February 15, 2021

Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

Re: Modernizing the Community Reinvestment Act Regulatory and Supervisory Framework Advance Notice of Proposed Rulemaking (ANPR)
Docket No. R-1723 and RIN 7100-AF94

Submitted via e-mail to: regs.comments@federalreserve.gov

Johnson Financial Group, Inc. ("JFG") is a $6-billion financial holding company headquartered in Racine, Wisconsin, operating through several affiliated companies primarily in the state of Wisconsin. Our product/service lines include banking, trust, and investment services (Johnson Bank), an insurance agency (Johnson Insurance Services, LLC), a registered investment advisor (Johnson Wealth Inc) and branded brokerage and credit card services (with joint marketing partners). We are supervised by the Federal Reserve.

Johnson Financial Group is dedicated to making stable and strong communities by fostering economic growth. And we recognize there are significant economic differences among neighborhoods in our communities. We are committed to the goals of CRA and to meeting the credit and financial services needs of our customers and communities. Johnson Bank deeply values its relationships with the people and communities we serve. Those relationships are the foundation of appropriate financial services and responsible and sustainable lending.

But, CRA regulation and supervision have become overly complex, subjective, unclear, and they have not kept up with the way the consumers expect to use technology to access financial products and services. With the prevalence of smartphones, tablets, and laptop computers, consumers can have comprehensive banking and financial services provided at their fingertips at every hour of the day. The need to update CRA has existed for years and will grow more pressing as technology and the financial services industry and especially non-bank fintech competition continues to evolve and grow.

In addition, we believe the current evaluation process uses a one-size-fits-all approach, and does not allow for optionality that would be appropriate in addressing each community's unique circumstances and needs in the context of each financial institution's unique business model, strategies, and strengths.

Thank you for your leadership in soliciting input on ways to modernize and transform the CRA regulatory and supervisory framework. We urge you to coordinate work with the FDIC and OCC in any way possible to develop a common evaluation methodology.

Our comments are focused on the activities conducted by or products and services offered by Johnson Bank as they are evaluated for a large bank under CRA.

Assessment Areas

Loan Production Offices (LPOs) are often used by commercial banks as a precursor to the consideration of opening a full-service branch in a new market These LPOs often have a singular initial focus, such as commercial lending, to test the competitive waters in the new market area. With this limited scope, they do not offer the full array of financial services available at competing deposit taking institutions. Accordingly, consideration of CRA activities are not on an equal playing field with already established full-service competitors. As such, we do not recommend the CRA evaluation of LPO based assessment areas because their evaluation would be inconsistent with full-service branch-based assessment areas.

