTEN. Okay. With the time left, does anybody else have any thoughts on this?

And, again, I understand that banks make money by loaning money. And I am not suggesting that we mandate charity, but it does strike me that the communities that have a lot of wealth in this country are not the ones that have accumulated a lot of debt. They are the ones that have accumulated a lot of equity.

And if any of you have thoughts, either in the time here or in follow-up, of how we might put sort of appropriate scoring in the CRA to give banks another tool, I would welcome your thoughts.

Ms. AGNANI. If I may, Congressman, I think a lot of these conversations we are having, really at the end of the day it is about the quality of the investments and lending versus quality—quantity—quality over quantity.

And this is really why we need better data and to use datasets like HMDA that actually disaggregate and include racial subgroups. Without that ability to really evaluate investments in lending, we won't be able to solve for these problems.

Mr. CASTEN. Thank you.

And I yield back.

Chairman PERLMUTTER. The gentleman's time has expired.

Votes have been called, but I want to see how many more Members we can get through.

Mr. Loudermilk from Georgia is recognized for 5 minutes.

Mr. LOUDERMILK. Thank you, Mr. Chairman.

And I will try to be brief.

Under the proposed rule, for a bank to receive an outstanding rating, its CRA performance would have to be at least 125 percent of the median. Over the last 3 years of banking activities, not one bank with more than \$50 billion of assets would have achieved an outstanding rating. And less than 2 percent of banking assets are in banks that would currently be considered outstanding.

Mr. Getter, if it is almost impossible for banks to receive an outstanding rating, would that incentivize them to do more or less CRA activity?

Mr. GETTER. It could incentivize them to do less or just maintain the status quo.

Mr. LOUDERMILK. Okay. Thank you. That is what I think most people would perceive, because if there is no reason for a bank to invest more resources, if there is a chance of achieving a higher rating, I agree with you. I think it could cause them to do less.

One of the biggest problems that we have with the current CRA regime is that regulators often do not deliver exam results for years back to the banks. Unfortunately, it appears that this rule would only make the problem worse because results would be based on backward-looking, peer metric comparisons.

So, Mr. Getter, if banks do not find out how they did until years later, doesn't that cause significant delays with getting CRA investments where they are needed most?

Mr. GETTER. I don't know if the results would cause delays. I have heard complaints that the results are slow. But again, if there is money to be made, I don't see the bank just walking away from it, waiting for a past CRA exam. But you are right. Banks have complained about not getting feedback quickly.

Mr. LOUDERMILK. Okay. I have one other area of concern. I have heard about the proposed rule that some of the compliance deadlines like the first quarter, that is, at least 60 days after the final rule, are very short.

Mr. Leighty, is that a concern for you? And can you share why that could be a challenge for community banks?

Mr. LEIGHTY. It is a concern. We wear a lot of hats, and we are serving our communities, too. We are investing a lot of time out in the community. And anytime we have added regulation, it is just helpful for us to have more time to get our arms around what exactly it means without having to go hire a bunch of service providers to get us there quickly.

With the 700-page change to CRA, there is just going to be a lot of things that we need to make sure we are covering. So, the more time we could have, the better, for sure.

Mr. LOUDERMILK. Okay. Thank you, Mr. Chairman.

I yield back.

Chairman PERLMUTTER. The gentleman has yielded back. Thank you for cutting your questioning a little short.

I now recognize Mr. Foster, who is also the Chair of our Task Force on Artificial Intelligence, for 5 minutes. If you can do the same, then we can get to Mr. Rose, and maybe to Mr. Garcia.

Mr. FOSTER. I will speak rapidly if we can get the lawyers to stop talking.

As part of my role as the Chair of this Committee's AI Task Force, we have been looking at how AI technology can improve all

aspects of the financial services industry, including achieving equity goals.

The Community Reinvestment Act was passed by Congress in 1977 with the explicit goal of responding to redlining and discrimination against communities of color. And still, decades later, in part because the law was written in a race-neutral way, a 2018 report by the Center for Investigative Reporting found that redlining effectively persists in 61 cities throughout the country.

New technologies such as artificial intelligence and machine learning have the ability to automate loan underwriting and can make credit decisions and process thousands of applications at an unprecedented rate. This will lower costs, and does lower costs, but can also make credit more available to LMI communities. But it comes with risks, and these risks have been highlighted by our AI Task Force.

I guess to all of the witnesses here: How can banks utilize artificial intelligence or are they also utilizing artificial intelligence in a way so that it actually benefits low- and medium- and moderate-income families and people of color in developing and revitalizing their communities instead of just exacerbating it? Is there good news here in relation to AI?

Anyone?

Mr. GETTER. It is my understanding that banks are not using the machine learning to make the actual credit decision, because if the regulators ask them, how did you get to this decision, and it is so much data and they don't understand it, then they can't answer that question.

So just from my understanding, machine learning may be valuable. They may take in the application or something like that, but the actual credit decision is made so that the bank can explain it.

Mr. LEIGHTY. I can speak from the community bank perspective. Our business model at the office is that it may be lacking in efficiency but very strong in the relationship base. And so, we sit down at the table and get to know each other, and make sure that we understand the exact needs, and custom-make products for our customers.

Artificial intelligence certainly has a place, and we are heading in that direction, but that is something that we have not spent a lot of time focusing on, given our business model.

Mr. FOSTER. Do you end up using it implicitly just in your advertising and outreach? There are examples of people using Facebook-driven stuff. And whether they plan to or not, they end up using AI for good or ill. How do you handle that one?

Mr. LEIGHTY. We do have some marketing efforts that use the digital platforms, and I am sure there is a lot of AI going on in that background. That has been less than 12 months for us. So we are new to that space, but we are certainly heading in that direction.

Ms. CROSBY. And just to add to the comments, we have heard of some AI-driven members using a type of college that someone attended or an Ivy League school in their underwriting decision. So the further the AI strays from variables used in traditional underwriting, the riskier it becomes from a fair lending perspective.

Agencies must subject AI to rigorous fair lending reviews to ensure that no racial, ethnic, or gender disparities arise that are not

justified by business necessity, which is the standard established by the Equal Credit Opportunity Act.

Ms. AGNANI. If I can just add, unfortunately, I can follow up with specific research. I believe women of color are disproportionately negatively impacted by machine learning in lending, and so we need to proceed with caution.

Mr. FOSTER. Yes, one of the tough things is when you end up using an algorithm that makes it better for everyone, but some are helped more than others. Is that an acceptable thing or not? And that is one of the things we have been struggling with on the AI issue for a long time.

Ms. GENAO-ESTRELLA. Yes, I will agree with my fellow panelists and witnesses. Definitely, this is something for the future, but we also need it right now. For the communities that we serve, right now, it has a negative impact, because we need to go back to the basics. And if we have a structural problem, racial disparity, there is very little that is going to, that artificial intelligence, especially when we are not sitting at the table making those decisions and who will be there. It is definitely going in the right direction, but we need to do more. Thank you.

Chairman FOSTER. Okay. My time is up.

And I yield back.

Chairman PERLMUTTER. Thank you. The physicist's time is up.

Mr. Rose from Tennessee is now recognized for 5 minutes.

Mr. ROSE. Thank you, Chairman Perlmutter. Another lawyer to talk now.

And, Ranking Member Luetkemeyer, thank you for holding this hearing. And thank to you our witnesses for being here.

I would just like to make a comment at the outset that we need to stop with these gimmicky titles to hearings that foreshadow a specific bias to the subject to be examined. Today's hearing is entitled, "Better Together: Examining the Unified Proposed Rule to Modernize the Community Reinvestment Act."

Is it better together? It might be. But how can we approach the hearing with an eye towards neutrality or objectivity if the very title of the hearing already reflects a certain type of bias and appears to be a jab at former Comptroller Otting?

The public has not even had time to weigh in on this issue. Indeed, the comment period is still open. And individuals, financial institutions, and other interested parties are still combing through the rulemaking. They have also asked for an extension of the comment period, which was ultimately denied, a common trend among Biden's financial regulators.

Imagine being a financial institution right now, spending hours on the Federal Register, trying to figure out how these new rules and regulations will impact your business, and in many cases, trying to do so within the confines of an abbreviated comment period. Now as my time is limited, I will dive right into questions.

Mr. Leighty, are you worried about the complexity and length of this 679-page rulemaking? And are you confident that community banks will be able to comply with it?

Mr. LEIGHTY. Ultimately, we will be able to comply with it because our business model hasn't changed because of it. We do take care of our communities. In two of the communities we operate in,

we are the only bank in town. There wouldn't be a bank without us. And so, that is our mission.

But, yes, a 700-page change will certainly take a lot of time, effort, and a lot of resources to get up to speed with and a lot of help from the Independent Community Bankers of America (ICBA) and others.

Mr. ROSE. Dr. Getter, Mr. Green just stated a few moments ago that he is working on a proposal to raise the Federal Funds Rate on banks that are in noncompliance with the CRA. You don't have to comment on what impact this would have perhaps on individual banks, but what impact do you think this would have on the banking system?

Mr. GETTER. It does increase the cost of funds, especially if they are using deposits to fund their loans. Actually, it may even increase the cost of—for the entire banking system, it could increase the wholesale funding and the cost to get the funds to make the loans. So, that would be an issue.

Mr. ROSE. Thank you.

I think that would be a terrible idea, frankly, and not helpful at all.

But Dr. Getter, I would like to discuss the retail lending assessment area test and the inclusion of indirect lending in that test. We usually think of indirect lending as auto dealer lending, but this will also sweep in dealer-initiated lending in the equipment and transportation financing sectors. Banks have very little input on these loans, since they are generally acquired through partnerships with dealers. And the banks have almost no control over the geographic distribution or the marketing of these loans to customers.

Equipment and transportation finance are unique in that there are fewer dealerships that originate these types of loans. Further, there is an even more unique customer base that isn't comparable to the overall aggregate of small business lenders or demographics.

The proposed changes could result in banks leaving markets, creating less opportunities and healthy competition for loans in low- and moderate-income census tracts or to low- and moderate-income borrowers or businesses with revenues of \$1 million or less.

Dr. Getter, if the goal of the CRA is to encourage lending by banks to low- and moderate-income communities and individuals, why is it logical to include categories of loans where the bank has no say in the communities or individuals they serve?

Mr. GETTER. It is my understanding that they are supposed to do oversight over their indirect lenders. They are supposed to pay attention to that, according to what I have heard from various regulators. And if banks decide they want out of it, my guess is that the nonbanks might step in and take up some of that business. So, I don't want to speculate; I am not 100 percent sure. All I can say is that having the automobile data might shed some light on where some real discrimination may or may not be.

Mr. ROSE. Thank you, Mr. Chairman.

I yield back.

Chairman PERLMUTTER. The gentleman's time has expired.

Now, I am trying to figure out who I am going to go to next.

Mr. Garcia, you are not on the subcommittee, so you are last. You are going close us out.

Mr. Timmons?

Mr. TIMMONS. Yes, sir.

Chairman PERLMUTTER. Mr. Timmons from South Carolina is recognized for 5 minutes.

And then, I think we will have to take a break and go vote.

Mr. TIMMONS. Thank you, Mr. Chairman. Thank you, my friend. I appreciate you holding this hearing.

And thank you to each of the witnesses for joining us today.

Dr. Getter, part of this new Community Reinvestment Act overall is that banks will be evaluated in so-called retail lending assessment areas, which is any location where the bank makes 250 or more small business loans or 100 or more mortgage or small farm loans.

Is it possible a bank might reconsider and even limit lending in a particular area to avoid meeting what seems to me to be extremely low thresholds in these retail lending assessment areas?

Mr. GETTER. It depends on if it is one of the banks that were complaining that they were not getting enough of their loans evaluated for CRS. So, I guess it really depends on the uniqueness of the banks. Some banks are probably glad to have it, and maybe there could be some banks that won't be glad. But it would be captured under the community development test.

Mr. TIMMONS. This could be an unintended consequence. And we need to make sure we are structuring this in a manner that would avoid that, if possible.

Would you agree with that?

Mr. GETTER. I'm sorry. Would you just say that one more time?

Mr. TIMMONS. This could be an unintended consequence, and we need to make sure that we are doing everything to avoid that outcome.

Would you agree with that?

Mr. GETTER. I guess maybe the community development test would pick up on what is not happening. The community development test is supposed to pick up anything that is not necessarily included in the retail lending test, is my understanding, is improper. So, the regulators will catch it.

Mr. TIMMONS. Okay. Thank you.

Dr. Getter, can we talk about the data collection aspect of this? Because I have started to chat with banks about the proposed rule-making. One common concern has been the new data collection piece of this. The biggest banks do not really care about this and the smallest banks are written out, but is that potentially a huge burden for midsized banks?

Can you explain to us the new compliance burden that would be leveled on banks for data collection?

Mr. GETTER. The automobile loans, I believe for the banks that are \$10,000 and over—oh, that is more the digital collection thing. They have to respond to that.

It is a blessing and a curse. It is a double-edged sword because there are a lot of complaints that banks are not doing enough lending. At some point, the data will be needed to either confirm or deny how much lending is being done by the banking system. It

will be costly, but at least we can go off of evidence at some point once we have the data.

Mr. TIMMONS. Could you talk about what kind of information is required to be submitted, how often, and any guesstimate on cost and time required for it?

Mr. GETTER. The regulators are going to try to harmonize it with HMDA and with Section 1071. And the CRA examinations, let me just say, 3 to 5 years. My guess is they are just going to have to collect data constantly and have it ready, because if they are doing mortgages, they are definitely collecting HMDA data every year. And then, we will wait and see what Section 1071 requires.

So, data collection is just a new way of life, I suppose, in a world of technology and digital modernization.

Mr. TIMMONS. Sure. Which regulators would be in charge of collecting the data and going through it?

Mr. GETTER. Who is going to be in charge?

Mr. TIMMONS. Which regulators?

Mr. GETTER. For CRA, it will be the banking regulators. For the HMDA and the Section 1071, it is the Consumer Financial Protection Bureau (CFPB).

Mr. TIMMONS. One final question. Where would this data, which would be pretty sensitive, be stored? Is there any concern with cybersecurity investments, costs associated with that? The compliance cost alone is going to be large because of additional individuals and time that will be required. But do you have any cybersecurity concerns, and is this going to create another layer of sensitivity?

Mr. GETTER. Yes, there are cybersecurity concerns. And I believe that is the reason why the small banks will be able to stay under the regular CRA tests, and that is part of the reason why Section 1071 has taken so long, based on my understanding. We need the data on kind of the smallest institutions served by some of the smallest banks. But because of the data collection requirements and the cybersecurity risks, it has been taking some time.

Chairman PERLMUTTER. Okay. The gentleman's time has expired.

Mr. TIMMONS. Thank you, Mr. Chairman.

I yield back.

Chairman PERLMUTTER. We are going to go to Mr. Garcia of Illinois for 5 minutes.

We have no time on the clock for voting on the Floor; 286 Members have yet to vote.

If Mr. Norman wants to go, we are going to end up reconvening for him.

But, Mr. Garcia, please go ahead.

Mr. GARCIA OF ILLINOIS. Thank you, Chairman Perlmutter, and Ranking Member Luetkemeyer, for hosting this important discussion on the Community Reinvestment Act. This is a very timely hearing.

And of course, I want to thank our witnesses who have shared their time and expertise on the Community Reinvestment Act with us. I come from Chicago and the story of the CRA runs deep through my City and our community. It was in the Austin neighborhood near my community where a community organizer named

Gale Cincotta led the fight against discriminatory lending practices, and earned the nickname, "Mother of the CRA."

So it is fitting that last year, our governor signed Illinois' CRA in the nation with its own protection against redlining and discrimination in lending. That is important to immigrant communities like those that I represent on the northwest and southwest sides of Chicago in suburban Cook County, because the CRA isn't working for us.

For every dollar lent into majority White neighborhoods, only 13 cents goes to Hispanic neighborhoods like mine, and the investments we do receive fuel gentrification and displacement all too often. I am heartened that our Federal regulators are taking up the task of modernizing the CRA because real change in lending practices is a nationwide problem and needs a nationwide solution.

Ms. Agnani, from Gail Cincotta's day until now, our communities have been clear about our needs. In the face of redlining, discrimination, underinvestment, and displacement, it is clear that our existing financial system wasn't built for us. We need protections.

Do you think it is important for the Federal regulators to receive community input as they revise CRA, and what should that process look like, and do agencies like the CFPB have anything to teach us about how regulators can consult with our communities?

Ms. AGNANI. Thank you, Congressman. Yes. Absolutely.

I also originally come from the Chicago area, and have worked in Queens, so both Cities that are in focus in this hearing are really critical. Absolutely. Focusing in on the displacement issues, our communities need investments in lending which will ensure that residents can stay in the cities that they live in and work in and have helped to build.

And so, CRA credits should be given only if existing residents are able to stay in their cities, and the small businesses are allowed to thrive. That needs to be part of the evaluation of whether CRA investments are effective. Sorry. I am not sure if I answered the specific question.

Mr. GARCIA OF ILLINOIS. That is fine. Thank you so much.

Ms. Crosby, since the CRA was last revised, new players like non-bank mortgage lenders and fintechs have revolutionized finance. And if our laws don't catch up with them, we risk predatory behavior and possible financial collapse. One issue that I am focused on is industrial loan company (ILC) charters, which not only allow for underregulated parent companies to own a bank, but raise questions about a bank's responsibilities to its community.

What do you think Congress and regulators can do to make sure that a revised CRA adequately covers these new industry—

Ms. CROSBY. ILCs have CRA obligations like traditional banks. NCRC is not supportive of ILCs since the ILC parent companies can be nonfinancial companies. This introduces potential conflicts of interest the ILC can be pressured to make unsound loans to its parent or cut off credit to the parent company's competitors. BMW bank is an example of an ILC that has a CRA exam, but the CRA exam evaluates an inadequate strategic plan despite being a lender offering billions of automobile loans across the country.

BMW bank created a strategic plan in which it has designated Salt Lake County to be its only assessment area, because that is

where they are headquartered. The strategic plan does not create goals for automobile lending, but only for community development financing and services. While the community development is important, lending should also be examined and should be examined across the country.

Mr. GARCIA OF ILLINOIS. Thank you very much. I see my time is up, so, Mr. Chairman, I yield back.

Chairman PERLMUTTER. The gentleman's time has expired.

Mr. Norman may have questions for the panel, but I think I am going to take the Chair's prerogative, and I would like to thank our witnesses for their testimony today.

The Chair notes that some Members may have additional questions for these witnesses, which they may wish to submit in writing. Without objection, the hearing record will remain open for 5 legislative days for Members to submit written questions to these witnesses and to place their responses in the record. Also, without objection, Members will have 5 legislative days to submit extraneous materials to the Chair for inclusion in the record.

I want to thank you all for your time and for your testimony today. We appreciate it. And again, I want to thank our panelists.

And with that, this hearing is adjourned.

[Whereupon, at 12:07 p.m., the hearing was adjourned.]

A P P E N D I X

July 13, 2022



**Statement of Seema Agnani
Executive Director, National Coalition for Asian Pacific American Community
Development**

**House Committee on Financial Services,
Subcommittee on Consumer Protection and Financial Institutions
Hearing on “Better Together: Examining the Unified Proposed Rule to Modernize the
Community Reinvestment Act”
Wednesday July 13, 2022**

Chairman Perlmutter, Ranking Member Luetkemeyer, and members of the U.S. House Financial Services Committee, thank you for the opportunity to provide testimony to the Consumer Protection and Financial Institutions Subcommittee on the federal banking regulators’ joint rule proposal to strengthen and modernize Community Reinvestment Act regulations to more effectively achieve its original intent of addressing inequities and discriminatory practices such as redlining within our financial system.

My name is Seema Agnani and I am the Executive Director for the National Coalition for Asian Pacific American Community Development (National CAPACD). National CAPACD is a coalition of more than 100 organizations that advocate for and organize low-income Asian American, Native Hawaiian, and Pacific Islander (AANHPI) communities to advance the economic and social empowerment of low-income AANHPI and the equitable development of AANHPI neighborhoods. We strengthen and mobilize our members to build power nationally and further our vision of economic and social justice for all. Our member organizations employ a diverse set of community development strategies tailored to local community needs, including housing and financial empowerment services, workforce development, community organizing, the creation of affordable housing and community institutions, and engagement and support for small businesses and entrepreneurs to advance equity and create vibrant, healthy communities.

I have personally worked in community development from the inception of my career - from developing affordable housing to establishing the country’s first housing counseling organization serving the South Asian and Indo-Caribbean community of Queens, New York. In fact, I read the CRA legislation while flying to New York for my first job interview in 1993 given its importance and impact on the community development sector’s ability to address inequities in housing, access to credit and the many other strategies that enable communities to live and thrive with dignity.

Background

The Community Reinvestment Act (CRA) was a landmark civil rights era legislation, passed due to community advocacy in response to financial institutions’ systematic redlining, discrimination

and disinvestment in low-income communities - especially communities of color. Since President Jimmy Carter signed the CRA in 1977, over \$6 trillion has flowed into LMI neighborhoods in the form of home mortgages, small business loans, investments in affordable housing, and other CRA-related investments.¹

Unfortunately, it is well documented that economic inequality continues to widen in the US leaving many without opportunities - and the vast majority are people of color. Many communities and neighborhoods continue to face barriers in accessing sound financial services, access to good credit, and investments in essential aspects of a healthy community such as affordable housing. With the numerous significant changes in the financial services industry, since its inception, modernizing the CRA is essential and offers a real opportunity to expand access to financial services and credit to LMI communities and communities of color, and tackle modern-day redlining, and increase investments in historically divested neighborhoods.

