



California
Reinvestment
Coalition

February 16, 2021

Ann E. Misback, Secretary,
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW,
Washington, DC 20551
Via email: regs.comments@federalreserve.gov

Re: Comments on Federal Reserve CRA ANPR: Docket Number R-1723 and RIN Number 7100-AF94

Dear Secretary Misback,

The California Reinvestment Coalition (CRC) writes this letter in response to the Federal Reserve Board (Board)'s proposal to reform Community Reinvestment Act (CRA) rules. We appreciate the Board's interest in strengthening the CRA so that banks can better meet the credit needs of low- and moderate-income (LMI) communities and communities of color in our state and throughout the country.

The California Reinvestment Coalition builds an inclusive and fair economy that meets the needs of communities of color and low-income communities by ensuring that banks and other corporations invest and conduct business in our communities in a just and equitable manner. We envision a future in which people of color and low-income people live and participate fully and equally in financially healthy and stable communities without fear of displacement and have the tools necessary to build household and community wealth. CRC and its member organizations have been advocating for banks to serve low-income communities and communities of color for more than thirty years. CRC and its members have negotiated nearly \$40 Billion in CRA Community Benefits Agreements over the last five years.¹

In an alarming turn of events, banks appear to be lending less as millions of Americans suffer physically, emotionally and financially from the COVID-19 pandemic, and as the public needs greater access to credit, banks appear to be lending less. A recent Bloomberg article noted that, "The biggest U.S. banks reduced the portion of their collective balance sheets they're dedicating to loans to a new low, extending a trend that's seen the largest lenders put less and less of their firepower behind everyday borrowers. Total loans at the 25 biggest U.S. banks make up less than 46% of their combined assets, down from 54% this time last year, according to weekly Federal Reserve data made public on Friday. At 45.8%, the share of total assets devoted to loans is the lowest figure in nearly 36 years of weekly data."²

We thank the Board for refusing to join the Office of the Comptroller of the Currency (OCC) which ignored public comments and rushed through a harmful CRA rule which will lead to less reinvestment, and to reinvestment that is less responsive to community need. We commend the Board for initiating a more thoughtful process that relies on data and that calls out important objectives, such as: more effectively meeting the needs of LMI communities and addressing inequities in credit, promoting community engagement, and recognizing that CRA and fair lending responsibilities are mutually reinforcing. We urge all three bank regulators to join this process and develop a unified CRA approach.

¹ To view CRC's Community Benefits Agreements, visit: <https://calreinvest.org/publications/bank-agreements/>

² Shahien Nasiripour, "Biggest U.S. banks keep lending less and less of their money," Bloomberg News. February 8, 2021.



We highlight the following key principles, which should inform any CRA reform efforts:

1. **Take race into account.** CRA should hold banks accountable to meet the credits needs of borrowers and neighborhoods of color, so that it achieves its Congressional purpose of addressing redlining.
2. **End CRA grade inflation and ensure greater reinvestment.** CRA reform efforts should refine the system so that banks are incentivized to do more to serve communities, not the same, or less.
3. **Impose consequences for harm caused.** Banks should suffer downgrades and potentially fail their CRA exams if they discriminate, displace, or exacerbate community credit needs.
4. **Consider both quantity and quality of reinvestment** to ensure bank activity targets low- and moderate-income and Black, Indigenous and People of Color (BIPOC) neighborhoods and people, and helps meet local community credit needs.
5. **Maintain a separate focus on community development lending and investment.** Community development is critical and deserves its own test, but combining lending and investment could disrupt the affordable housing finance system.
6. **Expand scrutiny of financial services such as branches and bank accounts.** The Board does well to highlight the impact that branch and product access can have on bringing people into the financial mainstream and helping them to achieve financial stability and build wealth. Yet more needs to be done.
7. **Increase community participation.** The Board is commended for acknowledging the important role that community and public input has played and will always play in helping to ensure that banks are serving LMI communities and communities of color.
8. **Bank obligations should be tied to bank presence and activity, while also encouraging reinvestment in poorly served areas like rural communities and Native American lands.**
9. **Beware of creating loopholes or alternatives that do not serve the goals of CRA.** Banks will gravitate toward the easiest and cheapest methods of passing their CRA evaluations, so care is needed to prevent the redirection of CRA credit towards easy and less impactful activities.

We expand on these principles below, and identify where comments are responsive to the Board’s questions by noting so in parenthesis:

1. **Take race into account (Question 2).** We thank the Board for raising this issue, but urge the Board to take stronger action than that suggested in the ANPR. Regulations must hold banks accountable to meet the credit needs of borrowers and neighborhoods of color, so that CRA can finally achieve its Congressional purpose of addressing redlining.