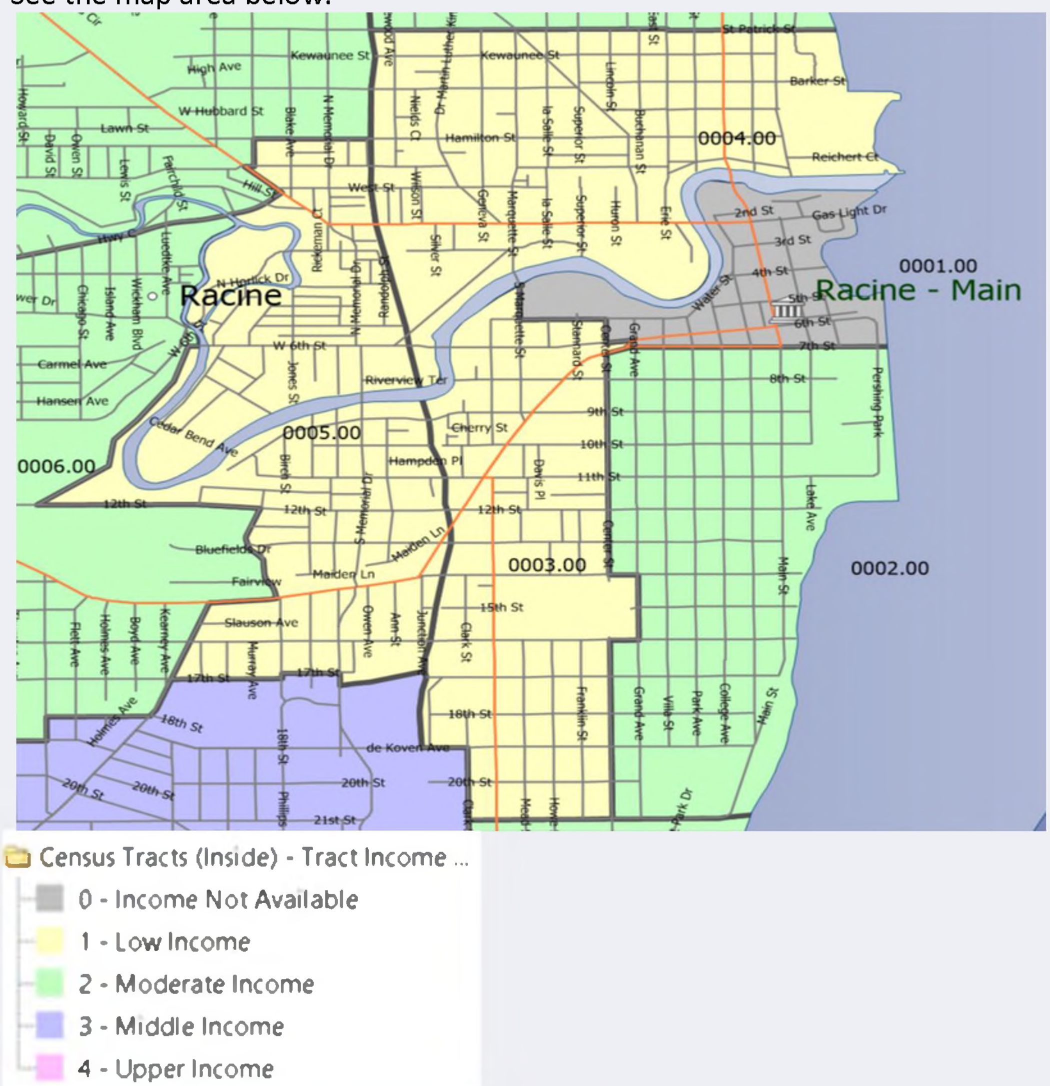
Branch Distribution

In the proposed ANPR Retail Services subtest, the distribution of LMI branches is evaluated. This process is described as limited to the actual census tract footprint of the physical branch building without regard to census tracts in immediate proximity. The proposed rule is too rigid in the consideration of LMI branch service delivery when it is restricted to the census tract income level of the branch location without regard to the contiguous census tract areas which it serves. This does not fairly and adequately address the actual service of the branch on the immediate surrounding area including adjacent census tracts which may be low- or moderate-income geographies especially in urban areas where census tract are relatively smaller than rural areas.

Branches are often located on major commercial thoroughfares which may also serve as boundaries between census tracts. As a result, the side of the street on which the branch is located could become critical to the branch distribution benchmark. This is despite the reality that the branch's actual retail service delivery footprint would be the same regardless of which side of the street it is located.

For example, Johnson Financial Group built its headquarters building (containing its main office branch) as part of a redevelopment effort in downtown Racine, Wisconsin in 2002. The downtown area of Racine is similar to many in small upper Midwest cities which once contained major industry which have since closed or relocated. A small downtown area exists which is immediately surrounded by rings of older housing stock and predominately LMI residents.

At the time of this branch's origin, the census tract's income designation was moderate. Eight years later in the 2010 census, that same census tract became middle-income. The application of the 2015 ACS again changed the census tract designation to "unknown" income. However, over the entire life of the branch, the census tract has been completely surrounded by low- and moderate-income census tracts. In fact, Johnson Bank is only one of two banks that are currently located in the downtown Racine area that is contiguous to four LMI census tracts. In the proposed metric of delivery systems, there will be no consideration given to the contiguous LMI areas within just a few city blocks which are clearly served by our downtown branch location. See the map area below.



We recommend that the LMI distribution benchmark use an LMI categorization metric that considers a reasonable radius surrounding each branch location. It has been suggested in academic studies that a banking "desert" exists when branches are inconveniently located beyond 10 miles away however we recommend a more conservative and reasonable 1 or 2 mile radius be used as a proxy to determine the LMI communities the bank serves in the immediate surrounding area of branches.

Low- and Moderate-Income Geographies

Under current CRA rules, the qualification of low- and moderate-income geographies is limited to census tracts definitions derived from the US Census. Since the time when the original CRA legislation was adopted, federal and state programs have been developed that seek to promote economic development in economically distressed low-income communities. These programs can have criteria for geographic qualification other than the census tract definitions under CRA.