Despite the fact that discrimination in lending is still widespread, 98% percent of banks pass their CRA exams. The Black homeownership rate is as low as it was when discrimination was legal, and overall homeownership rates for families of color lag at 30 points lower than for White families. Abusive payday lenders, charging unspeakable interest rates to those at the lowest end of the economic spectrum to meet basic needs, are largely concentrated in communities of color. Simultaneously, Asian-American, Pacific Islander, Latino, and Black communities are being pushed out of gentrifying neighborhoods they have long occupied as a result of predatory investments, a lack of affordable housing, and lack of access to affordable and effective credit. The CRA needs to be updated to cover the broader range of financial entities that exist now and needs to be tightened to better define the types of projects and programs that provide actual, direct benefit to LMI communities of color and to disincentive the types of investments that promote displacement in LMI communities.

The State of low income Asian American, Native Hawaiian, and Pacific Islander communities

AANHPI communities are far from a monolithic community. Therefore, to address racial inequities and achieve inclusion, a more nuanced understanding of these communities is necessary. AANHPIs are a diverse population with varied immigration histories, settlement patterns, and linguistic and cultural identities:

Extreme Housing Instability

Right now, the single biggest threat to housing stability for low-income AANHPIs is displacement due to rising rents and eviction, particularly in high cost housing markets, leading to increases in the homeless population. The COVID-19 pandemic has only exacerbated this problem within our communities. National CAPACD found that one in four AANHPIs pay more than half of their income toward housing costs compared to whites (16 percent), putting many on the edge of financial vulnerability. This segment of the population is considered severely cost-burdened.² Moreover, the majority of AANHPIs living in poverty are concentrated

¹ https://nrcr.org/wp-content/uploads/2017/11/CRA-101_b.pdf

² https://www.nationalcapacd.org/wp-content/uploads/2021/03/NationalCAPACD_HousingCounselingReport_final_031221.pdf

in the hottest, most expensive metropolitan areas (MSAs). Low-income AAPIs feel the current housing crisis resulting from rapid gentrification especially acutely; more than 50 percent of the total AANHPI poverty population lives in the top 10 MSAs compared to 25 percent of the nation's poverty population. Over 73 percent of AANHPIs in poverty live in metropolitan areas where the regional median rent is higher than the national median rent of \$1,012 per month, as compared to 44 percent of the general poverty population. Similarly, at the neighborhood level, 64 percent of AANHPIs in poverty live in higher rent zip codes, as compared to 37 percent of the general poverty population. This translates to extremely unstable housing, high rates of overcrowding, an inability to build savings due to the large percentage of income that goes toward paying rent, and a disproportionate risk of losing their homes. These residents, if displaced, are at risk of becoming homeless given their extremely low income. Our members report elders skipping meals and increased collection of recycling to make rental payments. National CAPACD is deeply concerned by the rapid displacement of AAPIs and communities of color from the neighborhoods they call home, and is committed to strategizing solutions to respond to this crisis

Income Inequality and Rapid Growth in Poverty

The economic conditions of AANHPIs in the US are often misrepresented and misunderstood as there is limited accurate data collection to reflect the significant income inequality in the AANHPI community. AANHPIs have the greatest income inequality and racial wealth gap of any other racial or ethnic group in the United States today, with extremely concentrated wealth in the highest income brackets and extreme poverty among low-income community members. As documented by the Pew Research Center, from 1970 to 2016, the top income bracket of Asian Americans experienced tremendous economic growth while those in the lowest income bracket experienced highly concentrated poverty. Indeed, the top 10% of Asian Americans make 10.7 times more than the bottom 10%. National CAPACD has documented these data for years; our research also demonstrates extreme poverty in Native Hawaiian and Pacific Islander communities. Between 2010 and 2016, the number of AAPIs living below the federal poverty line grew by nearly one quarter of a million people, a 13 percent increase.

Limited-English Proficiency

All of the economic challenges mentioned above compounded by the fact that AANHPIs have both high levels of language diversity (fully 77 percent of Asians and 43 percent of Native Hawaiians and Pacific Islanders speak a language other than English at home) and high rates of limited English proficiency (40 percent of Asians and 15 percent of Native Hawaiians and Pacific Islanders). Many low-income AANHPI communities also include a high proportion of LEP families. According to the U.S. Census, approximately 71% of Asian Americans speak a language other than English at home, compared to 20% of the total population. Of these, 32% of Asian Americans and 8% of Native Hawaiians and Pacific Islanders are considered LEP, compared to 9% of the total U.S. population. Those with limited English proficiency are particularly disadvantaged in their ability to navigate the mortgage process and understand the terms, access a safe and sustainable small business loan or any other financial product. Utilization rates of the first round of the Payment Protection Program by AANHPI businesses was extremely low as a direct result of the lack of in-language information about the program along with the lack of existing relationships with financial institutions. This leaves many outside of the financial system - leading them to predatory and unregulated lenders that either have the

cultural and linguistic competence such as payday lenders or many mortgage companies or online lenders.

Unequal Access to Lending Opportunities

The true financial vulnerability of many low- and moderate-income AANHPIs is often masked by aggregated data of the racial category, allowing model-minority stereotypes to further perpetuate. National CAPACD looked at the 2018 home mortgage application data reported by the CFPB revealing that different AANHPI sub-groups show wildly different outcomes and pricing for the loans they received, indicating that many AANHPI communities are still very underserved in lending opportunities.³ Additionally, more limited opportunities for AANHPIs results in more homebuyers using a mortgage company as opposed to a bank to fund their home purchase, on average paying almost \$1,800 more at the closing table.

Recommendations

While we applaud the joint proposal's emphasis on expanding access to credit, investment, and basic banking services in low- and moderate-income communities, National CAPACD respectfully submits the following recommendations to improve the final rule:

1. Explicit goals and evaluation of investments by Race and Ethnicity

Any CRA modernization must explicitly consider race and ethnicity in its evaluation process. Bank grades and satisfactory ratings should only be given if communities of color are effectively served and with strong anti-discrimination practices in place. The current rule proposal requires regulators to make assessments on banks' lending and investment activities to LMI communities without regard to race or ethnic groups that live within them. Many of the geographic areas assessed through the CRA include high concentrations of Black, Latino, and AANHPI populations. Instead, the regulators have chosen to use LMI communities as a proxy for race. A study from the Urban Institute has shown that not only do LMI neighborhoods not highly overlap with neighborhoods of color, but also that the CRA's current focus solely on LMI neighborhoods and borrowers has left significant gaps in lending to minority neighborhoods and borrowers.⁴ This was the original intent of the legislation and it should be strengthened in order to ensure that all LMI communities are benefiting from CRA investments. Currently, the agencies have proposed to include data collected under the Home Mortgage Disclosure Act (HMDA) in public portions of the evaluations process for banks with more than \$10 billion in assets but stipulates that HMDA data will not be used for grading. Race-based data such as HMDA data as well as Section 1071 data that is assessed on LMI census-tract level, should be used towards an institution's overall grade and be made publicly available so that the CRA can be a better and more transparent tool in serving minority borrowers.

2. Preventing Displacement and Homelessness; Focus on Creating Affordable Housing

The final rule must preserve the original intent and spirit of the CRA to expand financial opportunity, equity, and help spur investments in underserved areas. The final rule must create more safeguards in protecting communities of color from discriminatory practices while also preventing gentrification of hot markets where many LMI AANHPIs reside. The definition of

³ <https://www.nationalcapacd.org/data-research/mortgage-lending-in-the-asian-american-and-pacific-islander-community/>

⁴ https://www.urban.org/sites/default/files/2022-04/should-the-community-reinvestment-act-consider-race_1.pdf

affordable housing in the final rule must be narrowly tailored in a way that would prevent gentrification from being an unintended consequence of the rule. Banks must do more to affirmatively prevent the effects of gentrification to get credit, including proactive evaluations as to whether their lending activity is displacing communities of color, or in many cases resulting in increased homelessness. Investments in affordable housing should be rewarded if put towards the preservation of “naturally occurring affordable housing,” and not just new affordable housing in order to prevent displacement and increased risk of homelessness. Additionally, within the proposal, rental affordability is targeted at 30% of 60% of AMI while the other affordability standards are targeted at 30% of 80% of AMI. Unfortunately, this is still too high -- National CAPACD and its members have been pushing affordability standards closer to 30-50% of AMI in hot market neighborhoods for true affordability.⁵ For example, within the Chinatown San Francisco neighborhood in California, about one million single room occupancy (SRO) units were destroyed or converted to make way for urban renewal, condominiums, and development from the 1970s through the 1990s. While these older buildings are often substandard living conditions, they remain the most affordable option for new immigrants, seniors, people with disabilities, survivors of domestic violence, and low-wage workers. According to the SRO Families United Collaborative census, 62% of families in 2014 were at risk of displacement without leases, and some of the SRO buildings have been flipped for tech workers and students with higher rents after evictions. With San Francisco Area Median Income (AMI) above \$100,000 for a family of four, the median AANHPI household income is approximately \$34,000, so the SRO Families United Collaborative pushed for 20-50% AMI locally.⁶

3. Incentivize Language Access

The agencies should provide incentives and CRA credits for banks that offer linguistically appropriate services and resources so that LEP consumers do not fall prey to predatory lenders and can access good credit. Currently CRA regulations provide detailed information regarding activities that are eligible for CRA consideration in the evaluation of a bank's CRA performance. Activities that address the gaps in reaching the limited-English proficient community should be added to the list of qualifying activities, including but not limited to recruitment of local branch employees with language and cultural capacity that meets the needs of local communities, grants or contributions to nonprofits or organizations that offer culturally appropriate or language services to LMI borrowers of color, in-language technical assistance on financial matters, and offering volunteer services to provide language services. This should not solely be through AI or machine translation given its limitations but through partnerships with community based organizations with the capacity to reach those most vulnerable. Additionally, the CRA exam process must create ample opportunity for public engagement and comment, with outreach to LEP communities.

4. Creating Adequately Defined Assessment Areas

To prevent practices like redlining from happening again, the CRA needs to continue to have meaningful, enforceable requirements for the geographic distribution of CRA investments. Online and internet banking is on the rise--anecdotal reports from National CAPACD's network business counselors have also noted that more clients are turning to online lending, and clients

⁵ https://www.nationalcapacd.org/wp-content/uploads/2017/08/anti_displacement_strategies_report.pdf

⁶ https://www.nationalcapacd.org/wp-content/uploads/2017/08/anti_displacement_strategies_report.pdf

are with greater frequency dealing with egregious predatory loan practices and marketing.⁷ A recent study by the Urban Institute shows that 33 percent of small business lending is done outside banks' assessment areas and that banks are less focused on CRA-eligible small business lending such as lending to LMI areas and to businesses with limited revenue when lending outside their assessment areas.⁸ The current proposal goes a step in the right direction by expanding the assessment areas for large banks without branches if they meet a threshold for lending activity but the rule must also prioritize uplifting minority-owned small businesses. We share the sentiment of our community partner National Community Reinvestment Coalition, that the regulators need to both proactively and carefully consider the responsibility online institutions have to local LMI communities of color and as well as defining the areas within which those institutions will be assessed.

Conclusion

National CAPACD will continue to educate and work with its members in advocating for a CRA rule that provides resources to underinvested, low-income communities. Thank you for the opportunity to serve as a witness before the Subcommittee and to share our views on this critically important topic. I look forward to your questions.

⁷ https://www.nationalcapacd.org/wp-content/uploads/2019/03/CAPACD_SmallBusinessReport_final_web.pdf

⁸ <https://www.urban.org/sites/default/files/2022-03/bank-lending-outside-cra-assessment-areas.pdf>



Testimony of Catherine Crosby, Town Manager, Town of Apex; Board Chairperson, National Community Reinvestment Coalition

“Better, Together: Examining the Unified Proposed Rule to Modernize the Community Reinvestment Act”

House Financial Services Subcommittee on Consumer Protection and Financial Institutions, July 13, 2022

I am honored to testify before you today on the proposed regulatory reform of the Community Reinvestment Act. I am the board chairperson of the National Community Reinvestment Coalition (NCRC). NCRC is a coalition of 600 community-based organizations. Our members use CRA on a daily basis to increase lending, investments and services for our country’s underserved communities. I am also the town manager for Apex, North Carolina, home to approximately 73,000 residents. Prior to that I served in Dayton and Toledo, Ohio.

The Notice of Proposed Rulemaking (NPR) issued by the federal bank agencies represent the most significant changes to the CRA regulation and exams in 27 years.

CRA will be more effective in bolstering bank reinvestment activity in underserved communities and ensuring underserved groups’ ability to move into high opportunity communities, the more rigorous CRA exams and ratings are. The NPR proposed some significant improvements in test rigor but the improvements are not across the board on all aspects of exams.

Legislation can supplement the regulatory reforms proposed by the agencies

I am pleased with the Making Communities Stronger through the CRA bill circulated by the committee today. The bill would require banks to establish community advisory committees which would be consultative bodies providing input on banks’ CRA strategies, plans for meeting the needs of people of color, and on banks’ merger and branch plans. In addition, the bill would increase oversight of banks meeting important needs such as those for small dollar mortgages. Finally, NCRC is pleased we were able to influence the bill’s proposal for periodic interagency statistical studies on racial disparities.

We are pleased that the American Community Investment Reform Act of 2022 would require CRA exams for securities companies and assess their community development financing activities. We do not support the presumption that a financial institution with an Outstanding rating satisfied the convenience and needs of communities as part of its merger application. We outline our views about this in [recent comments to the FDIC](#).

We strongly support applying CRA to independent mortgage companies as the American Housing and Economic Mobility Act would do. [In a previous report](#), we describe how the application of CRA by the state of Massachusetts to mortgage companies is a model for federal law.



CRA needs to address racial disparities and also make up ground in modest income communities

Persistent racial and ethnic disparities in lending should compel the agencies to incorporate race and ethnicity in CRA exams. A NCRC [national level analysis](#) showed continuing disparities in loan denials by race and when people of color received home loans, their equity accumulation was less. NCRC had asserted [in a paper](#) that it is possible for changes to CRA to comply with legal standards if CRA examined lending by race and ethnicity in geographical areas experiencing ongoing discrimination.¹

By including race, CRA could address racial disparities that have direct impacts on quality of life and health outcomes. The COVID pandemic disproportionately affected communities of color in terms of unemployment, rates of COVID and business closures. In part, this is a legacy of 80 years of redlining. NCRC studies have shown that communities of color identified as risky on redlining maps produced by the Home Owners Loan Corporation (HOLC) remain [economically depressed](#) and experience a higher [incidence of adverse health outcomes](#).

I represent communities that have been distressed for decades due to redlining. The NPR is helpful in that it proposed that CRA exams would assess lending separately in low-income and moderate-income tracts. This will help the distressed and lower income communities. I also urge the agencies to go a step further and to examine lending in [underserved neighborhoods](#) with the lowest levels of lending. As documented by NCRC, these tracts are disproportionately communities of color.

I was formerly the Chief of Staff in Toledo, Ohio which is located in Lucas County. CRA reform is needed because in that county low- and moderate-income neighborhoods are receiving low levels of lending. NCRC documented that from 2018 through 2020 in Lucas County, just 12.4% of home purchase loans were made in LMI neighborhoods despite 32% of people living there.

No lender in Lucas County is doing an adequate job at serving the Hispanic population. Among the top 20 lenders, the percentage of loans to Hispanic applicants varied from 1% to 3% despite being 7% of the county population.

In Wake County, where the Town of Apex is located, 20% of the population is African American. Of the top twenty lenders in the county, only two make 20% or more of their loans to African Americans. The rest make 8% or less of their loans to African Americans. None are providing loans to the Hispanic community proportionate to their representation.

¹ This recommendation implements a solution that is appropriately focused on communities experiencing the ill effects of ongoing or past discrimination as revealed by interagency statistical studies. See the legal analysis in the paper co-authored by NCRC and Relman Colfax discussed in more detail below and obtained via the hyperlink above.



These disparities make a compelling case to examine lending by race on CRA exams in areas experiencing ongoing discrimination. We ask the agencies to reconsider their decision not to do this.

CRA reform must elevate the importance of public comments

Since CRA requires banks to meet the needs of communities, the agencies must elevate the importance of public comments regarding the extent to which banks meet needs. We urge the agencies to post comments on their websites as they proposed to do.

In addition, we ask that the agencies publish a list of organizations that comment and that the agencies identify those led by people of color and women in an effort to seek input from a diverse range of organizations. Finally, CRA exams must assess compliance with community benefit agreements that banks negotiate with community organizations during mergers and with any conditional merger approval order.

Improvement in exam rigor must be consistent across all parts of the CRA exam

The agencies bolstered the rigor on the large bank retail lending test by establishing comparisons among a bank's lending and demographic and market benchmarks. This approach would decrease ratings inflation and result in more failing and low satisfactory ratings on the lending test. As a result, several banks would respond by boosting their retail lending to underserved communities. In addition, the proposal for the lending test to separately examine lending to the smallest businesses with revenues below \$250,000 would increase lending to start-ups and younger businesses, which are disproportionately owned by people of color and women.

We are pleased that financing community facilities like childcare centers, climate remediation measures and disaster preparedness would receive more consideration in the community development test. In addition, financing increased broadband in underserved communities as proposed is critical because several small businesses and lower income tenants had difficulties applying for assistance during COVID due to lack of easy access to the internet. We also strongly support the requirement that these activities cannot displace low- and moderate-income residents.

The large bank tests such as community development finance and services include improvements but need to be developed further to guide examiners against inflating ratings. These new tests would have improved performance measures, but the NPR does not provide enough guidance to examiners regarding which of these measures are the most important when assigning ratings.

The proposed assessment area reform is critical

The agencies proposed to create assessment areas where a large bank does not have branches when a bank has issued 100 home loans or 250 small business loans. This proposal would result in the great majority of total lending being incorporated on exams and would therefore hold banks more accountable for serving low- and moderate-income communities. However, the



agencies must further ensure that exams do not overlook assessment areas containing smaller metropolitan areas and rural counties.

Conclusion

The NPR promises to make parts of CRA exams more rigorous but we urge the agencies to extend the rigor of the large bank lending test to the other tests. We also ask the agencies to incorporate race in CRA exams and to expand the public reporting of their data collection proposals. If CRA is improved while maintaining public input and accountability, we believe the proposed rule could help reduce inequalities, disinvestment and other disadvantages in America's overlooked communities.

Below is NCRC's initial analysis of the proposed rule.

Initial Analysis of the CRA Notice of Proposed Rulemaking

Introduction

On May 5, the federal bank agencies (the Federal Reserve Board, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation) issued a long-anticipated notice of proposed rulemaking (NPR) concerning the [Community Reinvestment Act](#) (CRA) regulations.² Enacted to redress [redlining](#) and racialized patterns of disinvestment, CRA requires banks to serve the needs of all communities, including and especially low- and moderate-income (LMI) communities. The federal agencies implement CRA by examining and rating banks based on their level of lending, investing and services provided to LMI people and communities. CRA also considers community development financing of affordable housing, economic development and community facilities as well as community development services such as providing homeownership counseling.

CRA will more effectively bolster bank reinvestment activity in traditionally underserved communities if CRA exams and ratings are more rigorous. In order to increase their effectiveness, the CRA exam process must also be transparent with ample opportunities for public comments on bank performance to be taken into account by examiners.

This NPR represents the most significant proposed changes to the CRA regulation and exams in 27 years. Since that time, profound changes have occurred in the banking industry including the increase in online banking. Meanwhile, persistent racial inequalities have not been addressed by CRA. Because of the technological advances in the banking industry and the stubbornness of our nation's inequities, an update to CRA is urgently needed.

² Office of the Comptroller of the Currency, Federal Reserve Board, Federal Deposit Insurance Corporation, Notice of Proposed Rulemaking (NPR) to amend the CRA regulations, May 5, 2022, <https://www.fdic.gov/news/board-matters/2022/2022-05-05-notice-dis-a-fr.pdf>



The agencies proposed important improvements in the CRA regulations including expansion of geographical areas on CRA exams, more data to scrutinize bank performance and increased rigor on parts of CRA exams. However, they did not sufficiently address racial inequities in the CRA reform. They were also inconsistent in addressing CRA ratings inflation. What follows is a review of the major areas of CRA reform addressed by the NPR.

CRA's consideration of race is lacking in the NPR

Former Senator William Proxmire, the main sponsor of CRA, clearly understood that redlining victimized communities of color. His remarks during the hearings leading up to the passage of CRA in 1977 described in detail the refusal of banks to lend in communities of color despite receiving deposits from these communities.³ Yet, the original CRA statute did not mention race, perhaps because Senator Proxmire understood that the backlash against affirmative action in the late 1970s would imperil CRA's passage if it included race explicitly. Nevertheless, the statute required banks to serve all communities and is intended to remedy racial exclusion, which provides room for the federal bank agencies to incorporate race in CRA exams to a greater extent than they do presently.

The agencies proposed to use Home Mortgage Disclosure Act (HMDA) data to produce exam tables describing lending by race, but not to incorporate those findings into banks' CRA exam ratings.⁴ NCRC and Relman Colfax PLLC asserted that it is possible for changes to CRA to meet current legal standards if CRA examined lending by race and ethnicity in geographical areas experiencing ongoing discrimination or exhibiting significant racial disparities in lending.⁵ We also proposed including analyses of lending in underserved neighborhoods with low levels of lending, which are disproportionately communities of color.⁶

The agencies should at a minimum bolster fair lending reviews accompanying CRA exams for banks that perform poorly in the HMDA data analysis of lending by race. In addition, the agencies proposed to use the Section 1071 small business and farm lending data by race and gender on CRA exams when the Section 1071 data becomes available.⁷ The Section 1071 data should also be used as a screen for identifying when heightened fair lending reviews are needed.