The CRA statute itself speaks to race. 12 U.S.C. section 2903(b) provides that, “in assessing and taking into account, under subsection (a), the record of a non-minority-owned and non-women-owned financial institution, the appropriate Federal financial supervisory agency may consider as a factor capital investment, loan participation, and other ventures undertaken by the institution in cooperation with minority- and women-owned financial institutions and low-income credit unions provided that these activities help meet the credit needs of local communities in which such institutions and credit unions are chartered.”



Section 12 U.S.C. section 2907(a) provides that, “In the case of any depository institution which donates, sells on favorable terms (as determined by the appropriate Federal financial supervisory agency), or makes available on a rent-free basis any branch of such institution which is located in any predominantly minority neighborhood to any minority depository institution or women’s depository institution, the amount of the contribution or the amount of the loss incurred in connection with such activity may be a factor in determining whether the depository institution is meeting the credit needs of the institution’s community for purposes of this chapter.” Ensuing paragraphs define “Minority Deposit Institution” and “Minority.”

The legislative history and context of the CRA also support the view that CRA rules must account for race. As the Board notes, “The CRA ... provides the agencies with a crucial mechanism for addressing persistent systemic inequity in the financial system for LMI and minority individuals and communities, and that ... the statute and its implementing regulations provide” a “necessary framework to facilitate and support a vital financial ecosystem that supports LMI and minority access to credit and community development. Congress enacted the CRA in 1977 primarily to address economic challenges in predominantly minority urban neighborhoods that had suffered from decades of disinvestment and other inequities ... Redlining occurred when banks refused outright to make loans or extend other financial services in neighborhoods comprised largely of African-American and other minority individuals, leading to discrimination in access to credit and less favorable financial outcomes even when they presented the same credit risk as others residing outside of those neighborhoods ... Redlined neighborhoods typically had a high percentage of minority residents, were overwhelmingly poor, and had less desirable housing.”³

The Board continues, “As Senator William Proxmire, who authored the CRA legislation, testified when discussing its purpose: ‘By redlining let me make it clear what I am talking about. I am talking about the fact that banks and savings and loans will take their deposits from a community and instead of reinvesting them in that community, they will actually or figuratively draw a red line on a map around the areas of their city, sometimes in the inner city, sometimes in the older neighborhoods, sometimes ethnic and sometimes black, but often encompassing a great area of their neighborhood.’”⁴

The Board further notes that, “the first CRA regulations ... included evidence of prohibited discriminatory or other illegal credit practices as a performance factor.”⁵

Access to credit for homeowners and small-business owners of color continues to be a crisis, and this crisis has only been exacerbated by the pandemic and its disproportionate impact on people and communities of color.

³ Board of Governors of the Federal Reserve System, “Community Reinvestment Act: Advanced Notice of Proposed Rulemaking,” October 19, 2020, at 12 C.F.R. Part 228, p. 66412, citing Federal Reserve Bank analysis of CRA and redlining maps, and the Congressional Record.

⁴ Board of Governors of the Federal Reserve System, “Community Reinvestment Act: Advanced Notice of Proposed Rulemaking,” October 19, 2020, at 12 C.F.R. Part 228, p. 66412, citing Federal Reserve Bank analysis of CRA and redlining maps, and the Congressional Record.

⁵ Board of Governors of the Federal Reserve System, “Community Reinvestment Act: Advanced Notice of Proposed Rulemaking,” October 19, 2020, at 12 C.F.R. Part 228, p. 66413, citing the Federal Register and remarks by Governor Brainard.



The Federal Reserve’s latest Small Business Credit Survey, conducted during the pandemic, found that while 57% of firms characterized their financial condition as “fair” or “poor,” this figure jumps to 79% for Asian-owned firms and 77% for Black-owned firms.⁶ And for Black-owned firms, credit availability was the top expected challenge.⁷ Further, firms owned by people of color, firms with fewer employees, and leisure and hospitality firms were least likely to report receiving the full amount of financing sought.⁸

A National Community Reinvestment Coalition study⁹ of small business owners during the pandemic found that:

- White small business owners had significantly more access to business credit cards and business lines of credit than Black and Latino small business owners.
- Latino small business owners were significantly less likely than both White and Black small business owners to contact a lender about a business credit product modification.
- Black small business owners were less likely to receive loan modifications.
- White small business owners who contacted commercial financial institutions received modification approvals at a significantly higher rate than Black and Latino small business owners who contacted commercial financial institutions.
- White and Latino small business owners had significantly more access to credit from family and friends than Black small business owners.