We recommend that for consideration of all CRA activities, the definition of LMI geographies be expanded to allow for census tract qualification consistent with any federal or state programs that are designated for low-income communities. Specific examples include the New Market Tax Credit program and the Opportunity Zones program which are limited to low-income communities with each having their own unique qualification criteria. In this way, LMI geographic priorities can be expanded to the expressed local community needs.

Retail Lending – Home Mortgage Lending Subtest

We believe that all measure of lending activity by product line be limited to the number of loans alone. We do not support the consideration of the dollar value size of individual loans as it introduces an intrinsic bias against banks who engage in jumbo mortgage lending against those who do not. Using a dollar value size could potentially penalize a bank who has a specialty in larger loans, for example new home construction. We believe the number of loans rather than dollar value of loans furthers the original purposes of community reinvestment in promoting LMI inclusion.

Treatment of Purchased Loans

We do not support the equal treatment of purchased loans to be the same as loan originations. We recommend that purchased loans be separately evaluated as supplemental information for those institutions who have significant purchased loan activity.

As noted in the ANPR, this activity is heavily concentrated in a just a few banks. Additional analysis would indicate these are purchased by the large regional and nationwide banks. We believe that they engage in this activity almost exclusively for CRA credit while expending minimal efforts, relative to their size and capacity, in direct origination. We believe this unjustly rewards megabanks in the evaluation of CRA at the expense of community banks. Accordingly, we recommend that only originated loans be used in determining the aggregate benchmark for the borrower and geographic distribution comparison.

Small Business Loan Size and Revenue Thresholds

We support the raising of the small business loan size and revenue thresholds to adjust for inflation. This will more accurately reflect the intent of the original rule for evaluation of small business lending. These thresholds should be updated in the final rule and indexed to inflation going forward.

Retail Lending - Small Business Subtest

We believe that the inclusion of business credit card lending activity in CRA analysis unfairly benefits large financial institutions who directly issue credit cards over community banks who offer co-branded credit cards through an out-sourced partner. The inclusion of business credit card lending as small business lending unfairly skews the evaluation of activity under $100,000 and to small businesses with revenues up to and including $1,000,000 in favor of large national and regional direct issue financial institutions.

Community banks lack the sophistication to provide direct issue credit cards. Johnson Bank, like most community banks, issues co-branded credit cards through an out-source partner Elan Financial Services, a division of U.S. Bank. We greatly value the relationship with Elan as they provide expertise in card management, underwriting, fraud monitoring, reporting, and marketing. From information they publish on their website, ELAN provides similar credit card services to over 1,400 other financial institutions. Under this arrangement, ELAN exclusively receives the CRA small business lending credit.

In the proposed evaluation of the adequacy of small business lending, the aggregate lending activity which includes business card lending is used as a baseline. In every assessment area we serve, large national and regional financial institutions such as U.S. Bank (w/ ELAN), American Express, Chase Bank, Citibank, and Capital One dominate the under $100,000 category and loans to small businesses category primarily because of the direct issue of business credit cards. The inclusion of credit card lending mixed-in with direct small business lending penalizes community banks in their CRA small business lending evaluations. While we support that direct business credit card issuers should receive CRA credit for that activity, we recommend that business credit card lending activity be segregated out and removed from the mandatory Retail Lending Test evaluation of small business lending with the ability to have optional consideration.

Retail Lending – Consumer Lending Subtest

We recommend that that the proposed retail lending consumer lending subtest be eliminated entirely from further consideration. We believe that this proposed benchmark does not recognize the current competitive environment and product differentiation and preferences between lenders. In some situations, it would also unfairly give advantage to the largest banks over smaller community banks.

In all the markets that Johnson Bank serves, automobile lending is now dominated by credit unions, captive automobile finance companies, and through in-direct lending by large banks. Accordingly, any benchmark using credit bureau data would be overwhelming skewed by that make-up. Credit unions in our markets compete aggressively in automobile lending through profits returned to members and tax-exempt status providing interest rate subsidies and other benefits (including longer loan amortizations). In the markets that we serve, indirect lending is largely dominated the largest banks who have developed specialty operations in this area. In addition, automobile manufacturers often respond to overproduction by offering special rebate and financing offers to stimulate consumer demand. The manufacturers' primary objective is to reduce inventory; pricing and financing are secondary concerns. This goal conflicts with that of other lenders, whose primary goal is to earn a fair return for a limited amount of risk.