³ Josh Silver, *The Purpose And Design Of The Community Reinvestment Act (CRA): An Examination Of The 1977 Hearings And Passage Of The CRA*, June 2019, <https://ncrc.org/the-purpose-and-design-of-the-community-reinvestment-act-cra-an-examination-of-the-1977-hearings-and-passage-of-the-cra/>

⁴ NPR, p. 420.

⁵ Brad Blower, General Counsel, NCRC; Josh Silver, Senior Policy Advisory, NCRC; Jason Richardson, Director of Research and Evaluation, NCRC; Glenn Schlactus, Partner, Relman Colfax PLLC; Sacha Markano-Stark, Attorney, Relman Colfax PLLC, *Adding Robust Consideration Of Race To Community Reinvestment Act Regulations: An Essential And Constitutional Proposal*, September 2021, <https://www.ncrc.org/adding-robust-consideration-of-race-to-community-reinvestment-act-regulations-an-essential-and-constitutional-proposal/>

⁶ Bruce Mitchell, PhD. and Josh Silver, *Adding Underserved Census Tracts As Criterion On CRA Exams*, January 2020, NCRC, <https://ncrc.org/adding-underserved-census-tracts-as-criterion-on-cra-exams/>

⁷ NPR, p. 385.



We will be advocating for this change and our previous recommendations regarding CRA and race.

Public input mechanisms: Agencies propose improvements that must be codified

Since CRA requires banks to meet the needs of communities, the agencies must elevate the importance of public comments regarding the extent to which banks meet those needs. The agencies proposed to continue the recent practice of publishing 60 days in advance of each calendar quarter the schedule of CRA exams for the next two quarters,⁸ which will help provide ample opportunities for the public to comment on exams. In addition, the agencies proposed to continue the current practice of sending any comments on CRA performance to banks and are also considering publishing comments received on agency websites.⁹

When community groups wish to have their comments publicly posted, the agencies should definitely post them on their website. This practice will establish accountability on the part of examiners to consider the comments. In addition, the comments form a public record that can be referenced during future merger applications to determine if the banks and agencies addressed significant concerns of the public and community organizations.

Agencies should also document their efforts to reach out to the community and ensure that they are seeking a diversity of organizations (in particular, with regard to race and gender of organizational leadership) to comment on needs and performance. CRA evaluations should include which organizations were contacted as part of the evaluations. The agencies should establish a public directory, which is updated frequently, of organizations that have commented on exams or have been contacted by the agencies. Community organizations should also be able to register and add their name and contact information to the directory. The regulators should be encouraged to hear from community contacts they have not consulted in the past, and to follow up with community contacts to see if issues raised have improved or worsened. A directory organized by geographical area, mission focus, and race and gender of organizations (whether the organization is led by people of color or women) would hold the agencies and other stakeholders accountable for ensuring that a diversity of voices are heard.

The agencies are considering whether to establish a specific mechanism seeking input about needs and conditions across localities.¹⁰ This could be useful in ascertaining the extent to which banks are responding to community needs. The agencies need to ask specific questions about the most pressing needs and which types of financing are offered or not offered by banks in response to those needs to obtain the most useful performance context information for evaluating bank performance and the banks' responsiveness to needs.

⁸ NPR, p. 426.

⁹ NPR, p. 426.

¹⁰ NPR, p. 427.



Missed opportunities on merger reviews

The agencies proposed no changes to how they consider CRA performance when reviewing merger applications. The agencies instead argue that improving the CRA exams used as a measuring stick in merger review is sufficient, stating that:

...by making the assessment of CRA performance more transparent, consistent, and predictable, the proposed CRA methodology would provide greater certainty to a bank regarding the level and distribution of activity that would achieve a “Satisfactory” rating when the bank contemplates making an application. It would also provide clear metrics regarding the bank’s record of meeting the credit needs of its entire community, including low-and moderate-income neighborhoods.¹¹

This statement appears to offer benefits to banks and community-based organizations. It suggests that banks will have more certainty about how to achieve a Satisfactory rating after CRA reform, making it easier for them to submit applications more likely to be approved without delays. It also suggests that the public will have more transparent metrics with which to understand and comment upon a bank’s CRA performance.

If CRA reform makes exams more rigorous, CRA exams will become a more effective standard for expecting more reinvestment activities from banks seeking to merge. However, CRA performance may have changed since a bank’s last CRA exam. Other existing merger oversight tools can help address this potential lag.

NCRC urges the agencies to improve upon their implementation of the “convenience and needs” (public benefits) standard required under banking law for mergers.¹² In short, the agencies must expect concrete plans including encouraging community benefit agreements (CBAs) from merging banks concerning how they will increase lending, investment and services to traditionally underserved communities.

In addition, these plans and other aspects of mergers can be better judged by the agencies if they hold more public hearings. We agree with Acting Comptroller Hsu who recently stated:

For mergers involving larger banks, the OCC is considering adopting a presumption in favor of holding public meetings. We partnered with the Federal Reserve to hold a public meeting in March for the proposed U.S. Bank and MUFG/Union bank merger. Over 120 community members attended and shared their views on the needs of the community and how they may be impacted by the merger.¹³

¹¹ NPR, p. 384

¹² For more about NCRC’s views regarding merger applications, see *NCRC Comments On DOJ Merger Review Guidelines*, October 2020, <https://www.ncrc.org/ncrc-comments-on-doj-merger-review-guidelines/>

¹³ Acting Comptroller of the Currency Michael J. Hsu Remarks at Brookings “Bank Mergers and Industry Resiliency” May 9, 2022, p. 8, <https://www.occ.gov/news-issuances/speeches/2022/pub-speech-2022-49.pdf>



Reducing CRA ratings inflation: Progress on the lending test of the large bank exam but not as much on the other subtests

Currently, about 98% of banks pass their CRA exams on an annual basis with fewer than 10% receiving an Outstanding rating and almost 90% receiving a rating of Satisfactory.¹⁴ The idea that 90% of all banks are performing in the same manner is implausible, as is the near-perfect pass rate. CRA has successfully leveraged more loans, investments and services for low- and moderate-income communities but it would be more effective in doing so if the ratings system more effectively revealed distinctions in performance.¹⁵ Banks performing in a mediocre or worse fashion would be motivated to increase their reinvestment activity if their performance was more accurately depicted by a ratings system. NCRC called for either five ratings overall (there are four ratings currently) or instituting a point system that could also reveal more distinctions in performance.

Proposed retail lending test would reduce ratings inflation

The agencies did not introduce a fifth overall rating but they preserved five ratings on the subtests and assigned points to each of these five ratings. The new point system will not only reveal more distinctions on the subtests but will also do so overall.¹⁶ In addition, the agencies bolstered the rigor on the retail lending test by introducing performance ranges for comparisons among a bank's lending and demographic and market benchmarks. For example, for a bank to receive a low satisfactory rating on home lending to moderate-income borrowers, its percentage of loans to moderate-income borrowers would need, at a minimum, to match either 80% of the market benchmark (percent of all lenders' loans to moderate-income borrowers) or 65% of the community benchmark (percent of all families that are moderate-income).¹⁷

The agencies should be encouraged to implement their proposal to identify assessment areas in which the market benchmark is ineffective because all lenders are underperforming. The agencies proposed to use a statistical model to project the market benchmark for assessment areas, taking into account demographic, economic and housing market characteristics. When the statistical model identifies assessment areas with market benchmarks that are significantly lower than the predicted market benchmarks, examiners would consider this as a factor and may adjust

¹⁴ Josh Silver and Jason Richardson, *Do CRA Ratings Reflect Differences In Performance: An Examination Using Federal Reserve Data*, NCRC, May 2020, <https://ncrc.org/do-cra-ratings-reflect-differences-in-performance-an-examination-using-federal-reserve-data/>

¹⁵ For studies documenting the impact of CRA, see Lei Ding and Leonard Nakamura, *Don't Know What You Got Till It's Gone: The Effects of the Community Reinvestment Act (CRA) on Mortgage Lending in the Philadelphia Market*, Working Paper No. 17-15, June 19, 2017, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2991557, and Lei Ding, Raphael Bostic, and Hyojung Lee, *Effects of the CRA on Small Business Lending*, Federal Reserve Bank of Philadelphia, WP 18-27, December 2018, <https://www.philadelphiafed.org/community-development/credit-and-capital/effects-of-the-community-reinvestment-act-cra-on-small-business-lending>.

¹⁶ NPR, pp. 161-162, pp. 225-226.

¹⁷ NPR, p. 214.



ratings downward. This would provide additional incentives for banks to improve their retail lending performance.¹⁸

The quantitative approach proposed for the retail lending test would decrease ratings inflation and result in more failing and low satisfactory ratings on the lending test, which at 45% of the overall rating, would be the most heavily weighted test.¹⁹ For example, 10% of banks with assets less than \$10 billion would likely receive a Needs-to-Improve on the retail lending test as would 4% of the banks with assets more than \$50 billion. In addition, 46% and 58% of banks with assets below \$10 billion and above \$50 billion, respectively, would receive Low Satisfactory ratings.²⁰ The Federal Reserve Board has a [data tool showing likely ratings](#) on the lending test on a local level.

Proposed community development financing (CDF) test does not match the rigor of the lending test

The quantitative part of the CDF subtest should further be developed

While the revamped lending test is clearly an advance, the agencies did not create as much rigor on the other subtests of the large bank CRA exam. If not corrected, this is likely to diminish the gains in exam rigor from the new lending test. The community development finance test, for example, will consist of a quantitative measure of a bank's ratio of community development finance divided by deposits. The bank's ratio will be compared to a local ratio at the assessment area level and to a national ratio.²¹ The agencies, however, did not provide enough guidelines to examiners for comparing the bank's ratio to either the local or national ratio, making it possible for an examiner to inflate a rating by choosing the lowest comparator ratio or placing more weight on the comparison to the lower ratio.²²

The agencies should have produced guidelines illustrating how performance on the ratio would correspond to a score. For example, guidelines could state that if a bank had a much higher ratio than either the local or national ratio, it would likely score Outstanding on the community development ratio measure. Further in "hot markets" with relatively high ratios (higher than the national ratio), a bank could score High Satisfactory if its ratio was higher than the national ratio but on par with the local ratio. It would score Low Satisfactory if its ratio was on par with the national ratio and lower than the local ratio (but not less than 50% of the local ratio). These benchmarks would not necessarily have precise thresholds like the retail lending test but would be an improvement over just leaving the decision up to the examiner regarding how scores correlate to comparisons between benchmarks. At the very least, the agencies could commit to

¹⁸ NPR, p. 231.

¹⁹ NPR, pp. 365-366.

²⁰ NPR, Table 9, p. 251.

²¹ NPR, pp. 311-315.

²² NPR, p. 320 discusses examiner discretion.



establishing guidelines in a few years when there is more data to create reasonable but rigorous guidance.

The agencies should revise and replace the existing guidance in Appendix A of the regulation that leads to subjective ratings due to its vagueness. For example, Appendix A advises that a bank will generally rate Outstanding on the investment test of the large bank exam if it has “An excellent level of qualified investments.”²³ The agencies could readily develop guidance and a new appendix to replace Appendix A with more detailed descriptions of how ratings would correlate to how a bank’s performance compares against benchmarks.

The impact review should also be further developed

Moreover, the agencies proposed a qualitative impact review that is aimed at adjusting a community development rating in cases in which a bank may have lower dollar amounts of financing that is nevertheless more responsive to needs.²⁴ For instance, this can occur when a bank is helping to finance intermediaries that support very small businesses in an area with high unemployment. Such financing could be of lower dollar amounts than other financing that is of high dollar values but does not directly address the need for job creation.

The agencies created valuable aspects of the qualitative impact review such as classifying community development financing as impactful if it is directed to counties with persistent poverty, Native American communities or counties experiencing a dearth of community development finance.²⁵ The agencies also proposed improvements for how to consider community development financing for affordable housing, economic development, community facilities and climate remediation and resiliency for which we will develop detailed comments.²⁶

While the qualitative review is needed, it can also be abused and can result in inflating a rating if it is not carefully designed and allow examiners to make vague statements that carry great weight on exams. In particular, the agencies backed away from assigning each community development loan or investment an impact score on a point scale as contemplated in the Federal Reserve’s Advance Notice of Proposed Rulemaking.²⁷

As an alternative, the agencies could guide the impact review by asking the examiners to calculate the percentage of community development finance that was devoted to persistent poverty counties, counties with low levels of finance and the percentage of activities that involved collaboration and partnerships with public agencies and community-based

²³ 12 CFR Appendix A to Part 25(b)(2)(i)(A), [https://www.ecfr.gov/current/title-12/chapter-I/part-25#p-Appendix-A-to-Part-25\(b\)\(2\)\(i\)](https://www.ecfr.gov/current/title-12/chapter-I/part-25#p-Appendix-A-to-Part-25(b)(2)(i))

²⁴ NPR, p. 319.

²⁵ NPR, p. 109

²⁶ NPR, pp. 31-100 for detailed discussions of activities counting as community development.

²⁷ NCRC Comment On Federal Reserve Board’s Advance Notice Of Proposed Rulemaking Regarding The Community Reinvestment Act – February 2021, p. 72, <https://ncrc.org/ncrc-comment-on-federal-reserve-boards-advance-notice-of-proposed-rulemaking-regarding-the-community-reinvestment-act-february-2021/>



organizations. In their instructions and templates for collecting community development data, the agencies should include data fields which would record geographical targeting, partnerships and other features. In this manner, the qualitative evaluation can become more quantitative and objective.

The agencies proposed data collection that involves impacts but should be more specific in the regulation and accompanying guidance. Guidance could encourage banks to record aspects of community development like jobs created or retained, number of LMI families housed, number of hospital beds created, and other statistics regarding the impacts of community facilities and infrastructure. In addition, the agencies could ask banks to indicate in data submissions when activities like affordable housing, economic development and climate remediation occur in tandem. The more robust this data collection process, the more objective the impact review can be in using and capturing data such as the number and percentage of community development loans or investments that have significant impacts.

Finally, the impact review should have its own score, rating and weight for the overall community development finance test, which the proposal lacks. Instead, the proposal would direct examiners to conduct an impact review judging the impact of the community development finance overall.²⁸ As currently constructed, the impact review could lead to inconsistent or careless application of examiner discretion and a contribution to the overall community development finance rating that is not justified by a concrete demonstration of the breadth and depth of impactful finance.

Retail services and products test could also produce inflated ratings

The retail service and products test of the large bank exam could also suffer from flaws similar to that of the community development finance test.²⁹ The proposal would require examiners to assess the distribution of branches by income level of census tract and conduct a qualitative review of affordability and responsiveness of credit and deposit products. The proposal did not provide enough guidelines for assuring objective evaluations such as guidelines for assigning ratings and points based on comparisons among the percent of a bank's branches in LMI census tracts to market or community benchmarks.

The agencies proposed to enhance their consideration of deposit products and services. The evaluations would include assessing the responsiveness of deposit products in terms of whether they are affordable and easily accessible.³⁰ However, the proposal did not assign weights to the components of the retail service and products test, again opening the possibilities of examiner

²⁸ NPR, pp. 318-320.

²⁹ NPR, pp. 255, pp. 262-267, pp. 296-297.

³⁰ NPR, p. 292.



misjudgment such as merely weighing the part of the test in which the bank performed better to a greater extent.³¹

Promising data-collection improvements still lack scope and transparency

In order to improve the accuracy and effectiveness of the CDF test and the retail services and products test, the agencies proposed to collect community development and deposit data. All large banks would be required to report community development data, on an individual project level, describing the category of community development (such as affordable housing or economic development), the dollar amount and indicators of the impact of the activity.³² The agencies proposed to report this data at a census tract or county level.

This data would be a significant advance. It would help make the community development finance test more rigorous by providing more detail, allowing examiners to compare a bank against its peers to determine whether or not a bank is especially responsive to local needs by financing activities that its peers are overlooking. It would also help stakeholders more accurately determine areas that are receiving considerable amounts of community development finance and which areas are not.

Like community development data, the agencies proposed requiring large banks to collect data on deposits by income category of census tracts. The agencies also proposed requiring banks to collect information on how many accounts were opened and closed on an annual basis³³ in order to help determine whether a bank is successful in creating affordable and sustainable accounts or whether consumers do not find the deposit accounts valuable as indicated by high closure rates. This data would significantly bolster the rigor of the service test, but the agencies proposed collecting this data only for banks with more than \$10 billion in assets.³⁴ This limitation does not seem necessary since collection of basic information on deposit accounts does not seem too difficult for any large bank. In addition, while the agencies would collect this data, they did not propose to make it publicly available,³⁵ eliminating opportunities for the public to use the data to hold banks accountable for serving LMI communities.

The agencies proposed to examine large banks for their record of making automobile loans to LMI customers and communities. The agencies stated that automobile lending is an important indicator of whether banks are responding to community needs since many geographical areas lack reliable transit for commuting and other travel needs. Just like deposit data, however, its

³¹ NPR, pp. 297-301.

³² NPR, pp. 408-409

³³ NPR, p. 294

³⁴ NPR, p. 385.

³⁵ NPR, p. 553.



usefulness would be constrained by the proposal to limit this data collection to banks with more than \$10 billion in assets and to not make the data publicly available.³⁶

Not enough safeguards against abusive and unsustainable lending

Just as with the current CRA, the NPR would retain the fair lending review which will probe for discriminatory and other illegal practices. In a significant advance, probing for discrimination and other illegal practices will not be confined to credit but will also extend to deposit-taking and other aspects of banking.³⁷

Disappointingly, however, the agencies are not proposing to regularly evaluate the quality of credit and deposit products to ensure that they are responsible, affordable and sustainable. Access to credit and banking is not sufficient if the products are high cost and unaffordable, leading to high rates of delinquency and defaults. In Massachusetts, one of the few states with its own CRA law, CRA exams scrutinize delinquency and default rates on mortgage lending and penalize banks with possible ratings downgrades when these rates are high.³⁸ Federal CRA exams should not only conduct this type of evaluation for home loans but also for other lending and deposit products on exams.

In addition, the NPR did not indicate whether CRA exams will scrutinize bank partnerships with nonbank institutions for the purpose of evading state usury caps and offering high cost products that mire consumers in unsustainable debt loads. The agencies proposed to automatically include operating subsidiaries of banks on exams, which is an advance that could increase the responsiveness of banks to providing safe and sound loans and banking products.³⁹ However, the proposal would not scrutinize third party relationships under which the nonbank could be performing many of the essential functions of lending such as underwriting that operating subsidiaries perform.

Assessment areas expanded for retail lending and out of assessment activities considered on the community development test

Advocates have been urging the agencies for several years to expand the geographical assessment areas used in CRA exams to include areas beyond bank branches where banks make significant numbers of retail loans. The agencies listened and proposed to create retail assessment areas where a large bank does not have branches when a bank has issued 100 home loans or 250 small business loans there in each of the two most recent years.⁴⁰ The agencies calculated that this proposal would cover the great majority of loans of the impacted banks.

³⁶ NPR, pp. 405-406.

³⁷ NPR, p. 371.

³⁸ Josh Silver, *Massachusetts CRA For Mortgage Companies: A Good Starting Point For Federal Policy*, NCRC, July 2021, <https://ncrc.org/massachusetts-cra-for-mortgage-companies-a-good-starting-point-for-federal-policy/>

³⁹ NPR, p. 154.

⁴⁰ NPR, pp. 131-133.



Moreover, the proposal is feasible in that it will affect 91 banks in the case of home loans and each of these banks will need to create a median number of 2 additional assessment areas. For small business lending, the median number of assessment areas is larger at about 10 but just 26 banks are impacted, most likely very large credit card banks.⁴¹

Assessment area procedures would be improved for strategic plans. All large banks electing the strategic plan option, including those that are primarily online lenders, would be required to follow the same assessment area designation procedures as they would under the retail lending test.⁴² This would ensure that large online lenders would no longer be able to designate just their headquarters' metropolitan areas as assessment areas and not have their lending across the country in several localities scrutinized by CRA exams.

The agencies, however, did not consider creating deposit-based assessment areas on either a metropolitan or rural county basis for banks that collect deposits but do not make loans. We will be urging the agencies to reconsider this since online institutions that are only in the business of collecting deposits and offering deposit-based accounts have received bank charters in recent years.

Agencies must carefully consider out of assessment area community development and services

Unlike retail lending, the agencies would not require banks to create assessment areas to capture community development financing or deposit-taking of large banks outside of their branch network. Instead, community development financing and deposit taking outside of the branch network would be considered at the state or institution level. In the case of community development financing, the agencies need to carefully consider how to weigh and evaluate community development lending outside of branch-based assessment areas to ensure the outside of assessment area activity does not result in high ratings that obscure non-performance inside assessment areas. The agencies proposed a weighing scheme at a state and institution level that appears to be a reasonable approach for banks with different business models (ranging from mostly branch-based to mostly online) when considering branch-based assessment area and outside assessment area performance, but we will be further reviewing this approach.⁴³

Measuring deposit-taking outside branch-based assessment areas raises similar concerns. The agencies did not present an approach for weighing services inside and outside assessment areas for determining ratings. We will further consider and review this aspect of the NPR.⁴⁴ Evaluating activities wherever they occur is important to make sure traditionally underserved communities are being reached. However, care must be taken to make sure exams evaluate all activities in all areas with rigor.

⁴¹ NPR, p. 134.

⁴² NPR, pp. 356-357.

⁴³ NPR, p. 328 and p. 334.

⁴⁴ NPR, pp. 296-301



Agencies must make sure that smaller areas receive weight on CRA exams

Another unresolved issue is how to weigh performance in large metropolitan areas, smaller metropolitan areas and rural counties. The agencies generally would weigh performance at an assessment area level based on the share of loans and deposits in that assessment area. This approach by itself would result in the larger areas not only contributing more to the overall rating but possibly obscuring poor performance in smaller metropolitan areas or rural counties.