The Board asks what modifications and approaches would strengthen CRA regulatory implementation in addressing ongoing systemic inequity in credit access for minority individuals and communities. The Board need to track bank activity as it relates to serving customers and neighborhoods of color, it needs to set expectations relating to such performance through the use of benchmarks and metrics, and it must impose consequences for poor performance and discriminatory conduct and impacts. The Board should be prepared to rate banks below “Satisfactory”, and for such ratings to carry clear consequences. The ANPR notes that a bank with a below Satisfactory “may” be restricted from certain activities until the next exam. The Board should clarify that poor-performing banks “will” face restrictions, and the Board should specify what those restrictions are, including the inability to merge or acquire other institutions.

As banks are evaluated under the CRA for helping to meet the credits needs of low-income residents and communities, so too it should be for people and neighborhoods of color. This calls for all lending, community development, and branch location tests and subtests to utilize benchmarks concerning bank performance in neighborhoods of color and to consumers of color, in addition to the current focus on LMI tracts and consumers.

⁶ Federal Reserve Banks of Atlanta, Boston, Chicago, Cleveland, Dallas, Kansas City, Minneapolis, New York, Philadelphia, Richmond, St. Louis, and San Francisco, “SMALL BUSINESS CREDIT SURVEY 2021 REPORT ON EMPLOYER FIRMS,” p. ii.

⁷ Federal Reserve Banks of Atlanta, Boston, Chicago, Cleveland, Dallas, Kansas City, Minneapolis, New York, Philadelphia, Richmond, St. Louis, and San Francisco, “SMALL BUSINESS CREDIT SURVEY 2021 REPORT ON EMPLOYER FIRMS,” p. iii.

⁸ Federal Reserve Banks of Atlanta, Boston, Chicago, Cleveland, Dallas, Kansas City, Minneapolis, New York, Philadelphia, Richmond, St. Louis, and San Francisco, “SMALL BUSINESS CREDIT SURVEY 2021 REPORT ON EMPLOYER FIRMS,” p. 28.

⁹Anneliese Lederer and Sara Oros. “Are Loan Modifications For Small Businesses A Possibility In The COVID-19 Pandemic?” February 2, 2021, available at: <https://ncrc.org/are-loan-modifications-for-small-businesses-a-possibility-in-the-covid-19-pandemic/>



As one example, examiners should evaluate a bank's branch distribution by considering the racial demographics of the census tracts in a bank's assessment areas, in addition to income. **(Question 24)**

Given the CRA's purpose and its nexus with fair lending laws, Regulation BB should reaffirm the practice of ensuring that assessment areas do not reflect illegal discrimination by confirming they cannot arbitrarily exclude LMI census tracts and census tracts that are majority-minority. Additionally, in most cases, the county should be the smallest geography to comprise an assessment area. **(Question 3)**

Additionally, a category of "underserved areas" could be defined to center on neighborhoods of color which are not well served by banks such that banks can get CRA credit for lending and investing there, even if these "underserved areas" are located outside of a bank's CRA assessment area. We support the proposal of the National Community Reinvestment Coalition (NCRC) in this regard.

If the Board does not put race on equal footing with income, the rules should at least provide a mechanism so that superior bank reinvestment in neighborhoods of color and to borrowers of color can enhance a CRA rating, and poor service can result in a lower rating. This can be accomplished through impact scoring across all products and services, or through consideration of these issues in evaluating a bank's performance context. Such consideration should take into account any and all disparities in marketing, denials, originations, pricing, terms, default rates, collections, etc. The Board should also enhance participation by communities and people of color in the strategic plan process¹⁰ and in conducting community contact.

There is growing interest in the special purpose credit program as a way for banks to meet the credit needs of BIPOC communities that have been underserved. The CFPB has established helpful rules in this arena.¹¹ Banks should be required to consider such programs, and be rewarded under the CRA for developing and implementing them as a way to address historic and systemic bias in the financial system.

Finally, no bank should pass its CRA evaluation if the regulator finds evidence of discrimination based on race, ethnicity, gender, disability and other protected classifications, based on its own analysis, other agency investigations, outside litigation, community comments, community research or otherwise. At a minimum, findings of discrimination should result in an automatic CRA ratings downgrade.

CRC believes that all banks should be subject to a racial equity audit that measures a bank's performance in closing the racial wealth gap as pertains to bank hiring and management practices, outreach and marketing, lending and investment, public policy initiatives, and all political contributions and lobbying emanating from the bank and its officers. Failure to equitably hire, market, lend, invest and respect the democratic structures that uphold communities impose great damage to communities of color. The CRA, through qualitative analysis,

¹⁰ See Geron Levi, "CRA & Race: The Federal Reserve's Proposal On The Community Reinvestment Act (CRA)," National Community Reinvestment Coalition, December 9, 2020, available at: <https://ncrc.org/the-federal-reserves-proposal-on-the-community-reinvestment-act-cra/>

¹¹ 12 C.F.R. § 1002.8



impact scoring, or otherwise, should reward banks that agree to such racial equity, fair lending and related audits. As recipients of significant federal assistance in the form of deposit insurance, Fed discount window access, branch and banking regulations that facilitate expansion and growth, amongst other benefits, banks should be prohibited from engaging in political donations or lobbying of all kinds.