In addition, the inclusion of overdraft protection products in a consumer lending subtest would also be problematic. Banks do not have uniform practices reporting overdraft protection product offerings and reporting to credit bureaus. Overdraft protection can be offered through means of a deposit account transfer, a preexisting line of credit (such as a home equity), a credit card, or as separate line of credit. With this lack of consistency, benchmark comparisons would be meaningless. Therefore, we do not recommend CRA evaluation of overdraft protection products.

Community Development Financing Metric

We strongly approve of the combining of CD originations and balance sheet items for lending and investments. This gives a more true and accurate representation of on-going CD efforts and will greatly enhance our ability to track, plan and create internal goals. We also support the combining of CD Loans and Investments into one metric as that provides us with greater flexibility to respond to the distinct needs of individual assessment areas.

Qualitative Considerations for CD Financing

While we support the general concept of performance context factors to provide additional consideration for differences in communities, we do not support the use of activity-based multipliers or impact scores as described in the ANPR. We believe that subjectivity such as that described in the ANPR re-introduce the likelihood for inconsistency between examiners and potentially between the federal agencies.

Community Development Services- Subtest

Some of the most burdensome requirements in the CRA current evaluation of the provision of community development services are the tracking of employee service hours and the extensive supporting documentation necessary to demonstrate CRA qualification. We recommend a more flexible and simplified process for consideration of community development services.

We do not support the application of pre-determined metrics to the evaluation of CD services. Banks (and other financial institutions) are of different sizes and business models and should have the flexibility to choose the types of activities in which they attempt to meet their CRA obligations by doing what they have the capacity and expertise to do well. This may vary from bank to bank and from community to community. Within community partnerships the degree of assistance needed or provided may vary significantly. Therefore, pre-determined metrics such as counts of hours cannot be applied fairly and consistently.

Under the current CRA rules, an element of CD qualification is the ability to demonstrate that a community service is “targeted to” LMI individuals. This has created a very complicated and overly restrictive approach. For example, when financial education is conducted in a school setting, we use the published free and reduced school lunch statistics to identify whether 50% or more of the student population are eligible as illustrated in the Q&As. This means that we receive credit for some schools (primarily those in urban areas) and no CD service credit for other schools (primarily suburban and small towns).

A similar situation arises with non-profit organizations who provide needed community services. While some agencies can provide supporting documentation to demonstrate the proportions of LMI served, many small non-profits do not have the sophistication, resources, and in some cases lack the desire to track the income level of all those who receive their services. Even those that do, there may be variance in the proportions of LMI participants from session to session or between different activities or programs. This recordkeeping has become burdensome on the banks as well as the service providers.

We believe that the use of bank employee financial expertise to support the provision of essential community services which benefit a broad spectrum of the entire community should receive community development credit without regard to income level or proportions of LMI participants. This also should include the broad spectrum of personal financial management, including homeownership education, credit and investments, insurance, and retirement planning. Supporting documentation should be streamlined to require the description of the community development mission, how services are deployed in the community, and the degree of inclusion of LMI populations as known.

The ANPR has suggested that stakeholders place a high value of bank staff serving on local nonprofit boards and providing technical expertise to local organizations, particularly in rural or underserved areas. We wholeheartedly support the proposal to broaden the range of community development services in rural assessment areas that address local community needs and have a primary purpose of community development, but do not use the employee's technical or financial expertise. An incentive for civic and non-profit engagement will encourage banks to take a leadership role in developing solutions to meet unmet community needs in non-metropolitan areas including small towns and rural settings. However, in the implementation of this concept, we believe that inclusion in the evaluation process must remain qualitative rather than quantitative. We did not believe that effective metrics can be devised that take into appropriate consideration the differences between the performance context factors including economic, demographic, and institution- and community-specific information.

As an example, Johnson Bank has a single office in Hayward Wisconsin which is the principal city of Sawyer County in a rural area of Northwest Wisconsin. The total population of Sawyer County is approximately 16,000 residents. It is categorized as an underserved nonmetropolitan middle-income geography for CRA purposes. After the employment in basic municipal services such as government, education, and heath care, the largest employment segments are arts, entertainment, recreation, accommodation, food service, and retail trade. This is attributed to tourism and recreational lodging industry in Sawyer County. According to the 2010 Sawyer County Comprehensive Plan for Economic Development, because the local economy is primarily based on tourism, the majority of jobs in Sawyer County are lower paying jobs in the service and retail trade sectors which accounts for the lower than statewide average Median Household Income (MHI) level. Despite these considerations, this assessment area is the most difficult for Johnson Bank to obtain CRA credit in the current evaluation framework.