The agencies attempted to correct for this by requiring that banks with 10 or more assessment areas must receive at least a Low Satisfactory rating in 60% of the assessment areas in order to pass overall. This still may not be an adequate solution since the smaller areas could represent a minority of areas, allowing a bank to pass the 60% threshold by focusing on the larger areas.⁴⁵ This proposal needs more development. One possibility is to require banks to achieve at least a Low Satisfactory rating in 60% of each of its large metropolitan, small metropolitan and rural assessment areas. Any such requirement should also apply to banks with less than 10 assessment areas.

Higher asset level thresholds encourage banks to reduce their level of community development financing and customer services

The agencies proposed to raise the small asset bank threshold from \$346 million to \$600 million.⁴⁶ Likewise, the intermediate small bank (ISB) asset threshold would be adjusted and would range from \$600 million to \$2 billion. Currently, the ISB asset thresholds range from \$346 million to \$1.384 billion.

As a result of this proposal, 779 banks that are ISB banks now would be reclassified as small banks.⁴⁷ These banks would no longer have community development finance responsibilities, resulting in a loss of considerable amounts of community development finance.

Likewise, 217 banks would be re-classified from large banks to ISB banks.⁴⁸ These banks would no longer have a service test requiring them to pay attention to the branching and service provision in LMI communities. The proposal should at the very least expect the same range of reinvestment activity as CRA currently does for all ISB and large banks. In this respect, the proposal goes backwards with no justification about how any reduction in burden for these banks would somehow offset the loss of reinvestment activity from a public benefits perspective. The banks impacted have been engaging in community development or service provision for several years without any apparent deleterious impacts.

⁴⁵ NPR, p. 368.

⁴⁶ Mark Pearce, Director, Division of Depositor and Consumer Protection, *Memo on Notice of Proposed Rulemaking on Community Reinvestment Act Regulations*, April 27, 2022, p. 4, <https://www.fdic.gov/news/board-matters/2022/2022-05-05-notice-dis-a-mem.pdf>

⁴⁷ FDIC memo

⁴⁸ FDIC memo



Conclusion: A good start but several improvements need to be made

The agencies' NPR contains important improvements to the CRA regulation. It would make the large bank retail lending test more rigorous and the ratings on that test more accurate in terms of revealing distinctions in performance. It proposed critical improvements in data collected on retail lending, community development financing, deposits and basic banking services. These data improvements would also make exams more objective and transparent. It also updated assessment area procedures to take into account the rise of online banking and other forms of nonbranch delivery including the use of brokers. Further, the agencies expanded and refined categories of community development activities and added considerations of credit and deposit products geared towards underserved populations.

However, the NPR remains a work in progress. While the large bank retail lending test is considerably improved, the other large bank tests including community development financing and retail services need more development concerning objective quantitative and qualitative measures and more instructions to examiners regarding how to weigh various components of the tests. If this is not done, the tests could end up being subjective and contribute to another round of CRA ratings inflation. The good news is that introducing more rigor into these tests is a feasible task that the agencies should be able to accomplish with the foundations they established in the NPR.

Assessment area issues need to also be addressed including ensuring that smaller metropolitan areas and rural counties receive proper consideration towards an exam's overall grade.

New data collecting and reporting is overly constricted and applies mainly to very large banks with assets over \$10 billion although all large banks can readily handle these new reporting requirements.

Lastly, the agencies should vastly improve their consideration of CRA and race on CRA exams. There are ample ways to incorporate race and ethnicity into CRA exams that are meaningful and can withstand a legal challenge.

This is the biggest opportunity since 1995 to update the CRA regulations in a way that significantly bolsters reinvestment in formerly redlined and underserved communities. We must help the agencies get this right.



Testimony

Hearing about:

“Better Together: Examining the Unified Proposed Rule to Modernize the Community Reinvestment Act”

Submitted to:

U.S. House Committee on Financial Services
The Subcommittee on Consumer Protection and Financial Institutions

Submitted by:

Yoselin Genao Estrella, Executive Director
Neighborhood Housing Services of Queens CDC Inc

July 13th, 2022

www.nhsfqueens.org

Chairwoman Waters and Distinguished members of the Subcommittee:

My name is Yoselin Genao Estrella and I am the Executive Director of Neighborhood Housing Services of Queens (NHS of Queens) CDC, Inc. I would like to thank Chairwoman Waters for inviting me to share my thoughts on the modernization of CRA. Although imperfect, CRA has been a lifeline for investment in underserved communities. We thank the Committee for holding this important and timely hearing at a critical time. In my testimony today, I will summarize the benefits and the shortcomings of NPR.

NHS of Queens is a HUD-certified nonprofit counseling agency. Its mission is to preserve and revitalize underserved communities in Queens by providing tools that build the generational wealth of low to moderate income households and that helps them to become more economically resilient. Since 2018, our first-time homebuyer program has helped built \$2.5 million in equity for clients. In addition, our homeownership preservation programs have assisted clients in saving their homes, avoiding over \$5 million in foreclosure costs.

NHS of Queens is a member of the Association for Neighborhood and Housing Development (ANHD), an organization made up of over 80 community groups across New York City with a mission to build community power to win affordable housing and thriving, equitable neighborhoods for all New Yorkers. It is also a member of ANHD's Equitable Reinvestment Coalition (ERC), which is dedicated to holding financial institutions accountable for the wealth and racial inequities they helped create and continue to perpetuate.

New York suffered greatly from the impact of COVID19 and our service area, at one point the epicenter of the COVID19 pandemic in New York City, was severely impacted creating high numbers of unemployment and housing. NHS of Queens provides comprehensive resources to our clients that serve as roadmap to guide them through their challenges by offering housing counseling and education for first time home buyers; foreclosure prevention; financial capability counseling and training; completion of housing affordability applications for renters; landlord training; estate planning; scam and deed theft prevention; provision of home emergency repair grants; low-cost loan programs; resiliency and energy efficiency education, digital literacy classes and home maintenance training workshops. It also offers post-purchase/post modification counseling and workforce development services in partnership with La Guardia Airport Career Center.

Although NHS of Queens serves all residents in Queens NY our target areas include Community Boards 1 through 4, consisting of Long Island City, Astoria, Sunnyside, Woodside, Corona, Elmhurst, East Elmhurst, and Jackson Heights. In 2018, Queens County had a population of 2.28M people with a median age of 39.2 and a median household income of \$69,320. The population of Queens is 28.1% Hispanic, 25.7% Asian and 24.7% White. Non-English speakers in Queens comprise 56.4% of the population. The median property value in Queens County is \$577,400 and the homeownership rate is 49.2%.

Each year NHSQ serves more than 5000 clients with the following demographics:
45% are female-headed households.
47% of clients are Hispanic; 30% are African American.

81% reside at or below 80% of the area median income.

NHS of Queens is able to serve our communities through meaningful partnerships with financial institutions who are investing in our communities, thanks to CRA including providing affordable mortgage products to our first-time homeowners and financial coaching. As a result of CRA, Webster Bank provides in-kind office space which allows our organization to allocate what it would pay in rent directly to our programs and services.

CRA has been one of the most important tools we have to hold financial institutions accountable for investing, providing affordable banking products, and giving access to credit to LMI families, allowing for economic mobility and wealth creation. As a result, communities across the US have benefitted from the trillions of dollars in investments leveraged by CRA.

However, despite all its benefits, the CRA has not kept up with significant changes in the current banking industry, nor has it addressed persistent racial disparities and inequities. It has been 40 years since the CRA was passed and the racial wealth gap is wider than ever. The average Black and Latino households earn about half as much as the average White household and only have about 15% to 20% as much net wealth.

The interagency Notice of Proposed Rulemaking (NPR) to modernize the Community Reinvestment Act (CRA) presents a positive development and it's a step in the right direction. However, with the current proposal CRA will remain far from effective and likely incapable of reaching the desired results.

Although there is no silver bullet to fully address centuries of racial disparities or redlining, a comprehensive cross-sector approach is urgently needed. We appreciate all three regulators for getting together and putting forth this collective NPR as well as our legislators in Congress for introducing legislations that could potentially complement the overarching goal of strengthening the CRA and tackling the issues in the short and long term. However, we need a BOLD holistic approach instead of a piece-meal approach. Given the magnitude of the problem and this historic moment – we need to use every tool in the tool box to fully address systematic racial disparities as well as years of disinvestment in low to moderate income communities, especially in communities of color.

For the CRA to actually address redlining and reach its desired goals,-it must:

- Strengthen the role of community input
- Provide access to Banking
- Emphasize homeownership as a path to wealth creation
- Evaluate banks for quantity and quality, with credit for impactful activities and downgrades for harm and displacement
- Provide inclusive access to online AND physical banking for LMI people and small businesses,
- Provide financing to support affordable housing and community development that benefits - and does not displace - LMI people and communities and people and communities of color.
- Explicitly include race

Let's examine whether these proposals accomplish these goals and why they are important to the communities we serve at NHS of Queens.

Community Input:

We appreciate that the regulators recognize the importance of community input, but we see few changes to the system today that will reinforce community consultation and comments. Local communities know best about their needs and how to best resolve them. It is not just important to allow community input in the process. Regulators must center the needs and voices of communities of color and LMI people in their exams and ratings. This testimony weaves in several areas where community input can and should be strengthened.

As presently proposed in the Making Community Stronger through the Community Reinvestment Act' bill, banks should be required to form advisory committees to develop and implement their CRA plans. Regulators should also strengthen community input by conducting comprehensive needs assessments based on local data and community input and conducting proactive outreach to a wide range of stakeholders on needs and bank performance. They should consider creating community advisory committees within local communities to support these processes.

Access to Banking

Acknowledging the increase in digital banking and regulating this practice cannot negate the importance of maintaining and opening new bank branches in already underbanked LMI communities and communities of color. Access to bank branches and affordable, accessible products for individuals and small businesses is critical to building wealth through savings and accessing credit. Yet, banks continue to expand and grow as branches close and lower-income, and communities of color are consistently left out of the financial system.

We see this phenomenon often in our neighborhoods where financial institutions create self-fulfilling prophecies by not providing the adequate products and services in LMI bank branches and then "justifying" bank closure due to lack of business activities. Immigrant communities, for example, are often left out of the banking system because of language, cultural, and identification barriers. Banks in these communities must respond to the needs of those communities, including accepting a wide range of identifications, including NYC's municipal ID, the IDNYC, as well as other foreign IDs. This extends to bank accounts and loans. Too often, financial institutions have stated that they don't take IDNYC, or won't make loans to ITIN holders because the regulators prohibit them. Yet other institutions will offer these products without any hesitation. Furthermore, under the CRA today and in the proposal, we see little incentive for banks to make responsible small dollar loans that our communities need to build and repair credit, or meet other financial needs. The CRA must be stronger in getting appropriate products and services to immigrant communities like ours in Queens.

Analysis of bank branches, bank products, and access to banking are just one piece of an already small section of the CRA exam, made smaller in the proposal. Branches **MUST** remain a core component of the retail services test. There must be stronger consequences for closing branches

in underbanked LMI and communities of color, including downgrades.

Further, if regulators are to increase access to banking and address the digital divide in banking, all banks - not just those over \$10 billion in assets - must be evaluated on how equitably they open accounts and take deposits, and the quality of their bank deposit products. No bank should pass its exam if it fails to serve communities with branches and affordable/accessible products.

Homeownership as a path to wealth creation for people of color and LMI people

Homeownership remains an important path to wealth creation and developing intergenerational wealth for communities of color. Yet, too often these communities are locked out of homeownership opportunities, targeted with predatory products, and given limited opportunities to accumulate wealth due to lower appraisal values. We appreciate the proposed data-driven framework and acknowledge that it could combat grade inflation, but we have concerns about its overall impact without significant changes.

For example, homeownership is crucial in the Latino community as 63% of the wealth in these communities comes from homeownership. [Homeowners have 28 times the wealth of renters; Latino homeowners have a net worth of \\$171,900, twenty-eight times that of Latino renters which is \\$6,210.](#) Despite the importance of homeownership, there are barriers that impede sustainable homeownership acquisition. According to data from the National Association of Hispanic Real Estate Professionals, since the 2008-09 financial crisis and subprime mortgage fiasco, Latino home ownership rates declined to a low of approximately 45% of the Hispanic population in 2014. By 2020 however, that rate had rebounded to approximately 49%, similar to the peak before the crisis. While the national latino homeownership rate is nearly 50%, in Queens, NY, the [latino homeownership rate is a dismal](#) 27.3%-- despite the total average homeownership rate in the Borough being 49.2%.

CRA can play a key role in ensuring homeownership opportunities and ameliorating barriers. For one, regulators must **prioritize owner-occupied homes over investor-owned properties, and focus on originations, not loans banks purchase from other lenders.** Any evaluation of investor properties must focus on their impact on communities, ensuring they build wealth for people and communities of color, while not fueling harm or displacement for these populations. Regulators should **adopt a similar approach for purchased loans** and require banks to demonstrate how they increase affordable, accessible lending to LMI and BIPOC borrowers. Similarly, regulators should **evaluate who gets loans in LMI/BIPOC communities** to ensure they are benefiting - and not displacing - LMI and BIPOC people.

Regulators must **incorporate an analysis of loan pricing and terms of consumer products** to ensure products are meeting local needs and not extracting wealth. This is especially the case for open-ended HELOC loans, but pertains to all loans. Likewise, regulators should **evaluate how well loan products match local needs.** For example, is a bank offering HELOCs when communities call for traditional home repair loans? Do they include limited equity co-ops where needed? In addition, there should be repercussions if they pull out of residential mortgage lending.

Regulators **must not allow a race to the bottom**, as could happen in a high-cost market like NYC where a bank can pass with just 1.4% of home loans to low-income borrowers, who make up 27% of NYC's population. The proposed considerations for "market failures" should be adopted and apply to New York City, even with the high cost of housing.

One of the shortcomings of the proposed NPR is that it does not regulate the activities of nonbanks and fintech companies, which currently hold a large portion of the market. While we recognize this requires legislative change, as proposed in two of the bills being discussed, there are steps regulators can take in the NPR to close the gap, including requiring banks to include affiliate lenders, and evaluating banks on the performance of non-banks with which they have formal relationships. Banks may also provide financing to non-bank entities, which provides another opportunity for regulators to evaluate the non-bank/Fintech's performance.

Community Development Finance to support homeownership & prevent displacement:

Community organizations, nonprofit developers, and CDFIs depend upon bank financing leveraged through the CRA to support their missions. We appreciate the attention to volume, the impact review incentives for deeper affordability and grants. We are also glad to see the proposal explicitly reference the need to finance the development and creation of affordable homeownership and other programs to support homeownership.

We are concerned about combining **loans and investments, and recommend regulators evaluate each separately** within the community development finance test to ensure banks don't cease to make investments, especially in high cost areas like NYC where the housing production is lagging behind the demand for housing. We are facing an affordable housing crisis and we need to increase affordable housing production using one of the most important financing tools: LIHTC. One of the unintended consequences of evaluating loans and investments together is that it may disincentive institutions from making LIHTC investments. We also worry it could disincentivize other investments, such as grants and EQ2s, both of which are greatly needed, especially in LMI and communities of color. We note that the regulators must require that financial education serve LMI people, and not allow for all income levels, unless it is explicitly to serve people of color.

Equally important is the need to preserve the affordable housing we have. Programs like LIHTC and other government subsidies are important to preserving subsidized housing. However, we also risk losing unsubsidized affordable housing like our rent-regulated housing stock when landlords purchase buildings speculatively - at prices predicated on pushing out lower-paying tenants - when they fail to maintain their buildings with similar tenants. Banks that finance these landlords must be held accountable when their financing contributes to harm and displacement.

Community Development Finance: Broadband & Climate Resiliency

We appreciate the new categories specific to broadband access and climate resiliency which will have a long term impact in our communities.

Broadband access is critical to closing the digital divide. In moving forward with digital banking practices, all of us, including government and financial institutions need to provide bold approaches on how to reduce the digital literacy gap especially in LMI and BIPOC communities in the short and long term as this is crucial to fully provide financial access. One of the complaints we often hear and I have witnessed is how customers at local banks wait up to two hours to be served by a bank clerk because banks have reduced their staff and replaced them with machines. Financial institutions are moving forward with digital banking leaving a large segment of our population behind.

Bridging the digital gap is a challenge and opportunity for all of us, including non profits on the ground. We need to find ways to increase the digital literacy of our clients especially seniors so they can better access our services. During the Covid-19 pandemic, as part of NHS of Queens' business continuity plan, the office equipped itself to provide services remotely. However, in the last couple of months we have realized that many of the neediest clients who desperately needed our services are faced with internet barrier and/or lack digital literacy skills to be able to submit documents for a successful housing counseling session or to access other services including job placement opportunities. Thanks to our partnership with UnidosUs and LaGuardia Airport Career Center, we began a digital training program to increase the digital skilling of residents to help them increase their access to educational and employment opportunities. We all need to do our part and be intentional about bringing cross sector resources to foster short and long term solutions to bridge the digital divide not only in urban areas but also in rural America as well.

Furthermore, financial institutions must respond to the urgent needs for climate resiliency and disaster preparation. As a nation, we cannot continue to rely solely on government disaster relief efforts to deal with the consequences of climate change. We need government and financial institutions to invest in long term sustainable solutions in LMI and BIPOC communities, which too often bear the brunt of climate disasters. An article in the American Journal of Community Psychology indicates that BIPOC populations, specifically African Americans and Latinos, have higher risk of disaster exposure and are disproportionately affected by them (e.g., [Fothergill et al. 1999](#); [Hawkins et al. 2009](#); [Perilla et al. 2002](#)).

Bringing climate resiliency and disaster recovery resources to our communities is also a call for frontline organizations like NHS of Queens. While NHSQ is not a disaster relief organization it has a track record dating back to Hurricane Sandy for providing disaster relief services in special circumstances. In 2020 during the COVID pandemic, NHSQ began its Adopt-a-Family program to meet the food insecurity needs of individuals and families in Corona. To date it has provided food to close to 500 families. Also in 2020, NHSQ provided disaster relief services to families impacted by a major fire in Jackson Heights; and when Hurricane Ida paralyzed NYC in September of 2021, NHSQ was the first organization to go door-to-door in neighborhoods impacted by the storm, assisting residents complete FEMA applications and connecting them with city, state and federal resources. We also worked with NYSERDA and KC3 to expedite the process for sustainable recovery efforts of households affected by Hurricane Ida through electrification measures such as installation of heat pumps, electrical water heaters and other energy efficiency services.

At NHS of Queens, as part of our resiliency and sustainability efforts, we incorporated electrification and energy efficiency education into our homeowner financial counseling practice. One of the challenges faced by our clients is to sustainably finance these renewal home repair projects affordably. Providing incentives to financial institutions to consider in climate resiliency investments can potentially be a gamechanger for LMI and BIPOC communities especially for 1-4 homeowners.

We appreciate the strong attention to climate resilience and disaster recovery in the NPR, including the intent to encourage banks to cooperate with government plans to respond to, or mitigate, disasters. However, not every community has a local government plan, and there are times when those plans are inadequate, especially when communities impacted are not consulted. We ask the regulators to also consider credit for financing that supports community-led plans and programs. We also cannot allow banks to get credit for green financing while also investing in fossil fuels elsewhere. Banks must be downgraded for harmful practices. To enhance the impact of CRA **more can be done to ensure that any activity that gets credit benefits local communities, and that banks are deterred from activities that cause harm.**

Race & CRA

We are deeply disappointed that the regulators failed to push for regulations that would have CRA live up to its intended purpose to address redlining. Despite acknowledging the law's origins and how modern day redlining persists, all the regulators propose regarding race within the examination framework is to disclose already public data that will have no impact on the final rating.

Regulators should **create affirmative obligations** to serve and benefit people of color and communities, and **incentivize** activities that close the racial wealth gap.

Regulators should **benchmark and disclose all available data by race**: home loans (HMDA), small business loans (1071 data), branch & community development locations/ Disparate trends should lead to downgrades and trigger fair lending investigations¹.

Regulators should **extend place-based anti-displacement criteria** to all community development categories: no credit should be awarded for "displacement or detrimental effect on LMI or underserved populations".

And finally, regulators should **expand discrimination downgrades** to include such incidents of displacement or harm ("detrimental effects") on people of color and communities, such as specific branch closures, harmful landlord practices, or higher cost products that disproportionately impact communities of color.

The provision in the Making Communities Stronger through the Community Reinvestment Act takes a step in the right direction by downgrading CRA ratings for an "activity that harms, including by displacing, residents of low- and moderate-income neighborhoods," although it does not specifically reference harming or displacing LMI people or people of color.

¹ NYC example: 22% of the population is Black, but fewer than 5% of loans by CRA-regulated banks go to Black borrowers.

As a Nation we are in at crossroad as we strive for racial equity, economic mobility and sustainable communities especially as we recover from the devastation of the Covid 19 Pandemic. With intentionality, CRA can be one of the most important engine. At time when we are striving for racial equity, it is disappointing that the proposed rules don't go far enough. There is a missed opportunity to strive for racial equity.

What will strengthen any regulatory and legislative efforts will be to be racial conscious and to be more intentional about ending systematic racial disparities - only then we will be on the road of ending redlining in this country.

If it's not now- then when. Our communities can't wait.

Thank you for this opportunity and I am happy to answer questions.



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TESTIMONY

Statement of

Darryl E. Getter

Specialist in Financial Economics

Before

Committee on Financial Services

Subcommittee on Consumer Protection and Financial Institutions

U.S. House of Representatives

Hearing on

**“Better, Together: Examining the Unified
Proposed Rule to Modernize the Community
Reinvestment Act”**

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Mr. Chairman, Ranking Member, and Members of the subcommittee, thank you for the opportunity to testify before you today. My name is Darryl E. Getter. I am a Specialist in Financial Economics at the Congressional Research Service (CRS), focusing on financial regulation in mortgage, consumer, and small business credit markets. CRS's role is to provide objective, nonpartisan research and analysis to Congress. CRS takes no position on the desirability of any specific policy. Any arguments presented in my written and oral testimony are for the purposes of informing Congress, not to advocate for a particular policy outcome. My testimony begins with some background about the Community Reinvestment Act (CRA).¹ A general overview of the proposed rule follows.²

CRA Background and Objectives of the Proposed Rule

Congress passed the Community Reinvestment Act of 1977 (CRA; P.L. 95-128, 12 U.S.C. §§2901-2908) in response to concerns that federally insured banking institutions were not making sufficient credit available in the local areas in which they were chartered and acquiring deposits. According to some in Congress at that time, a bank charter should entail a continuing obligation for a bank to serve the credit needs of the community where it was chartered.³ Consequently, the CRA was enacted to "re-affirm the obligation of federally chartered or insured financial institutions to serve the convenience and needs of their service areas" and "to help meet the credit needs of the localities in which they are chartered, consistent with the prudent operation of the institution."

The CRA requires federal banking regulators to conduct examinations to assess whether a bank is meeting local credit needs.⁴ The regulators assign CRA credits where banks engage in qualifying activities in the areas where they have deposit-taking operations. Qualifying activities include mortgage, consumer, and business lending; community investments; and low-cost services that would benefit low- and moderate-income (LMI) areas and entities. CRA credits are subsequently used to issue each bank a performance rating. The CRA requires federal banking regulators to take those ratings into account when institutions apply for charters, branches, mergers, and acquisitions, or seek to take other actions that require regulatory approval.

Congress became concerned with the geographical mismatch of deposit-taking and lending activities for a variety of reasons.⁵ Deposits serve as a primary source of borrowed funds that banks may use to facilitate their lending. Hence, there was concern that banks were using deposits collected from local

¹ This section is adapted from CRS Report R43661, *The Effectiveness of the Community Reinvestment Act*, by Darryl E. Getter.

² This section is adapted from the Department of the Treasury, Office of the Comptroller of the Currency, Federal Reserve System, Federal Deposit Insurance Corporation, "Community Reinvestment Act," 87 *Federal Register* 33884-34066, June 3, 2022, and Federal Reserve Bank of St. Louis, *Ask the Regulators: CRA Reform Update: Overview of the Interagency CRA Notice of Proposed Rulemaking*, May 11, 2022, at <https://bsr.stlouisfed.org/connectingcommunities/#104/ask-the-regulators-cra-reform-update-overview-of-the-interagency-cra-notice-of-proposed-rulemaking>.

³ See U.S. Congress, Senate Committee on Banking, Housing, and Urban Affairs, *Community Credit Needs*, S. 406, 95th Cong., 1st sess., March 23-25, 1977, pp. 1-429.

⁴ The Office of the Comptroller of the Currency conducts a Community Reinvestment Act of 1977 (CRA) examination of national banks every three years; see "CRA Questions and Answers" at <https://www.occ.treas.gov/topics/compliance-bsa/cra/questions-and-answers.html>. For banks supervised by the Federal Reserve, see "Consumer Compliance and CRA Examination Mandates," at https://www.federalreserve.gov/supervisionreg/caletters/Attachment_CA_13-20_Frequency_Guidance.pdf. The Gramm-Leach-Bliley Act of 1999 (GLBA; P.L. 106-102) mandated the examination for smaller banks of \$250 million or less. For more information, see "Consumer Compliance Examinations—Examination and Visitation Frequency," at <https://www.fdic.gov/regulations/compliance/manual/2-ii-12.1.pdf>. P.L. 109-351, the Financial Services Regulatory Relief Act of 2006, reduced the frequency of on-site CRA examinations for smaller banking institutions.

⁵ U.S. Congress, Senate Committee on Banking, Housing, and Urban Affairs, *Housing and Community Development Act of 1977*, committee print, prepared by Report to accompany S. 1523, 95th Cong., 1st sess., May 16, 1977, Report No. 95-175 (Washington: GPO, 1977), pp. 33-35.

neighborhoods to fund out-of-state as well as various international lending activities at the expense of addressing the local areas' housing, agricultural, and small business credit needs.⁶ Another motivation for congressional action was to discourage *redlining* practices. One type of redlining can be defined as the refusal of a bank to make credit available to all of the neighborhoods in its immediate locality, including LMI neighborhoods where the bank may have collected deposits. A second type of redlining is the practice of denying a creditworthy applicant a loan for housing located in a certain neighborhood even though the applicant may qualify for a similar loan in another neighborhood. This type of redlining pertains to circumstances in which a bank refuses to serve all of the residents in an area, perhaps due to discrimination.⁷

The CRA applies to banking institutions with deposits insured by the Federal Deposit Insurance Corporation (FDIC), such as national banks, savings associations, and state-chartered commercial and savings banks.⁸ The CRA does not apply to credit unions, insurance companies, securities companies, and other nonbank institutions because of the differences in their financial business models.⁹ The Office of the Comptroller of the Currency (OCC), the Federal Reserve System, and the FDIC administer the CRA, which is implemented via Regulation BB.¹⁰ The CRA requires federal banking regulatory agencies to evaluate the extent to which regulated institutions are effectively meeting the credit needs within their designated assessment areas, including LMI neighborhoods, in a manner consistent with the federal prudential regulations for *safety and soundness*.¹¹

⁶ During the 20th century, U.S. banks began to expand their operations across designated geographical boundaries. For example, large regional banks in the 1960s and 1970s expanded their lending operations internationally and, in some cases, established foreign branches. The U.S. banking system was also transitioning from a system characterized primarily by unit banking, in which a small, independent bank operated solely in one state with no branches, to interstate banking. Interstate banking and branching allows a bank to conduct activities (e.g., accepting deposits, lending) across geographical (state) boundaries, forgoing the need to establish separate subsidiaries for each locality in which it operates and, therefore, having to duplicate the operating costs and capital requirements in each subsidiary. See James V. Hout, "International Activities of U.S. Banks and in U.S. Banking Markets," *Federal Reserve Bulletin*, September 1999, pp. 599-615, at <http://www.federalreserve.gov/pubs/bulletin/1999/0999lead.pdf>; Frederick R. Dahl, "International Operations of U.S. Banks: Growth and Public Policy Implications," *Law and Contemporary Problems*, Winter 1967, pp. 100-130; and David L. Mengle, "The Case for Interstate Branch Banking," *Federal Reserve Bank of Richmond, Economic Review*, vol. 76 (November 1990), at http://www.richmondfed.org/publications/research/economic_review/1990/pdr/er760601.pdf. The Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (P.L. 103-328, 108 Stat. 2338) overrode long-standing state prohibitions against nationwide banking. See Susan McLaughlin, "The Impact of Interstate Banking and Branching Reform: Evidence from the States," *Federal Reserve Bank of New York, Current Issues in Economics and Finance*, vol. 1, no. 2 (May 1995), at http://www.ny.frb.org/research/current_issues/ci1-2.pdf.

⁷ For a description of the Fair Housing Act (Title VIII of the Civil Rights Act of 1968, P.L. 90-284, 42 U.S.C. §3601 et seq.), see http://www.federalreserve.gov/boarddocs/supmanual/cch/fair_lend_faact.pdf. For more information about the Fair Housing Act, see CRS Report 95-710, *The Fair Housing Act (FHA): A Legal Overview*, by David H. Carpenter, and CRS Report R44557, *The Fair Housing Act: HUD Oversight, Programs, and Activities*, by Libby Perl.

⁸ See Office of the Comptroller of the Currency (OCC), *Community Reinvestment Act*, Fact Sheet, March 2014, at <http://www.occ.gov/topics/community-affairs/publications/fact-sheets/fact-sheet-cra-reinvestment-act.pdf>.

⁹ Credit unions have membership restrictions, meaning these institutions may only lend to their members. A credit union may get permission to lend outside of its membership if it wants to operate in an underserved area. See CRS In Focus IF11048, *Introduction to Bank Regulation: Credit Unions and Community Banks: A Comparison*, by Darryl E. Getter. Insurance and securities companies do not hold federally insured deposits and are not subject to the CRA.

¹⁰ The OCC is the primary regulator for national banks. The Federal Reserve System is the primary regulator for bank holding companies and some state banks. The Federal Deposit Insurance Corporation (FDIC) is the primary regulator for state banks not under the Federal Reserve. For more information, see CRS In Focus IF10035, *Introduction to Financial Services: Banking*, by Raj Gnanarajah and David W. Perkins. Several states also have separate community reinvestment laws applicable to banking institutions under their supervision.

¹¹ Safety and soundness regulation refers to banks maintaining prudent loan underwriting standards and sufficient regulatory capital to buffer against default risks.

Dissatisfaction with CRA in the late 1980s and early 1990s set the stage for a substantive update.¹² Community groups viewed CRA as ineffective at expanding credit access. Factors such as the savings and loan crisis, however, translated into tight credit and few banks looking to expand their operations, which arguably may have reduced the focus on CRA objectives. Banks also indicated that policy guidance from the regulators was unclear. Furthermore, banks viewed early CRA examination processes as placing too much emphasis on documentation and paperwork and too little emphasis on performance.

Following President Clinton's call for reform in 1993, the regulatory agencies issued a Joint Final Rule in 1995.¹³ Among the various revisions, the term *service area* was replaced with the concept of a CRA *assessment area*, where a bank's lending activities would be evaluated. This geographical area included the location of a bank's main office, branches, and deposit-taking automatic teller machines, as well as surrounding areas where the bank originates and purchases a substantial portion of loans.¹⁴ In addition, the CRA examination was customized to account for differences in bank sizes and business models. The definition of *community development* was also expanded beyond economic needs to include the promotion of community welfare. The community development definition also clarified the definitions of small businesses and farms covered by the rule.¹⁵

Since 1995, various stakeholders—both community groups and banks—have seen the need to further revisit CRA regulations. For example, the adoption of digital technologies by the financial industry has had potentially significant implications for financial inclusion (i.e., the increased access of traditionally underserved populations and markets to affordable financial services and products). As banks conduct more digital payments and online transactions, some commentators have raised concerns about the extent to which populations that are marginally attached to the economy might be excluded.¹⁶ Meanwhile, a bank may provide electronic and digital financial products and services, which may benefit a broader community outside of a delineated geographical assessment area; however, it may not automatically receive community development credit.¹⁷ Some banks may receive CRA credit while others may not for various activities (e.g., delivering financial products electronically rather than at a brick-and-mortar location, partnering with some nonprofit organizations for various community activities) depending upon a CRA examiner's interpretation. Inconsistencies in awarding CRA credit arguably increase uncertainty about eligible CRA activities and standards.

¹² Michael S. Barr, "Credit Where It Counts: The Community Reinvestment Act and Its Critics," *New York University Law Review*, May 2005, pp. 110-112.

¹³ See OCC, Federal Reserve System, FDIC, Office of Thrift Supervision, "Community Reinvestment Act Regulations and Home Mortgage Disclosure, Final Rules," 60 *Federal Register* 22156-22223, May 4, 1995.

¹⁴ Service areas were defined using the *equidistance principle*, which required a bank to serve areas that were uniformly equidistant from its branches and deposit-taking ATMs. The equidistant principle, however, was deemed inappropriate because it did not align with many banks' business models. The assessment area concept was adopted to provide greater flexibility for banks to establish boundaries that were in better alignment with the locations that it reasonably expected to serve, including allowing for the establishment of more contiguous political subdivisions.

¹⁵ The 1995 rule harmonized the definition of small businesses and farms as activities that promote economic development and meet the size eligibility standards consistent with the Small Business Administration's size limitations for its 504 Certified Development Company program and Small Business Investment Company program. For more information, see CRS Report R41184, *Small Business Administration 504/CDC Loan Guaranty Program*, by Robert Jay Dilger and Anthony A. Cilluffo; and CRS Report R41456, *SBA Small Business Investment Company Program*, by Robert Jay Dilger and Anthony A. Cilluffo.

¹⁶ See Raphael Bostic, Shari Bower, Oz Shy, et al., *Shifting the Focus: Digital Payments and the Path to Financial Inclusion*, Federal Reserve Bank of Atlanta, Working Paper No. 20-1, September 30, 2020, at <https://www.atlantafed.org/-/media/documents/promoting-safer-payments-innovation/publications/2020/09/30/shifting-the-focus-digital-payments-and-the-path-to-financial-inclusion/Shifting-the-Focus-Digital-Payments-and-the-Path-to-Financial-Inclusion.pdf>.

¹⁷ See American Bankers Association, *CRA Modernization: Meeting Community Needs and Increasing Transparency*, December 2017, at <https://www.aba.com/-/media/documents/white-paper/cra-whitepaper2017.pdf>.

For these and other reasons, the federal banking regulators have been engaging stakeholders and seeking public input on CRA reform for several years.¹⁸ On May 5, 2022, the three bank regulators jointly issued a proposed rule to modernize and strengthen the CRA regulations.¹⁹ The proposed rule includes the following provisions:

- The definition of CRA assessment areas has been updated and expanded to allow more activities that occur outside of a bank's primary assessment area to be evaluated. Furthermore, the proposed rule clarifies that *all* activities that meet the community development definition are eligible for CRA consideration regardless of whether they occur in a delineated assessment area.
- The proposed rule expands the definition of community development to clarify the eligibility of product and service activities as well as to encourage partnerships with various financial entities that promote greater access of traditionally underserved populations and geographies to financial products and services.
- The proposed rule evaluates how banks' delivery systems, including internet and mobile banking, are responsive to LMI community needs.
- The proposed rule incorporates greater use of data and documentation to measure CRA effectiveness. Specifically, the proposed rule adopts a metrics-based approach to evaluate a bank's retail lending and community development financing (i.e., lending and investment) activities. In addition, banks must demonstrate the impact of their activities in census tracts that are likely to have the greatest need for community development. The emphasis on better data as well as more precise documentation of community development activities arguably provides greater clarity, consistency, and transparency for all stakeholders.

The proposed rule also customizes CRA examinations and data collection requirements to bank size and business models. Smaller banks would continue to be evaluated under the existing (status quo) CRA regulatory framework with the option to be evaluated under aspects of the new proposed framework. Public comments on the proposed rule are due by August 5, 2022.

Overview of the Proposed Rule

This section provides an overview of selected key topics in the proposed rule. The proposed rule updates how banks can determine their assessment areas, the definition of community development, and the evaluation framework for large and intermediate banks. The data collecting and reporting customized by bank size and business are also discussed.

Under the updated CRA framework, the following bank definitions would apply:

- *Small banks* are defined as those with average quarterly assets, computed annually, of less than \$600 million in either of the prior two calendar years.

¹⁸ On June 5, 2020, the OCC published a final rule updating its CRA framework that would have applied only to the banks it directly supervises. On May 18, 2021, the OCC announced that it would reconsider the rule. For more information, see CRS InFocus IN11865, *Implementation of the Community Reinvestment Act by the Office of the Comptroller of the Currency*, by Darryl E. Getter.

¹⁹ See U.S. Treasury, OCC, "Agencies Issue Joint Proposal to Strengthen and Modernize Community Reinvestment Act Regulations," New Release 2022-47, at <https://www.occ.treas.gov/news-issuances/news-releases/2022/nr-ia-2022-47.html>.

- *Intermediate banks* are defined as those with average quarterly assets, computed annually, of at least \$600 million in both of the prior two calendar years but less than \$2 billion in either of the prior two calendar years.
- *Large banks* are those with average quarterly assets, computed annually, of at least \$2 billion in both of the prior two calendar years..²⁰
- *Wholesale banks* provide services to larger clients, such as large corporations and other financial institutions; they generally do not provide financial services to retail clients, such as individuals and small businesses.
- *Limited purpose banks* offer a narrow product line (e.g., concentration in credit card lending) rather than providing a wider range of financial products and services.

These definitions will be used throughout this discussion unless otherwise specified.

Assessment Areas

Banks are currently required to delineate the assessment area(s) in which their primary regulator will conduct its CRA examination..²¹ The proposed CRA framework introduces a *facility-based assessment area*, which would be based upon where a bank has its physical main office, branches, and deposit-taking remote service facilities..²² Deposit-taking remote service facilities consist of automated teller machines (ATMs) as well as interactive or virtual ATMs. (The regulators have requested public feedback on how to treat bank business models that allows customers to make deposits on phones and mobile devices with the help of a bank's staff.) For large banks, wholesale banks, and limited purpose banks, a facility-based assessment area would include one or more metropolitan statistical areas (MSAs) or metropolitan divisions or one or more contiguous counties within an MSA, a metropolitan division, or the nonmetropolitan area of a state. Intermediate and small banks, however, may continue to use partial county destinations given that they have smaller service areas. Delineated facility-based assessment areas may not reflect illegal discrimination or arbitrarily exclude LMI census tracts.

Under the new proposal, large banks may have activities evaluated that occur outside of their facility-based assessment areas.

- A large bank must delineate a *retail lending assessment area* if it has a lending volume of either at least 100 home mortgages or at least 250 small business loans in 2 consecutive years outside of its facility-based assessment areas in any MSA or non-MSA areas of a state. (Banks would be evaluated only on retail lending activity in these areas.)
- Large or certain intermediate banks may establish an *outside retail lending area* for any retail lending that would occur outside of all facility-based and retail-lending assessment areas. This category would capture any LMI lending that is too geographically dispersed to satisfy the requirements for creating a more distinctive assessment area.

²⁰ The FDIC generally defines community banks as having assets that do not exceed \$10 billion. Banks with assets between \$1 billion and \$10 billion are considered to be large community banks. For more information, see Federal Deposit Insurance Corporation, *FDIC Community Banking Study*, December 2020, at <https://www.fdic.gov/resources/community-banking/report/2020/2020-cbi-study-full.pdf>. For this reason, *large banks* as used in the context of CRA differs from when discussed in the context of prudential regulation.

²¹ See Kenneth Benton and Donna Harris, "Understanding the Community Reinvestment Act's Assessment Area Requirements," Federal Reserve Bank of Philadelphia, *Consumer Compliance Outlook*, First Quarter 2014, at <https://consumercomplianceoutlook.org/2014/first-quarter/understanding-cras-assessment-area-requirements/>.

²² Large banks may have multiple facility-based assessment areas. The regulators are not proposing that loan production offices, facilities where banks may assemble credit information and process loan applications, should constitute a facility-based assessment area.

- The proposal would allow for all eligible community development activities (discussed in the next section) to be eligible for CRA consideration. This flexibility would reduce uncertainty about the eligibility of community development activities that occur outside of assessment areas.

The agencies propose to update how these areas are defined and to affirm that assessment areas may not reflect illegal discrimination or arbitrarily exclude low- or moderate-income census tracts.

Community Development Definition

Under the proposed rule, the current grouping of community development activities—deemed *responsive* to community needs and, therefore, eligible for CRA consideration—would increase from four to the following 11 categories:²³

- *affordable rental housing* (developed in conjunction with federal, state, local, or tribal government programs), multifamily rental housing with affordable rents, activities that support LMI homeownership, and purchases of mortgage-backed securities that finance affordable housing;
- *economic development* that supports small business and small farms (e.g., activities with an SBA Development Company, Small Business Investment Company, New Markets Venture Capital Company, Community Development Entity, Department of Agriculture Rural Business Investment Company, among various other activities listed in the proposed rule);
- *community supportive service* that serves or assists LMI individuals (e.g., childcare, education, workforce development, job training programs, health services, housing services);
- *revitalization activities* that occur in targeted census tracts (undertaken with a federal, state, local, or tribal government plan, program, or initiative), including reuse of vacant or blighted buildings, or activities consistent with a plan for a business improvement district;
- *essential community facilities* that benefit or serve residents of targeted census tract (e.g., schools, libraries, childcare facilities, parks, hospitals, healthcare facilities);
- *essential community infrastructure* that benefits or serves residents of targeted census tracts (e.g., broadband, telecommunications, mass transit, water supply and distribution, sewage treatment and collection systems);
- *recovery activities* that support revitalization in designated disaster areas, typically subject to a Major Disaster Declaration administered by the Federal Emergency Management Agency (with certain exceptions as determined by the Federal Reserve, the FDIC, and the OCC);
- *disaster preparedness and climate resiliency activities* that benefit or serve residents of targeted census tracts with the preparation for natural and weather-related disasters or climate-related risks;
- *activities undertaken with “impact” financial institutions*, such as minority depository institutions (MDIs), women’s depository institutions (WDIs), low-income credit unions

²³ Instead of *innovative* or *flexible* as discussed in current CRA regulations, the regulators state that *responsiveness* better captures the focus on community credit needs.

(LICUs), and Treasury Department-certified community development financial institutions (CDFIs);

- *financial literacy programs*, including housing counseling; and
- *qualifying activities in Native Land Areas* that benefit or serve residents, including LMI residents.

Current CRA regulations require that activities with a *primary purpose* of community development receive CRA credit. Under the proposed rule, the primary purpose standard could be met under two possible approaches. A loan, investment, or service can meet the primary purpose standard if the majority of funds (dollar amounts) is allocated towards activities described in one of the 11 categories above. Alternatively, the primary purpose standard can be met if the bona fide intent of the activity satisfies objectives represented by one of the 11 categories; the intent must be expressed in a prospectus, loan proposal, or community action plan.

The revisions to the community development definition and primary purpose standard determination, therefore, are designed to increase clarity and consistency when awarding CRA credits. In addition, the regulators propose to maintain a publicly available illustrative, non-exhaustive list of qualifying activities eligible for CRA consideration.²⁴ The agencies also propose to establish a process to allow banks to confirm in advance the eligibility of potential community development activities.