The Bank has significant engagement in many community organizations in the area and is a major benefactor for the community. We have specifically provided long time support of the American Birkebeiner (known as the Birkie) which is the largest cross-country ski race in North America. Race registration can be 10,000 skiers, with an additional 20,000 spectators. According to a 1988 survey by the University of Wisconsin Northern Institute for Economic Development, an estimated $4 million is spent in the Hayward-Cable area during Birkie week. A 2000 survey conducted by the Wisconsin Department of Tourism shows that 93.2% of all racers travel to the area during Birkie week because of the race, the average nights stayed in the area during Birkie week is 2.9, and the average daily expenditure per person is $145.62. This is clearly the largest economic development opportunity over the winter period.

This endeavor is only possibly with tremendous community support and volunteerism. The Bank is proud to contribute both financial and staff resources to make it a success. We believe all our activities in support of this event, without regard to use of financial or technical expertise should qualify under the proposed community development definition of economic development in rural areas.

Consideration of Affordable Housing

Johnson Bank encourages the ANPR's stated goal to ensure strong incentives for banks to provide community development loans and investments for the creation and preservation of affordable housing, both rental and owner-occupied. We also endorse the proposed interpretations that would qualify both subsidized and unsubsidized rental housing that provide affordable housing options to LMI households. In particular, we believe that it is appropriate to use either the LMI property location or the demographic qualification of median renters in the geography as proxies.

We believe it is also important to recognize that community benefits of mixed-income housing. By allowing or requiring affordable housing to be combined with market-rate housing through cross subsidies, it makes the development of affordable units more financially feasible. That is the case regardless of the proportion of LMI units. Accordingly, we support the continued use of pro rata consideration for community development activities for mixed-income housing.

The ANPR raises questions regarding the appropriate CRA treatment of mortgage-backed securities. It has been the experience of Johnson Bank that mortgage-backed securities were predominately used in the Bank's CRA investment strategy to fill gaps in assessment areas which had more limited opportunities for more sophisticated CRA investments. In the same spirit, we recommend continuing the full consideration of mortgage-backed securities. We understand the concerns of some stakeholders that these are less impactful and responsive but believe that those issues will be largely mitigated through the proposed process of combining of lending and investments in the CD financing subtest.

<u>Use of the Performance Context for Institutional Capacity and Similarly Situated Lenders</u>

In the current evaluation process, the lending, investment, service tests are to be applied in the context of, among other things, the institutional capacity (including size) and the performance of similarly situated lenders. While we wholeheartedly support these concepts, we believe in the current CRA evaluation process, they lack specific guidelines and transparency as to how and when they are applied.

For example, Johnson Bank operates in the large metropolitan area of Milwaukee, Wisconsin This market is dominated by large national and regional banks. In the Milwaukee metro area, the four largest FDIC insured financial institutions operated 38% of the total number of branches and 73% of the total deposits. In contrast, Johnson Bank has only a few branches and less than a 1% deposit market share. We have found no references in past performance evaluations that would indicate consideration of the distinct competitive advantage of size or regarding whether market dominant institutions are considered similarly situated lenders.

As described in the ANPR, performance context comprises a broad range of economic, demographic, and institution- and community-specific information that examiners review to calibrate a bank's CRA evaluation to its local communities, including:

- Demographic data on median income levels, distribution of household income, nature of housing stock, housing costs, and other relevant assessment area-related data.
- Any information about lending, investment, and service opportunities in the bank's assessment area(s).
- The bank's product offerings and business strategy.
- Institutional capacity and constraints, including the size and financial condition of the bank, the economic climate, safety and soundness limitations, and any other factors that significantly affect the bank's ability to provide lending, investments, or services in its assessment area(s).

We would advocate that continued efforts be made to support a uniform and transparent structure to be developed that would adopt consistent and objective evaluation practices of the performance context. This would be particularly useful for all stakeholders to understand the consideration of all quantitative and qualitative factors for a final rating when it is not presumptive satisfactory.

Johnson Bank greatly appreciates the opportunity to provide comments which address our concerns regarding the goal of CRA modernization. Thank you again for your commitment to undertake this important work. We look forward to the continuing dialogue with all interested parties.

Sincerely,

Robert A. Reinders
Vice President
Community Reinvestment and Fair Lending Program Manager