CRA Performance Tests

The regulators propose a new CRA evaluation framework consisting of the following four performance tests, which typically have both quantitative and qualitative components.

- *Retail Lending Test.* For each facility-based and retail lending assessment area, the retail lending test would evaluate the volume of retail lending (relative to a bank's deposit base) as well as the distribution of six loan product types to LMI borrowers. The types of loans are closed-end residential mortgages, open-end residential mortgages, multifamily mortgages, small business loans, small farm loans, and automobile loans. The definitions of small business and small farm loans would be aligned with those in rules promulgated by the Consumer Financial Protection Bureau pursuant to Section 1071 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (P.L. 111-203).²⁵ Automobiles would be a new loan category given their importance in certain LMI credit markets.²⁶ The retail lending test would be performed for a loan category considered a major product line, meaning that it comprises 15% or more of a bank's retail lending in a facility-based or retail lending assessment area except for automobile loans.²⁷ A bank's

²⁴ For example, see OCC, "CRA Illustrative List of Qualifying Activities," at <https://www.occ.gov/topics/consumers-and-communities/cra/cra-illustrative-list-of-qualifying-activities.pdf>.

²⁵ Until Section 1071 is finalized, the regulators would continue to define small business and small farms using annual revenues of \$250,000 for small business and \$250,000 to \$1 million for small farms. For more information, see CFPB, "Small Business Lending Data Collection Under the Equal Credit Opportunity Act (Regulation B)," September 1, 2021, at <https://www.consumerfinance.gov/rules-policy/rules-under-development/small-business-lending-data-collection-under-equal-credit-opportunity-act-regulation-b/>; Bureau of Consumer Financial Protection, "Small Business Lending Data Collection Under the Equal Credit Opportunity Act (Regulation B)," 86 *Federal Register* 56356-56606, October 8, 2021; and CRS Report R45878, *Small Business Credit Markets and Selected Policy Issues*, by Darryl E. Getter.

²⁶ A bank with assets totaling more than \$10 billion would be required to collect and maintain data for automobile loans until the completion of its next CRA examination.

²⁷ Because automobile loans have lower dollar values compared to mortgages and business loans, they would rarely meet the 15% threshold. For this reason, the regulators propose to use both a dollar volume percentage and a loan count percentage of automobile lending to determine when to evaluate it as a major product line.

set of distribution metrics, tailored to each assessment area and product line, would be compared to its peers before it receives a performance score, discussed in the section entitled, “Performance Test Conclusions and Overall CRA Ratings”.

- *Retail Services and Products Test.* The Retail Services and Products Test evaluates all bank delivery systems as well as the consumer credit and deposit products considered responsive to the needs of LMI individuals.²⁸ The evaluation of bank delivery systems has a quantitative component in the form of a geographic distribution test of its branches and ATMs. All large banks would be evaluated on branch availability and other remote services such as ATM availability. Banks with more than \$10 billion in assets would also be evaluated on digital systems such as mobile and online banking. All large banks would be required to demonstrate the responsiveness of these products. For banks with more than \$10 billion in assets, the availability (e.g., hours of operation) of these products would also be examined.
- *Community Development (CD) Financing Test.* The quantitative part of the CD financing test would evaluate the dollar amount of a bank’s CD loans and CD investments in the facility-based assessment area, relative to the dollar value of its deposit base in the facility-based assessment area.²⁹ This test would be performed on all eligible loans (regardless of whether they meet the minimum threshold to be a major loan product, which is required for the Retail Lending Test). The test would also include activities occurring anywhere in a state or multistate MSA (where a bank has a facility-based assessment area) and nationwide areas for any CD activities. The calculations would include new CD originations as well as prior CD financing activities that would still remain on a bank’s balance sheet.³⁰ For each assessment area, the regulators would establish both a local and a national benchmark to compare a bank’s activities to its peers.³¹ Along with the quantitative test, the regulators propose a qualitative evaluation of CD activities to assess the impact of loans that have small dollar amounts yet are responsiveness to community needs and are highly impactful in LMI communities. A weighted average is then computed to determine a score that would correspond with categories discussed in the section entitled “Performance Test Conclusions and Overall CRA Ratings”.
- *Community Development Services Test.* This test evaluates a bank’s ability to foster partnerships among different stakeholders and create conditions for effective community development. The CD Services Test may use metrics such as the number of LMI participants in attendance at an event, the number of organizations participating at an event, the number of sponsored events or sessions, or the number of hours that staff spent at these events. Under certain circumstances, the number of hours volunteered by bank

²⁸ Automobile loans, which are a form of consumer credit, would be evaluated under the Retail Lending Test. The forms of consumer credit evaluated under the Retail Services and Products Test would include, for example, credit cards.

²⁹ In general, a retail loan may only be considered under the Retail Lending Test and is not eligible for consideration under the CD Financing Test with the exception of multifamily loans under certain circumstances.

³⁰ Past loan originations are allowed in the calculations to discourage *loan churning*, a practice that would allow a bank’s balance sheet to reflect new loan originations solely for the purpose of obtaining CRA credit without an actual increase in lending activity. Specifically, banks may reduce the maturity of loan originations, which would cause borrowers to refinance an existing loan more frequently. Banks may purchase loans from other banks to receive CRA credit even though no new loan origination has occurred. Because previous CRA lending activity would continue to be recognized in these calculations, banks would have the incentive to provide borrowers with longer-term financing.

³¹ These benchmark metrics would be established once sufficient data has been collected.

staff for activities that met a community development need may be considered for credit under the CD Services Test.

When evaluating the impact and responsiveness of a bank's qualifying activities, particularly for the CD Financing and CD Services, the regulators have established *impact review factors* that include but are not limited to the following: serve persistent poverty counties or county-equivalents;³² serve geographic areas with low levels of community development financing; support MDIs, WDIs, LICUs, or CDFIs; serve LMI individuals and families; support small businesses or small farms with gross annual revenues of \$250,000 or less; directly facilitate the acquisition, construction, development, preservation, or improvement of affordable housing in High Opportunity Areas;³³ benefit Native American communities; are a qualifying grant or donation; reflect bank leadership through multifaceted or instrumental support; or result in a new CD financing product or service that addresses needs for LMI individuals and families. Similar to the 11 community development categories, the list of explicit impact review factors is intended to promote greater transparency and consistency in evaluations of eligible CRA activities.

Given the variation in bank size, business models, and data collection requirements, not all banks are required to take all four performance tests. **Table 1** summarizes which of the CRA performance tests are mandatory for banks by size.

Table 1. Required CRA Performance Tests by Bank Size

Bank Definition	Retail Lending Test	Retail Services and Products Test	Community Development Financing Test	Community Development Services Test
Large Bank (assets totaling at least \$2 billion)	mandatory	mandatory; additional requirements (e.g., the possibility of an automobile lending test) for large banks with assets greater than \$10 billion	mandatory	mandatory
Intermediate Bank (assets of at least \$600 million but less than \$2 billion)	mandatory		optional (or status quo, referring to current CRA framework)	mandatory
Small Banks (assets totaling \$600 million or less)	optional (or status quo, referring to the current CRA framework)			
Wholesale and Limited Purpose Banks			mandatory (tailored for their individual business models)	

³² Persistent poverty counties are defined as any county, including county equivalent areas in Puerto Rico, that has had 20% or more of its population living in poverty over the past 30 years, or any other territory or possession of the United States that has had 20% or more of its population living in poverty over the past 30 years, as measured by the U.S. Census Bureau.

³³ A *high opportunity area* is defined as either (1) an area designated by the Department of Housing and Urban Development as a *Difficult Development Area* during any year covered by an Underserved Markets Plan (sponsored by either Fannie Mae or Freddie Mac) in the year prior to its effective date, whose poverty rate falls below 10% for metropolitan areas or 15% for non-metropolitan areas; or (2) an area designated by a state or local Qualified Allocation Plan as a high opportunity area whose poverty rate falls below 10% for metropolitan areas or 15% for non-metropolitan areas.

Source: Department of the Treasury, Office of the Comptroller of the Currency; Federal Reserve System; Federal Deposit Insurance Corporation, "Community Reinvestment Act," 87 *Federal Register* 33884-34066, June 3, 2022; and Federal Reserve Bank of St. Louis, *Ask the Regulators: CRA Reform Update: Overview of the Interagency CRA Notice of Proposed Rulemaking*, May 11, 2022, at <https://bsr.stlouisfed.org/connectingcommunities/#104/ask-the-regulators-cra-reform-update-overview-of-the-interagency-cra-notice-of-proposed-rulemaking>.

A bank can seek permission from its primary regulator to delineate its assessment areas under the strategic plan option. A bank operating under a strategic plan option would still be expected to submit plans that include the same performance tests and standards. If, however, a bank is substantially engaged in activities outside the scope of these tests, its primary regulator would determine whether a more customized CRA framework would be more appropriate.

Performance Test Conclusions and Overall CRA Ratings

The regulators propose to update how performance test conclusions as well as overall CRA ratings are assigned. In general, a bank may receive 5 possible conclusions that are assigned a point value following a performance test. The conclusions and point values are as follows: *Outstanding* [10 points], *High Satisfactory* [7 points], *Low Satisfactory* [6 points], *Needs to Improve* [3 points], or *Substantial Non-Compliance* [0 points]. For banks with multiple facility-based assessment areas that must take multiple performance tests, the regulators propose averaging their conclusion points by type of performance test to obtain a composite score for a particular test.

Banks receive CRA ratings for their overall institution as well as at the state and multistate MSA levels. Under the proposed rule, banks would continue to receive four possible overall CRA ratings—*Outstanding*, *Satisfactory*, *Needs to Improve*, or *Substantial Non-Compliance*. The determination of the overall CRA rating, however, has been updated to reflect the new proposed CRA performance tests. A bank's overall CRA rating will be determined by first combining the individual (or average) scores by type of performance test, which are then assigned a specific weight. For a large bank, the specific weights for the Retail Lending Test, CD Lending Test, Retail Service and Product Test, and CD Services Test would be 45%, 30%, 15%, and 10%, respectively. For intermediate banks, the Retail Lending Test and CD Lending Test would both receive specific weights of 50%. Small banks would either receive a rating based solely upon the Retail Lending Test or continue to follow their applicable requirements under the existing (status quo) CRA framework. Finally, the regulators affirm that any discriminatory or certain other illegal practices could adversely affect a bank's CRA ratings at all levels.

Data Collection and Reporting

The proposed rule has new data collection requirements for large banks with assets over \$10 billion. For example, these banks would be required to collect and maintain depositor location data, which would be aggregated at the county-, state, multistate MSA, and institution level. These banks would also be required to collect and maintain data for automobile loans. For the most part, data collection requirements for small banks will remain unchanged, thereby minimizing data collection and reporting burdens.

Concluding Remarks

Determining the extent to which banks' financial decisions are motivated by CRA incentives, profit incentives, or both can be challenging particularly in cases where those incentives exist simultaneously. Compliance with CRA does not require banks to make unprofitable, high-risk loans that would threaten the financial health of the bank. Instead, CRA loans have profit potential; and bank regulators require all loans—including CRA loans—to be prudently underwritten. Hence, whether observations of greater CRA lending activities would be attributed to the proposed CRA evaluation framework, if finalized, is unclear.

However, the proposed framework would likely improve the data and documentation of CRA activities already sponsored by banks that currently may not be captured or evaluated under the existing framework.



Testimony of

Quentin D. Leighty

Chief Financial Officer and President

First National Bank of Las Animas

On behalf of the

Independent Community Bankers of America

Before the

United States House of Representatives

Committee on Financial Services

Subcommittee on Consumer Protection and Financial Institutions

Hearing on

“Better Together: Examining the Unified Proposed Rule to Modernize the
Community Reinvestment Act”

July 13, 2022

Washington, D.C.

Chairman Perlmutter, Ranking Member Luetkemeyer, and members of the Subcommittee, I am Quentin D. Leighty, CFO and President of First National Bank of Las Animas in Las Animas, Colorado. I testify today on behalf of the Independent Community Bankers of America where I am Chairman of the Policy Development Committee and a member of the Federal Delegate Board.

Thank you for the opportunity to testify at today's hearing, "Better Together: Examining the Unified Proposed Rule to Modify the Community Reinvestment Act."

The CRA was enacted in 1977 to ensure that bank serve the convenience and needs of their entire communities, including low and moderate-income (LMI) neighborhoods, consistent with safe and sound operation. This mission is the essence of what community banks do – inclusive and often customized lending in service of our entire communities, leaving no household behind. This explains community banks' outstanding and inclusive performance in Paycheck Protection Program (PPP) lending. Community banks made nearly 72 percent of the PPP loans to minority-owned small businesses and an even greater percentage of loans to businesses in lower-income and rural communities. CRA has not required us to shift or tailor our banking practices, but to document what we are already doing. This is true not only for my bank but for all community banks.

I am pleased to provide our perspective to this important discussion of CRA, the proposed inter-agency rule, and our suggestions for improving it.

Credit Unions Should Be Subject to CRA

I will note at the outset that, as is known to members of this committee, CRA does not apply to tax-exempt credit unions. This may have made sense in a former era when credit unions were subject to a strict common bond requirement and served limited populations. That era is long past. Modern credit unions are no longer subject to any meaningful common bond requirement. Community credit unions serve whole communities, and even common bond credit unions market their services broadly. Modern credit unions effectively operate as tax-exempt banks with near-equivalent powers. They have leveraged their tax exemption to grow larger and more complex and rapidly gain market share in retail and commercial lending as well as other financial services. We fully expect their expansion to continue unabated and transform the financial services marketplace. In the absence of CRA, credit unions are unaccountable for their service to LMIs, and enjoy a substantial regulatory advantage at the expense of consumers.

Moreover, the trend of credit union-community bank acquisitions has sharply increased in recent years, with increasingly larger community banks targeted for acquisition. When a community bank is acquired by a credit union, a CRA-covered institution is removed from the market with an adverse impact on LMI communities: Fewer institutions are held accountable for service to

these communities and fewer consumers are protected by the robust consumer protection examination practices of the banking regulators.

ICBA and community banks urge this Committee to hold a hearing in the near future to examine the community impact of credit union-community bank acquisitions and the possible application of CRA to credit unions. These are urgent public policy issues and are ripe for the Committee's attention.

Our Story

First National Bank has a rich history of serving the communities of Southeast Colorado, tracing our roots back to 1901, when our region needed a local bank that understood the unique requirements, challenges, and values of its residents and businesses. Today, we are a \$580 million community bank with 78 employees and 7 branches in three counties. Most of the communities we serve are low, moderate, and middle-income, and some are designated as either distressed, underserved, or both. We are the sole banking provider in two of the communities we serve, Las Animas and Ordway.

Our Experience with CRA

I am proud that my bank has consistently achieved CRA ratings of Outstanding. We are examined on a four-year cycle, and our last exam was completed in 2020. We have been examined as an Intermediate Small Bank since 2010, so we have recent experience as both a Small Bank and an ISB.

How do we account for our consistent Outstanding ratings? The answer is simply that we do what we have always done since long before there was a CRA, adhering to the core values and principles set forth in our mission statement. As a community bank, we are locally owned and operated by people with deep roots in the communities we serve. Our commitment is to meet the unique needs of our neighbors, guided by the traditional values we all share. This is reflected in our lending and donations of funds and employee time and expertise to organizations that are doing critical work in our communities.

First National Bank has two CRA assessment areas (AAs): Las Animas and Monument. As an ISB, we are subject to two tests, the Lending Test and the Community Development Test. In our 2020 exam, as in prior exams, we scored Outstanding in both of these categories. This score was based on:

- Our high average loan-to-deposit ratio of nearly 80 percent.
- The high percentage of loans, 70 percent, made within our AAs.

- The distribution of loans across census tracts within our AAs. Our results showed excellent penetration to borrowers of different income levels and businesses and farms of different sizes, particularly within distressed and underserved communities in the Las Animas AA.
- The examiners found no gaps in our lending pattern that would exclude low- or moderate-income communities.
- We demonstrated excellent responsiveness to the community development needs in each of our AAs. During the evaluation period, our bank provided 170 community development loans totaling over \$16.3 million within our AAs. The loans helped provide 105 units of affordable housing to LMI families among other important investments. Further, our bank provided over \$6.5 million in loans to promote economic stability through permanent job creation or retention in LMI and distressed middle-income geographies. We also provided over \$800,000 in loan funds directed towards essential community services in LMI and distressed middle-income geographies.
- The bank provided 217 donations totaling over \$172,000 within the designated AAs.
- In addition to lending and donations, a total of 27 bank employees and directors provided over 2,500 hours of community development services within the AAs.

Since the 2020 examination, we have continued and expanded our CRA activities and fully expect to receive a rating of Outstanding in our next exam.

I would like to share with you some recent examples of our activities that have made a real difference in our communities.

In February 2021, First National Bank made a \$2,885,000 loan with a reduced interest rate to Safe Passage to purchase and rehabilitate a building in a moderate-income tract area of Colorado Springs. Safe Passage is the Children's Advocacy Center for El Paso & Teller Counties serving more than 1,000 children and non-offending caregivers each year. They give abused children a voice and act as a single source of contact for medical, investigative, and legal services. In addition to Safe Passage, multiple community services are housed out of this building, including the Crimes Against Children Unit (CACU) of the Colorado Springs Police Department; KidPower, a non-profit organization that provides vital instruction to abused children and families on how to create and maintain safe emotional and physical boundaries; and the UC Health Memorial Health System, which partners with Safe Passage to provide onsite examinations in hospital-style rooms. The bank also made a \$5,000 donation to Safe Passage.

Our employees serve on various boards in our communities. One of our loan officers currently uses his financial expertise to help several community organizations, serving on a high school Ag Education/Future Farmers of America advisory board, a housing and community development board, a resource center that provides crisis intervention, shelter, counseling, and support for victims of domestic violence, their children, and all

other victims of violent crime, and the local volunteer fire department as a trustee and fireman, helping with safety presentations for elementary kids. The bank has made loans to help the fire department obtain new vehicles, equipment, and build or expand stations. This year the bank made a \$5,000 donation to help with an addition to their station.

First National Bank made nearly 900 SBA PPP (Paycheck Protection Program) loans totaling almost \$42 million. One loan was made to a Hispanic woman-owned family restaurant that was required to close during part of the pandemic. The owner was able to continue paying her employees until they were allowed to reopen. Restrictions went from full closure to carry-out only before the restaurant was allowed to fully reopen. In addition, the bank purchased gift cards from various restaurants in our communities and gave them out to front-line workers (nurses, ambulance, fire, police) during the pandemic as a “Thank You” for continuing to serve in our communities.

Community Banks and CRA

First National Bank’s commitment to our communities is replicated by thousands of community banks across the country. A typical community bank would have a similar list of community development projects that make a real impact in their communities. Many also choose to invest in MDIs and CDFIs that serve marginalized communities. But just as important as these high-profile projects and investments is a community bank’s core lending to LMI families and small businesses in LMI census tracts that have been historically overlooked by the banking system.

As I noted earlier, CRA does not require a community bank to alter its activities or business model. A commitment to supporting our customers and communities across the diverse demographics we service is the essence of community banking. For this reason, nearly all community banks receive a CRA rating of Satisfactory or higher.

CRA Modernization Recommendations

In consultation with community banks from across the country, ICBA has developed the following CRA modernization recommendations.

The Examination Process Should Be Clear, Consistent, and Timely. Community banks experience inconsistencies in the examination process, which creates uncertainty and confusion. The inconsistent manner in which loans and services receive CRA credit occurs between examinations within an agency, as well as between agencies. This makes it incredibly difficult for community banks to plan and implement their CRA requirements responsibly. Agencies must adopt consistent definitions and qualifying activities criteria. Additionally, there is virtually no feedback during or following an examination until the actual performance evaluation is shared with the bank.

Asset Thresholds Should Be Adjusted to Reflect the Current Banking Environment. ICBA believes that the current thresholds defining “small,” “intermediate small,” and “large” banks for purposes of CRA performance tests do not adequately reflect the extensive consolidation and growth that has occurred in the industry since 1977 when CRA was adopted. The OCC’s 2020 final rule made a positive step by increasing the small bank threshold to \$600 million and the intermediate small bank threshold to \$2.5 billion. These changes are partially replicated in the interagency rule (discussed below). Updated thresholds would partially ease the CRA regulatory burden for most community banks without impairing agency assessment of CRA performance.

CRA-Qualifying Activities Should Be Expanded and Consistently Applied. ICBA supports a more forward-looking approach in qualifying activities for CRA credit by providing a CRA credit safe harbor for listed activities. An illustrative list was included in the OCC’s final rule and in the joint-agency rule (more below). While the qualifying activities list would not capture the entire universe of activities that would receive credit, it would provide banks with greater clarity.

Alternative Approaches for Minority and Women-Owned Financial Institutions and CDFIs. CRA regulations should exempt minority and women-owned financial institutions from documentation and full-scope examinations. ICBA believes it is appropriate for CRA to support such institutions through compliance relief as these are the very types of historically marginalized business that CRA is designed to support. For the same reason, ICBA supports accommodations for bank-designated, certified Community Development Financial Institutions (CDFIs), which provide credit predominantly to lower-income borrowers and communities that have been historically underserved. We also believe that there should be an incentive for all banks to enter into partnerships with MDIs, CDFIs, and women-owned financial institutions. An incentive could come in the form of a credit multiplier or impact score that would affect performance context.

Parity in the Application of CRA. I have already discussed the imperative of applying CRA to credit unions. By the same token, all financial service providers, including fintech companies and any financial firm that serves consumers and small businesses, should be committed to providing service to entire communities and should be subject to CRA. Branchless internet banks should be evaluated on a nationwide basis, with performance benchmarks that are at least equivalent to branch-based banks. An uneven playing field places community banks at a competitive disadvantage and inhibits their ability to serve their customers and their communities.

Current Agency Efforts

The regulatory agencies are in the process of modernizing CRA’s implementing regulations, which have not been updated since 1995. Since 2017, the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC) and the Federal Reserve Board of Governors (FRB) have worked to modernize the 1995 rule.

In June 2020, the OCC finalized a new CRA framework. That rule attempted to make performance evaluations strictly quantitative and to significantly change the definitions of qualifying activities. As noted above, the rule also raised the small bank asset threshold to \$600 million and the ISB threshold to \$2.5 billion. While the OCC's 2020 rule made several positive changes, it also imposed additional data collection burdens on community banks and did not include the FDIC or Federal Reserve Board, leading to a confusing and unequal regulatory landscape. Because of this, ICBA advocated for the rescission of the 2020 rule and urged the OCC to engage in a joint rulemaking with the FDIC and Fed. In December 2021, the OCC rescinded the 2020 rule, returning to its 1995 rule, which the FDIC and Fed also use. ICBA supported this decision because we believe there should be a unified, interagency rule.

The Joint Interagency Proposal

As you know, on May 5, 2022, the OCC, FDIC, and FRB released a proposed CRA rule that would create a modernized rule for the banking industry. Comments in response to the agency's notice of proposed rulemaking (NPR) are due on Aug. 5, 2022. ICBA is reviewing the proposal and conferring with community bankers and will submit a comment letter on behalf of community banks.

While we are not yet prepared to offer this committee a comprehensive, detailed response to the proposal, I will use this opportunity to make some preliminary observations.

Asset Thresholds

ICBA supports the threshold increases in the proposed rule, which are set forth below.

- Small Bank: The proposed small bank threshold is \$600 million, an increase from the current level of \$346 million.
- Intermediate Small Bank: The proposed ISB threshold is \$2 billion, an increase from the current level of \$1.384 billion.
- Large Banks: Banks with assets exceeding \$10 billion would be subject to evaluation of digital and other delivery systems and deposit products and be subject to additional requirements

As discussed above, these threshold increases reflect industry consolidation and are appropriate to provide compliance relief for smaller community banks such as mine. First National Bank, currently an Intermediate Small Bank, would be categorized as a Small Bank, though we are approaching the proposed ISB threshold. The Small Bank designation would allow First National Bank and many other community banks in our asset range to direct more resources toward serving our communities. The proposed Intermediate Small Bank threshold of \$2 billion is a welcome increase but falls short of our recommendation of \$2.5 billion.

Small and Intermediate Small Bank Opt-In

Any change to CRA, even one that creates a more transparent method of evaluating banks, requires banks to completely overhaul their compliance management systems and retrain staff to comply with new requirements. For this reason, ICBA believes that small banks and ISBs should have the option to opt-in to any new CRA evaluation framework or continue to be evaluated under the status quo retail lending and community development tests.

The inter-agency proposal allows small banks (assets of less than \$600 million) to be evaluated under the status quo small bank lending test or to opt into the new Retail Lending Test. ICBA strongly supports this approach which avoid disruptive change for banks such as mine.

Banks between \$600 million and \$2 billion in assets (ISBs) would be required to comply with the new Retail Lending Test but would have the option to retain the current community development test. This disruption comes at a high cost to community bank resources. ICBA recommends that ISBs retain the option of being evaluated under the status quo retail lending test.

Banks with assets exceeding \$2 billion (large banks) would be required to comply with the new tests and would not have the option to retain their current exam framework. Many community banks have assets in excess of \$2 billion, and as consolidation continues, more will exceed this threshold in the future. Adopting new CRA frameworks represents a substantial regulatory burden.

Assessment Areas

Small banks and ISBs would continue to be allowed to delineate facilities-based assessment areas including the portion of a county that the bank can be reasonably expected to serve, provided they continue to include only whole census tracts.

However, large banks would be required to delineate assessment areas that “consist of one or more MSAs or metropolitan divisions or one or more contiguous counties within an MSA, a metropolitan division, or the nonmetropolitan area of a state.” This would be a change for large banks which are currently permitted to delineate portions of a county as a facility-based assessment area.

In addition to facility-based assessment areas, large banks would be required to delineate new retail lending assessment areas in geographies where they have a concentration of retail loan originations outside of their facility-based assessment areas. Only the Retail Lending Test would be applied in these assessment areas.

The agencies estimate that, using these thresholds, 104 large banks will be required to delineate at least one retail lending assessment area in a geography where they lack a physical branch.

Moreover, this proposed change will likely expand the number of geographic areas where branchless, internet-based banks are evaluated. However, as the agency estimates show, it will also likely impact some traditional, branch-based banks.

Out-of-Area Activities

As advocated by ICBA, the agencies' proposal grants credit for qualifying community development financing and services activities conducted beyond the boundaries of a bank's facility-based assessment areas. According to the proposal, banks "would receive consideration for qualifying activities anywhere in a state or multistate MSA in which they maintain a facility-based assessment area, when determining the conclusion for that state or multistate MSA. In addition, banks would receive consideration at the institution level for any qualifying activities conducted nationwide." This broader geographic consideration of community development financing will ensure that banks receive credit for the beneficial community development loans and investments they make outside the confines of their assessment areas

Qualifying Activities Confirmation and Illustrative List of Activities

ICBA strongly supports the proposal's requirement that the agencies maintain a publicly available illustrative, non-exhaustive list of activities eligible for CRA consideration. The proposal also creates a process for modifying the illustrative list of activities periodically. In addition, the agencies are proposing a process, open to banks, for confirming eligibility of qualifying community development activities. In this process, banks would submit the details of a potential loan or investment to their regulator and could receive a binding decision about whether the loan or investment would be eligible for CRA credit. ICBA strongly supports these changes as they would create more transparency and predictability in CRA evaluations.

Agency Data Confirm That Many Community Banks Would Fail the Proposed Retail Lending Test

The agencies' analysis of the new Retail Lending Test includes a table titled: "Distribution of Estimated Retail Lending Test Conclusions among Banks by Asset Size" and is based on banks that had a CRA examination that began in 2018 or 2019 and excluded Wholesale, Limited Purpose, and Strategic Plan banks. The table shows that 15 percent of banks below \$600 million and included in the analysis are estimated to receive a rating of "Substantial Noncompliance" or "Needs to Improve" under the proposed new Retail Lending Test. An additional 24 percent of these banks would receive a rating of "Low Satisfactory." By contrast, fewer than one percent of Federal Reserve and OCC evaluated banks received a less than satisfactory rating in 2018 and 2019, and only 1.7% of banks examined by the FDIC were rated as less than satisfactory.

Fortunately, as Small Banks, they would have the option of being evaluated under the current Retail Lending Test, but this data shows the magnitude of the change in the new Retail Lending Test.

The agencies estimate that 7 percent of Intermediate Banks and 7 percent of Large Banks would receive less than Satisfactory ratings. An additional 38 percent of ISBs and 41 percent of Large Banks would receive Low Satisfactory ratings. For these banks, the new Retail Lending test is not optional.

ICBA's comment letter will contain recommendations for modifying the Retail Lending Test (as well as making it optional for ISBs) that will make it easier for banks to obtain ratings that reflect the significant LMI lending they do in their communities.

Conclusion

Thank you again for convening today's hearing and for the opportunity to offer the community bank perspective on CRA modernization.

I'm happy to answer any questions you may have.

Statement for the Record

On Behalf of the

American Bankers Association

Before the

Subcommittee on Consumer Protection and Financial Institutions

of the

U.S. House Financial Services Committee

July 13, 2022

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Chairman Waters, Ranking Member McHenry, and distinguished Members of the Committee, the American Bankers Association¹ (ABA) appreciates the opportunity to submit this statement for the record for today's hearing examining the interagency proposed rule to modernize the regulations that implement the Community Reinvestment Act (CRA). Importantly, we are still in the process of analyzing the proposal and discussing its potential impacts with our member banks. As such, the observations and recommendations contained in this Statement for the Record may be subject to refinement or change.

Access to capital is fundamental to economic opportunity in the United States. For this reason, banks support the CRA statute's objective of encouraging banks "to help meet the credit needs of the local communities in which they are chartered, consistent with the safe and sound operation of such institutions."² In fact, in 2020, banks provided more than \$271 billion in capital to low- and moderate-income (LMI) communities.³

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 updated to reflect how technology has transformed the delivery of financial products and services. There is consensus that the banking agencies need to ensure that CRA expectations are transparent and that examiners interpret and apply CRA regulations consistently. And, there is wide recognition

¹ The American Bankers Association is the voice of the nation's \$23.7 trillion banking industry, which is composed of small, regional and large banks that together employ more than 2 million people, safeguard \$19.7 trillion in deposits and extend nearly \$11.2 trillion in loans.

² 12 U.S.C. § 2019(b).

³ Based on mortgages and loans to small businesses in LMI areas. See CRA Data, <https://www.ffiec.gov/craadweb/national.aspx> and HMDA data, <https://ffiec.cfpb.gov/data-publication/2021>.

that CRA activities can do more to financially empower underserved consumers and communities.

We support each of these objectives, and we anticipate that several aspects of the proposed rule would achieve them.⁴ However, we are concerned that other elements of the proposal would *not* accomplish the goals of regulatory modernization. In fact, if not calibrated appropriately, the final rule could result in outcomes that are *contrary* to the agencies' intent, particularly as it relates to expanding access to credit for residential mortgages, small business loans, and community development financing.

Nevertheless, we remain optimistic that it is possible to improve the effectiveness and administration of the CRA in a manner that will help banks more effectively support customers and communities. To that end, we offer the following initial observations and recommendations, which reflect the perspective of the full range of bank business models.

A. Focus on Individuals and Areas Where Banks Can Have the Most Impact

There is consensus among CRA stakeholders that CRA modernization must reflect the digital transformation of financial products and services. While there is broad agreement on this concept, melding the CRA statute's focus on geography with the practicalities of the electronic age and the emergence of new bank business models is not a simple task. The banking agencies devoted extensive thought and data analysis toward developing a modernized regulatory framework that addresses these challenges. But, the proposal's creation of Retail Lending Assessment Areas is not the elegant solution that it appears to be.

By way of background, existing CRA regulations largely limit the evaluation of a bank's CRA performance to those geographic locations where the bank has a physical presence as well as the surrounding geographies in which the bank has originated or purchased a substantial portion of its loans. This definition was developed when brick and mortar branches were the primary means of delivering financial products and services.

To reflect the changes in how banking services are delivered, the proposal would require large banks (defined as those with more than \$2 billion in assets) to delineate a new type of assessment area, known as a Retail Lending Assessment Area (RLAA), where the bank has a concentration

⁴ In particular, we support the proposed preapproval process and list of qualifying activities for community development; the increased specificity regarding what qualifies for community development credit; and the combination of community development lending and investments into a single community development financing test. We also support providing CRA credit at the bank level for community development activities that a bank conducts outside of its assessment area(s). Finally, we appreciate the agencies' sincere effort to tailor the proposal so as to avoid imposing regulatory burden on the smallest banks by adjusting the caps for Small Banks and Intermediate Banks to \$600 million and \$2 billion, respectively.

of home mortgage or small business lending where it does not have a physical presence. These RLAAAs would consist of any MSA or the combined non-MSA areas of a state in which the bank originated (i) at least 100 home mortgage loans outside of its facility-based assessment areas (FBAAs) *or* (ii) at least 250 small business loans outside of its FBAAAs in each of the two preceding calendar years. Importantly, a bank would be evaluated for its CRA performance for *all* of its major product lines in each RLAA, regardless of whether the bank surpasses *either or both* of the proposed thresholds.

We agree that a modernized CRA regulatory framework should no longer rigidly adhere to physical presence as the sole basis for a bank's CRA evaluation. However, we have significant concerns with the RLAA as proposed. While it appears workable in theory, the 100/250 loan triggers pose several practical problems.

First, the loan volumes that would trigger a RLAA are not sufficiently material. As proposed, many banks would be required to create dozens—and in some cases well over one hundred—new assessment areas in geographies where the bank does not have a meaningful market presence or that are not central to the bank's broader business strategy.

For example, one of our members would go from 105 assessment areas today to 170 assessment areas under the proposed rule. Another community bank would go from 3 assessment areas today to over 60 assessment areas under the proposal. This increase in assessment areas may dilute the effectiveness of CRA activity by potentially diverting a bank's focus on areas where it could make a significant difference for LMI individuals and communities.

For this reason, we recommend that the agencies re-calibrate the proposal to create a regulatory framework that incentivizes banks to focus on locations where they can make a meaningful impact toward closing the wealth gap. Allowing banks to concentrate their efforts in areas where they have more substantial activity than the 100/250 loan thresholds is more likely to achieve the goals of CRA than requiring them to spread their efforts across numerous new assessment areas.

A related problem is that the proposal would scope in all of a bank's major product lines in each RLAA once the bank meets the trigger for only one product line. For example, if a bank makes 125 mortgage loans (thereby triggering an RLAA) and 75 small business loans, both products would be subject to the Retail Lending Test (provided the 75 small business loans are a major product line), even though the bank's small business lending volume is insufficient to trigger an RLAA on its own. In the spirit of focusing on lending that is material to the bank and to the community, we recommend that the Retail Lending Test not apply to a product that, by itself would not trigger a RLAA designation. In this same vein, we recommend that any final rule carefully calibrate what constitutes a major product line.

Second, the proposed thresholds could unintentionally incentivize banks to curtail retail lending in locations that are incidental to the bank's business strategy and where the bank does not actively market its loan products. For example, one of our members exceeds the 100 mortgage loan threshold in Boston even though the bank does not have branches in Boston and does not market its mortgage products there. Nonetheless, the bank would be required to add the Boston MSA as an RLAA and meet the same CRA performance benchmarks as banks with a branch in the city or that market their products in the area. Under these circumstances, some banks may choose to take a hard look at the costs and benefits of accepting loan applications from and managing a CRA program in a geography that is incidental to the bank's business strategy.

Third, while the agencies sought to tailor the proposal to reflect a bank's asset size and capacity, the proposed FBAA structure and weighting of the Retail Lending Test will disadvantage some bank business models. For example, one of our members has only one retail lending product. This book of business represents a mere 1.8% of the bank's total loan portfolio, yet the bank would be required to add 181 RLAAAs. Moreover, this product line would comprise 45% of the bank's entire CRA rating even though it represents less than 2% of the bank's total loan portfolio. To be effective and workable, a final rule must take these types of situations into account.

In light of the foregoing concerns, we are evaluating potential alternatives to the RLAA construct. One option might be to evaluate non-facility-based assessment area lending at the bank level rather than creating many new RLAAAs. Another option would be to adjust the triggers for delineating a RLAA based on a material loan count *and* market share. Regardless of the approach that the agencies ultimately take, regulators must be mindful of the unintended consequences that could result from major revisions to the assessment area construct.

B. Rebalance the Proposed Benchmarks and Rating Methodology

The proposal would raise the bar for the performance on the Retail Lending Test. As a result, a bank would have to exceed past performance in order to attain the same CRA rating that it received on a prior exam. Regulators believe that these heightened performance standards would incentivize banks to increase lending to underserved communities. This is an important goal. However, as explained below, the proposed benchmarks and ratings methodology may actually create a *disincentive* for certain types of lending and investment. For this reason, regulators must ensure that new benchmarks and ratings methodologies are calibrated appropriately.

First, in an attempt to standardize CRA evaluations, the proposal would apply the same performance metrics to all banks operating in an assessment area, regardless of whether the bank has a digital or a physical presence. Regulators should take great care to ensure any final rule does not competitively advantage or disadvantage certain business models.

Second, the proposal is weighted too heavily on the Retail Lending Test, which would constitute 45% of a “large” bank’s CRA rating.⁵ Under this approach, a bank could not achieve an overall rating of Outstanding unless it receives an Outstanding rating on the Retail Lending Test, regardless of how well the bank performs on the Community Development Test.

The agencies believe that a weighting of 45% appropriately emphasizes retail lending to LMI individuals and communities. However, over-emphasizing the Retail Lending Test could have unintended consequences. For instance, if a bank believes an Outstanding on the Retail Lending Test is unattainable, that bank may choose *not* to pursue an Outstanding on the Community Development Financing Test since the bank would not be capable of achieving an overall rating of Outstanding. In other words, the proposed benchmarks could create a *disincentive* for banks to stretch and do more community development lending and investing. This would be a highly undesirable outcome, particularly for communities that desperately need revitalization and are located outside of the assessment areas of most banks.

Third, the proposed Retail Lending benchmarks may be unachievable and could incentivize unsafe and unsound risk taking. To obtain a High Satisfactory rating, a bank must meet 110% of the market benchmark or 90% of the community benchmark. For an Outstanding rating, a bank must meet 125% of the market benchmark or 100% of the community benchmark. Importantly, the proposal would evaluate banks on a relative basis rather than an absolute basis. While we are still analyzing the proposal, we are concerned that the proposed performance standards could create an unrealistic target, whereby it will be mathematically impossible for all banks in an assessment area to meet the proposed thresholds. In other words, the proposed performance standards would create an automatic bell curve of ratings distributions within the Retail Lending Test. In fact, according to the preamble to the proposed rule, 34% of banks would fail the Retail Lending Test in their RLAs and 39% would only receive a Low Satisfactory rating.⁶

We strongly disagree with this approach. CRA performance benchmarks should be vigorous, yet achievable, and the expectation should be that all banks can meet or exceed the established standard—as is the case with all other consumer protection and safety and soundness regulations. Artificially high benchmarks could incentivize banks to engage in undue risk taking in order to comply with the regulation’s performance standards. This would be disastrous for consumers, communities, and could increase risk in the financial system.

C. Provide an Adequate Transition Period

The agencies propose to incorporate a transition period comprised of multiple “applicability dates.” For the most burdensome aspects of the proposal (including RLAs, new performance

⁵The proposal would weight the various performance tests as follows for large banks: 45% for Retail Lending Test performance score; 15% for Retail Services and Products Test performance score; 30% for Community Development Financing Test performance score; and 10% for Community Development Services Test performance score.

⁶ See Appendix A for more information regarding potential ratings outcomes under the proposal.

tests, standards, and ratings, and data collection and reporting requirements), the agencies would provide a transition period of one year. However, twelve months is insufficient to implement the proposed changes for a rulemaking this comprehensive and complex.

In addition to parsing the highly-technical rule, banks will need to:

- Apply new and complicated formulas to their existing CRA programs;
- Establish administrative oversight over newly designated RLAAAs and ensure that they are properly incorporated into the bank's CRA program;
- Ensure that all assessment areas (new and existing) meet the rule's newly-established performance benchmarks;
- Implement major data collection, recordkeeping, and reporting mechanisms that significantly exceed existing CRA requirements, including the establishment of data integrity procedures and controls; and
- Evaluate the cost-benefit of certain business lines and geographic markets in light of the burden that the new RLAAAs and performance metrics create.

CRA implementation will be a very heavy lift on its own. But, the proposed 12-month implementation period is especially unrealistic given that banks will likely be required to implement the new CRA regulation in tandem with the CFPB's anticipated final small business lending data collection rule (Dodd-Frank Act section 1071). For many banks, the same staff will be charged with implementing both of these new regulations, particularly as it pertains to overhauling technology systems and standing up new data collection and reporting mechanisms. This dual implementation will make the time pressures of a 12-month implementation period particularly acute.

In fact, in anticipation of overlapping implementation periods for these major rules, some banks have initiated their compliance preparations *prior to* the issuance of final rules even though some of this effort may need to be unwound in the event a final rule deviates from the proposal. This is wasteful. Yet, extreme measures like this illustrate the operational challenges associated with unreasonable implementation timelines.

Banks are not the only entities that must dedicate substantial resources to meet the time pressures of a new CRA rule. Banks are dependent on software vendors and core providers to furnish services that will be necessary to implement a new CRA framework. Regulators should solicit input from these third parties regarding the time that will be necessary to develop the requisite coding, programs, and systems necessary for banks to implement a final rule. In the case of prior rulemakings involving HMDA and TRID, bank implementation and testing of vendor products was delayed because third-parties lacked sufficient time to develop systems changes for their clients. We urge the agencies to draw upon these experiences when establishing the implementation period for the final CRA rule.

For the foregoing reasons, we request that the agencies provide an implementation period of at least two years following publication of the final rule in the *Federal Register*. We also recommend that the agencies provide extensive interagency training and support to help banks understand and apply a new regulatory framework. Examiner training should also be conducted on an interagency basis.

D. Provide Sufficient Time for Banks to Provide Meaningful, Data-Driven Comments

Leadership of the banking agencies have repeatedly emphasized the need for robust public comments in order to best assure that a final rule is calibrated appropriately. As Acting FDIC Chairman Martin Gruenberg observed at during a recent panel discussion, “Nothing is perfect and it is a large, complicated rule. We assume there is a lot there that we didn’t get right or may have missed or could be improved.”⁷

Nevertheless, the agencies denied a request by ten banking trade associations to extend the proposal’s comment period by only 30 days. We do not understand the agencies’ rationale in denying this request or why the agencies are proceeding with a comment period that is too short relative to the scope and magnitude of changes being proposed. As history has demonstrated, complex regulatory overhauls that are rushed tend to have little staying power or require extensive amendments and/or interpretations. Revisions or clarifications during the already abbreviated one-year implementation period would make compliance even more difficult.

In recent years, multiple iterations of CRA modernization have created modernization fatigue. While there may be pressure to “just get it done,” regulators, banks, and other stakeholders have come too far and worked too hard to rush the final stage of this important work. Communities, regulators, and banks would benefit from an updated regulatory framework that achieves this initiative’s stated objectives *and* stands the test of time.

We will continue to work diligently to provide thoughtful comments on the overall framework that the agencies have proposed. However, policymakers should be aware that the 90-day comment period is insufficient for banks to provide fulsome, data-driven comments on the complicated formulas, benchmarks, and thresholds set forth in the nearly 700-page proposed rule. This is particularly the case for community banks that are classified as “large banks” for CRA purposes.

⁷ Regulatory panel discussion hosted by the Urban Institute. “Modernizing the Community Reinvestment Act: Ensuring that Banks Meet the Credit Needs of Their Communities.” (June 3, 2022). <https://www.urban.org/events/modernizing-community-reinvestment-act-ensuring-banks-meet-credit-needs-their-communities>

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

The Subcommittee's evaluation of the interagency CRA proposal provides policymakers with the opportunity to make a holistic evaluation of CRA. There has been a remarkable transformation in the delivery of financial products and services since the CRA was enacted 45 years ago. In addition to the proliferation of electronic delivery channels, payment processing and loan origination are no longer within the exclusive purview of the local bank. In 2021, nonbanks originated approximately 72% of mortgage loans in the United States.⁸ Non-bank origination of small business loans is also on the rise. Fintech lending to small businesses increased from \$14 billion in 2018 to \$20.4 billion in 2020.⁹

In like manner, the credit union industry continues to expand. Today's credit unions are a \$2 trillion industry. Some credit unions have grown into regional and even national financial institutions that receive significant government benefits to serve LMI individuals, yet they are not required to demonstrate through measurable standards that they are meeting their service obligations.

Analysis shows that credit unions are increasingly targeting wealthy communities, serving wealthy consumers, and are a contributing factor to *widening* economic inequality.¹⁰ Between 2012 and 2021, more than 70% of the branches of banks targeted for acquisition by credit unions were in upper- or middle-income census tracts, and only 13 branches out of almost 200 were in low-income tracts. Per data from S&P Global, banks are already much more likely than credit unions to have branches in at-risk communities—7.7x in poverty-distressed communities, 9.3x in distressed, underserved, or middle-income communities, 12.8x in remote rural communities, and 18.1x in communities experiencing population loss.

Perhaps even more concerning is the recent trend of credit unions buying community banks. Community banks pay taxes and comply with the Community Reinvestment Act, but once the transaction closes, the bank's CRA obligations cease to exist and the acquiring credit union has no CRA responsibility to the community. This outcome is nonsensical.

In light of the foregoing market developments, policymakers should reconsider the entities that have community reinvestment responsibilities. As Federal Reserve Chairman Jerome Powell observed, "like activity should have like regulation.... Consumers require protection and low-

⁸ https://files.consumerfinance.gov/f/documents/cfpb_2020-mortgage-market-activity-trends_report_2021-08.pdf

⁹ <https://cdn.advocacy.sba.gov/wp-content/uploads/2022/02/15122206/FinanceFAQ-Final-Feb2022.pdf>

¹⁰ <https://fedfin.com/wp-content/uploads/2020/07/FedFin-Paper-The-Credit-Union-Equality-Commitment-An-Analytical-Assessment.pdf>

and moderate-income communities require credit support, regardless of the nature of the institution.”¹¹

F. Looking Forward

Thank you for the opportunity to comment on potential revisions to the regulations that implement the CRA. We appreciate the Subcommittee’s continued interest in the modernization effort. Updates to this regulation are long overdue, and we remain optimistic that it is possible to improve the effectiveness and administration of CRA on an interagency basis. We welcome the opportunity to provide additional information and input as the modernization effort proceeds and we finalize our comment letter on the proposed rule.

¹¹ <https://ncrc.org/ncrc-ceo-jesse-van-tol-with-federal-reserve-board-of-governors-chair-jerome-powell-at-the-2021-just-economy-conference-may-3-2021/>

Appendix A: Agency Analysis of Bank Performance Under the Proposed CRA Performance Standards

Table 10 to Section ____22. Distribution of Estimated Retail Lending Conclusions among Banks by Asset Size, without applying the Retail Lending Volume Screen

	Assets <\$600m		Assets \$600M-\$2B		Assets >\$2B	
	Freq.	Percent	Freq.	Percent	Freq.	Percent
"Substantial Noncompliance"	1	1%	0	0%	0	0%
"Needs to Improve"	27	14%	5	7%	3	7%
"Low Satisfactory"	48	24%	28	38%	17	40%
"High Satisfactory"	61	31%	32	43%	18	43%
"Outstanding"	61	31%	9	12%	4	10%

Notes: Table 10 shows the estimated distribution of Retail Lending Test conclusions based on agency analysis of home mortgage and small business lending, deposits, and demographic data from the CRA Analytics Data Tables. Institution-level conclusions were derived from the weighted average of assessment area level recommended conclusions. The boundaries of facility-based assessment areas for small and intermediate-small banks were derived from data collected from the bank's performance evaluation. The boundaries of facility-based assessment area for large banks were derived from a combination of the data collected from the bank's performance evaluation and its reported assessment area data. Analysis included banks that had a CRA examination begin in 2018 or 2019, and excluded wholesale, limited purpose, and strategic plan banks. Bank asset categories were assigned using the annual average of the prior two years of quarterly assets relative to the examination year. Percentages were rounded to the nearest whole number.

Table 11 to Section ____22. Distribution of Reporter Bank Assessment Area Estimated Retail Lending Conclusions, by Location

	MSA		non-MSA	
	Freq.	Percent	Freq.	Percent
"Substantial Noncompliance"	46	1%	33	2%
"Needs to Improve"	796	16%	284	16%
"Low Satisfactory"	1669	33%	484	27%
"High Satisfactory"	1803	35%	638	35%
"Outstanding"	760	15%	359	20%

Notes: Table 11 shows the estimated distribution of Retail Lending Test conclusions based on agency analysis of home mortgage and small business lending, deposits, and demographic data from the CRA Analytics Data Tables, over the years 2017-2019. Assessment area-level recommended conclusions are shown. The boundaries of assessment areas were estimated using reported assessment areas, along with the restrictions that assessment areas must generally lie entirely within a single MSA or the non-MSA portion of a single state, and generally consist of (at least portions of) a contiguous set of counties. Analysis included 606 banks that were both CRA and HMDA reporters, and excluded wholesale, limited purpose, and strategic plan banks. Percentages were rounded to the nearest whole number.

Table 12 to Section ____22. Distribution of Estimated Reporter Bank Retail Lending Conclusions, in Retail Lending Assessment Areas and Outside Retail Lending Areas

	Retail Lending AA		Outside Retail Lending Area	
	Freq.	Percent	Freq.	Percent
"Substantial Noncompliance"	37	2%	11	2%
"Needs to Improve"	531	32%	175	29%
"Low Satisfactory"	646	39%	268	45%
"High Satisfactory"	360	22%	129	21%
"Outstanding"	96	6%	21	3%



MORTGAGE BANKERS ASSOCIATION

**MBA Observations and Recommendations on Legislative Proposals
before the House Financial Services Committee's Subcommittee on Consumer
Protection & Financial Institutions
"Better Together: Examining the Unified Proposed Rule to Modernize the Community
Reinvestment Act."
July 13, 2022**

The Mortgage Bankers Association (MBA)¹ appreciates the opportunity to comment on legislative proposals noticed by the House Financial Services Committee's Subcommittee on Consumer Protection and Financial Institutions that were the focus of the July 13, 2022 hearing entitled, "Better Together: Examining the Unified Proposed Rule to Modernize the Community Reinvestment Act." MBA supports common-sense reforms of the federal Community Reinvestment Act (CRA), as applied to banks, that ensure appropriate credit is given for mortgage banking activities. MBA, however, opposes language in H.R. 2768, the *American Housing and Economic Mobility Act* as introduced by Rep. Emanuel Cleaver (D-MO), and within the discussion draft bill, the *American Community Investment Reform Act*, which would apply CRA mandates to non-depository lenders, such as independent mortgage banks (IMBs). Our comments below reflect that perspective.

Background

In recent months, regulators, legislators, and others in the public policy community have revisited the structure and contours of the CRA, which was enacted in 1977 to encourage covered depository institutions to "demonstrate that their deposit facilities serve the convenience and needs of the communities in which they are chartered to do business," including "the need for credit services as well as deposit services." While various amendments to the implementing regulations have been made over the past forty years, major changes in the nature and provision of financial services have spurred some to call for more fundamental CRA modernization efforts.

Among the options being considered by Congress and state legislatures is an expansion of CRA requirements to apply to non-depository lenders, such as IMBs. The policy rationale for the proposed expansion is questionable – it overlooks the data on IMB performance in serving low- to moderate-income (LMI) communities and rests on a misunderstanding of the IMB business model as well as the purposes of the CRA.

¹ The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 390,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets, to expand homeownership, and to extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of more than 2,200 companies includes all elements of real estate finance: independent mortgage banks, mortgage brokers, commercial banks, thrifts, REITs, Wall Street conduits, life insurance companies, credit unions, and others in the mortgage lending field. For additional information, visit MBA's website: www.mba.org.

MBA Statement for the Record
July 13, 2022

Robust Lending in LMI Communities

One of the main objectives of the CRA is to ensure reliable, sustainable lending to LMI borrowers and communities throughout the country by banking institutions. This is a laudable goal for banking policy – that insured depository institutions should serve the credit needs of LMI borrowers and neighborhoods in the communities from which they take deposits. Those arguing to extend CRA obligations to IMBs on these grounds, however, often ignore the fact that IMBs do not have direct federal benefits and already engage in substantial lending in LMI communities. In fact, IMBs as a sector compare very favorably to other types of financial institutions in this regard.

Based on Home Mortgage Disclosure Act (HMDA) data and the CRA files from the Federal Financial Institutions Examination Council (FFIEC), the Urban Institute found that IMBs have a higher LMI borrower share and LMI area share than banks, whether viewed by loan count or dollar volume.² Similarly, IMBs are the dominant originators in the government housing finance programs operated by the Federal Housing Administration (FHA), Department of Veterans Affairs (VA), and Rural Housing Service (RHS). In particular, the FHA program primarily serves LMI borrowers and accounts for a disproportionate share of lending to minority borrowers and first-time homebuyers. According to 2019 HMDA data, IMBs originated more than 85 percent of FHA loans, 74 percent of VA loans, and 69 percent of RHS loans. Further, IMBs originated nearly 67 percent of loans to minority borrowers and approximately 62 percent of purchase loans for LMI borrowers. Finally, IMBs served homebuyers with lower average purchase loan amounts (\$264,000) than their depository counterparts (\$298,000).³

Supporters of the legislation point to Massachusetts as a “model,” because in 2006 the Commonwealth enacted a statute mandating CRA for nonbank mortgage lenders. The Massachusetts Division of Banks promulgated regulations in 2007 and conducted its first nonbank CRA exam in 2009. It is reasonable to conclude, therefore, that IMB lending in Massachusetts to LMI borrowers over the past decade should serve as a case study to assess its efficacy at stimulating more lending to LMI and minority borrowers by IMBs, compared to states without a nonbank CRA requirement. This inference is not supported by data.

If CRA for IMBs were an effective policy measure, the rules in Massachusetts would be expected to result in faster growth in IMB lending to LMI and minority homebuyers after implementation compared to states without CRA requirements for IMBs. A comparison of the key HMDA data points discussed above do not suggest that the Massachusetts law encouraged IMBs to increase their lending by more than in the rest of the states *without* CRA for nonbanks.

In Massachusetts, the proportion of mortgages to minority homebuyers made by IMBs increased from 27% in 2008 to 62% in 2020 – an impressive increase of 129% after the

² Goodman, Laurie, Jun Zhu, and John Walsh, “The Community Reinvestment Act: Lending Data Highlights,” Urban Institute, November 2018. Available at: https://www.urban.org/sites/default/files/publication/99427/community_reinvestment_act_lending_data_highlights_update.pdf.

³ Mortgage Bankers Association, “Independent Mortgage Banks: Financing the American Dream.” Available at: https://www.mba.org/Documents/Policy/22153_MBA_IMB_Summary_Report_2021.pdf.

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enactment of CRA. Nationally, the IMB share of loans to minority borrowers grew from 33% in 2008 to 71% in 2020. In other words, Massachusetts did not outperform the national data over this time period. Similarly, the share of home purchase loans to LMI households in Massachusetts made by IMBs rose from 27% to 62% between 2008 and 2020 – a 129% increase. Nationally, IMBs accounted for 29% of LMI loans in 2008, and 67% in 2020. Again, IMBs in Massachusetts actually lagged the national growth in lending to LMI borrowers, despite the presence of the CRA requirement in the Bay State. If the Massachusetts CRA requirements had been effective, one would expect these gaps to have narrowed, not increased.

Taken together, these statistics point to a clear conclusion — IMBs do not need any regulatory obligation or incentive in order to serve LMI borrowers and communities; they have a strong history of doing so that continues today. As a result, extending CRA coverage to IMBs is very much a policy solution that is detached from IMBs' willingness and ability to provide mortgage credit to LMI borrowers and communities.

Lack of Deposits to Reinvest

The CRA was designed to cover deposit-taking institutions that enjoy the benefits of federal deposit insurance provided by the Federal Deposit Insurance Corporation (FDIC). These institutions include national banks, savings associations, and state-chartered commercial and savings banks. The primary purpose of the Act is to ensure that if financial institutions accept deposits from a particular community or population, they also should lend to or invest in programs or activities that benefit that community or population. In other words, in exchange for receiving FDIC deposit insurance, these institutions should *reinvest* an appropriate proportion of these deposits in a fair and equitable manner — hence, the name of the Act.

In contrast to FDIC-insured institutions, IMBs do not accept deposits from their customers as a source of funds to lend or invest, and therefore are not beneficiaries of FDIC deposit insurance. IMBs instead use short-term borrowing, or warehouse lines of credit, to obtain the funds needed to originate mortgages. This borrowing is secured by the funded mortgages until the mortgages are sold to investors in the secondary market. As a result, the IMB business model is designed to *import* funds from global capital markets and lend those funds in local communities to support homeownership. IMBs do not take in deposits or other resources from these local communities, and therefore the concept of *reinvesting* does not apply. Rather, IMBs channel capital from outside the local community into productive uses within that community. At its core, this is an entirely different model of originating mortgages than the model used by banks, and it is not compatible with the underlying purpose of the CRA.

Lack of Access to Direct Government Support

Insured depositories also receive access to other forms of direct federal benefits. They are eligible, for example, to secure advances from the Federal Home Loan Banks (FHLBs), emergency loans from the Federal Reserve through the discount window, and access to the federal payments system. These programs provide both reliable liquidity on an ongoing basis and backstop funding in periods of stress.

IMBs, however, are ineligible for these government benefits. If an IMB faces liquidity strains, it cannot turn to FHLB advances or obtain funding from the Federal Reserve discount window. The operations of IMBs are not directly supported by federal backstops in the way that is true of

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insured depository institutions' operations. As such, imposing CRA obligations on IMBs as a means of compensating taxpayers imposes cost burdens on IMBs with no offsetting benefits.

Strengthened Regulatory Oversight

Another argument made in favor of a broader CRA that applies to IMBs centers on the idea that CRA examinations serve as a needed layer of additional federal oversight.

This view, however, is rooted in a pre-2008 regulatory framework and ignores the dramatic changes in both the state and federal oversight of IMBs over the past decade. In addition to more robust prudential standards that are applied by state regulators and counterparty risk standards that are applied by Fannie Mae, Freddie Mac, Ginnie Mae, and warehouse lenders, IMBs also are subject to the supervisory, investigative, and enforcement authority of the Consumer Financial Protection Bureau (CFPB). The CFPB examines IMBs with respect to their fair lending practices and their compliance with consumer-facing regulations.

Further, the regulatory framework in place in the mortgage market today effectively has eliminated the damaging types of products that contributed to the financial crisis — for lenders of all types. The CFPB's ability-to-repay rules and the accompanying Qualified Mortgage standard, for example, better ensure thorough documentation of borrower income, assets, employment, and debt, as well as promote product features that are more likely to foster long-term homeownership for consumers.

In contrast, CRA examinations are not the mechanism by which to ensure high-quality lending. Such an argument conflates the purpose of the CRA and fails to recognize the far-superior post-crisis methods for overseeing underwriting practices that now are in place for all lenders. Again, the CRA simply is the wrong solution to the concerns raised in this context.

Conclusion

The Community Reinvestment Act is an important pillar of our federal banking policy. It works hand in glove with fair lending laws — which apply to all lenders regardless of charter — to ensure that LMI borrowers and communities have access to mortgage credit on a fair and equitable basis. Indeed, all lenders should serve such borrowers and communities, and discrimination in any form should not be tolerated. The CRA is a vital component of this policy objective, though advocates of extending CRA to IMBs should remember that the CRA has a far more specific purpose. The CRA is meant to ensure that financial institutions accepting deposits from a particular community or population reinvest those deposits in that community or population.

IMBs do not accept deposits, nor are they the beneficiaries of direct taxpayer backstops for their ongoing operations. They have a proven track record of strong and reliable lending to LMI borrowers and communities and are subject to the same consumer-facing regulations as depository institutions, which ensures sound underwriting and high-quality lending.

Subjecting IMBs to the CRA therefore would impose costs on IMBs that are unlikely to produce significant incremental benefits, given the important role IMBs already play in serving LMI borrowers. The experience in Massachusetts with its nonbank CRA requirements appears to validate that it has had little impact on increasing LMI lending by IMBs relative to all other states

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without such a requirement. As such, a federal CRA requirement on IMBs is likely to prove an ineffective and misguided policy choice – one with significant costs but little upside benefits.

Thank you in advance for your consideration of the views expressed within this statement for the record. As always, MBA stands ready to work with Members of the Committee to ensure a robust housing market that is accessible, affordable, and sustainable – and works to benefit all borrowers, renters, and other critical stakeholders.

The Bank Policy Institute thanks the House Financial Services Committee Subcommittee on Consumer Protection and Financial Institutions for holding a hearing to hear views on proposed changes to regulations implementing the Community Reinvestment Act. BPI and our member banks are actively investing in communities to address economic inequality and advance economic opportunity. The banking industry supports the goals of CRA and will continue to invest in the communities they serve, including low- and moderate-income (“LMI”) areas, to sustain and increase economic development and to support consumers and small businesses living and operating in those communities.

BPI appreciates the coordinated interagency proposal to implement CRA reform recently proposed by the Federal Deposit Insurance Corporation, the Federal Reserve Board, and the Office of the Comptroller of the Currency.¹ We also appreciate the three banking agencies’ willingness to explore innovative ways to ensure that the CRA remains relevant and effective in encouraging banks to meet the credit needs of the communities they serve as the banking industry continues to evolve in light of technological advancements and changes in consumer demand for different types of banking products and services.

We are concerned, however, that certain aspects of the agencies’ proposal would stray from the core mission of the CRA and risk undermining, rather than strengthening, the goals of the CRA.

As an initial matter, the proposed rule is unnecessarily complex and would impose multiple new tests, subtests, and factors on banks, and the agencies have not explained why they did not offer more straightforward, clear alternatives that would achieve similar objectives.

Second, the agencies propose to recalibrate certain tests under the CRA so stringently that it could lead to widespread downgrades of banks’ performance, a result that the agencies do not rationalize or adequately explain. Critically, by imposing significant barriers to many large banks receiving “Outstanding ratings,” there could be *reduced* incentives to strive for such ratings, and thus, undermine the goals of the CRA.

Of significant concern, certain tests under the proposal would compare banks’ performance to benchmarks that they would never know in advance, raising due process and fairness concerns. Banks should be able to know the benchmarks against which they will be evaluated in advance of the applicable performance period.

Banks also would be evaluated outside of their facility-based assessment areas, which would be inconsistent with the agencies’ statutory authority under the CRA, which requires the federal banking agencies to prepare written evaluations of banks’ CRA performance in geographies where banks have domestic branch offices, and does not refer to areas where banks provide loans.² The text is consistent with the underlying purposes of the CRA, which include ensuring that banks serve any community where they have branches that take deposits from that community.³ Moreover, it takes time and dedicated resources to build meaningful CRA infrastructure in a given geography—especially to meet expectations regarding the *geographic* distribution of retail loans in that geography. Unfortunately, if making retail

¹ Community Reinvestment Act, 87 Fed. Reg. 33,884 (June 3, 2022).

² See, e.g., 12 U.S.C. § 2906(b)(1)(B).

³ See, e.g., 123 Cong. Reg. 58932 (daily ed. June 6, 1977) (Senator William Proxmire, the bill’s sponsor in the Senate, stating in floor debate that the statute was intended to solve the problem that “banks and savings and loans will take their deposits from a community and instead of reinvesting them in that community, they will invest them elsewhere . . .”).

loans outside a bank's facility-based assessment areas could give rise to a stringent distribution analysis in new, separate geographies, banks may have a strong disincentive to offer lending products in many places outside their facility-based assessment areas where they lack these resources. As a result, underserved communities could suffer from a constriction in the availability of credit, frustrating further the very purpose of the CRA.

In addition, several elements of the proposal appear to serve as a *de facto* requirement to offer specific deposit services, products, and features, which indicates that the agencies have ventured far from their statutory mandate of encouraging a bank to meet the *credit needs* of its entire community. In particular, certain aspects of the proposal would appear to have the effect of regulating the cost of certain products and services. The agencies have no authority impose price controls by capping these costs and fees, much less indirect authority within the CRA.

Although we are concerned with certain aspects of the proposal, importantly, we believe that the shortcomings described above are avoidable, and we look forward to engaging further with the agencies to collectively work towards a simpler, more flexible rule that allows banks to fulfill the goals of the CRA while recognizing the ongoing innovation occurring in the financial services marketplace.