2. **End CRA grade inflation and ensure greater reinvestment.** CRA reform efforts should result in banks doing more to serve communities, not merely provide the same level of reinvestment, or less. Approximately 96% of banks “pass” their CRA ratings. Community groups and the public do not believe that 96% of banks are doing a “Satisfactory” or “Outstanding” job of serving communities. The ratings status quo is not accurate, fair or acceptable.

The Board does not help matters by suggesting that new benchmarks should be set so that bank CRA ratings should approximate historic ratings distributions. Instead, benchmarks should be aggressive so that banks are motivated to do more, and so that those that do not do more suffer lower ratings. The Board suggests that in its modeling, up to 15% of Assessment Areas that received a rating of Substantial Noncompliance or Needs to Improve would have received a presumptive Satisfactory under the new approach. This seems an indictment of the proposal, as such poor ratings are rare. The Board does go on to say that “the most common reason” for these failures would be addressed by the retail screen and discrimination downgrades. But is unclear what is meant by the “most common reason,” and whether and why this should give comfort that the thresholds are not set too low.¹² **(Question 20)**

Additionally, we disagree with the board’s proposal to do away with the sub ratings of “High Satisfactory” and “Low Satisfactory.” **(Question 81)** These sub ratings give banks something to strive for, and, importantly, help the public distinguish among the performance of the numerous banks that receive an overall “Satisfactory” CRA rating. Finally, the board should consider restricting extra credits or positive impact scores only to banks that can move from an overall “Satisfactory” rating to an “Outstanding” rating. Banks that poorly serve the community in some areas should not believe that they can bump up to a “Satisfactory” by performing a particular service or activity that the Board signals will garner extra credit.

The retail lending screen may be an appropriate metric for assessing the level of a bank’s lending, but we are concerned that the Bureau may be proposing to set too low a threshold, **(Question 14)** and the threshold for a presumption of “satisfactory” is set too low in communities underserved by all lenders. **(Question 18)** We are concerned that the Board proposes to choose the lower of the community or market thresholds. In our view, banks are often underserving markets that are qualified for and deserving of credit. As the Board notes, “thresholds could be set low in areas where credit markets as a whole are underserving LMI census tracts, LMI borrowers, or both, which could have the effect of providing the presumption of “satisfactory” too often in

¹² Board of Governors of the Federal Reserve System, “Community Reinvestment Act: Advanced Notice of Proposed Rulemaking,” October 19, 2020, at 12 C.F.R. Part 228, p. 66426.



communities with significant unmet credit needs. An approach that set performance standards too low could fail to fulfill one of the core purposes of CRA, which is to encourage banks to serve LMI communities.”¹³

We also argue the Board should not too narrowly limit the circumstances in which an examiner can rebut a presumption of a Satisfactory rating. We urge the board to consider the quality of loans and investments to determine if banks are helping to meet or are exacerbating community credit needs through gouging, high rates and fees, high defaults, abusive collections, displacement financing, and more. The Board should also compare current performance to prior performance and ensure that undue decreases will adversely impact CRA ratings. The Board can also rely on community input to inform evaluations of bank performance and to rebut or provide a counter to presumptions and thresholds that may be too low.

We support the Board’s suggestions that adjustments to the recommended conclusion under the performance ranges approach be incorporated based on examiner judgment, a predetermined list of performance context factors, specific activities, or other means to ensure qualitative aspects and performance context are taken into account in a limited manner. **(Question 23)** Perhaps there should be an evolving list of performance context concerns, such as displacement concerns, MDIs, and CDFI entities and activities that are not serving communities, etc. Perhaps Outstanding ratings could be earned based on substantial and impactful efforts to serve people and communities of color and open branches in bank deserts.

For a bank with multiple assessment areas in a state or multistate MSA, the Board should limit how high a rating can be for the state or multistate MSA if there is a pattern of persistently weaker performance in multiple assessment areas. **(Question 79)** This may be one effective way to counter CRA grade inflation. Similarly, a “needs to improve” conclusion for an assessment area should be downgraded to “substantial non-compliance” if there is no appreciable improvement at the next examination. **(Question 80)**

- 3. Impose consequences for harm caused.** Banks should suffer downgrades and potentially fail their CRA exams if they discriminate, displace, or harm communities. CRA has generally been about giving credit for good performance by banks in helping to meet community credit needs. But in discriminating, displacing, gouging and abusing customers, banks can exacerbate the credit needs of communities through higher costs and lost equity, foreclosure, eviction, impaired credit scores, garnishments, job loss, and deferred or denied ability to build wealth through homeownership or business ownership. And yet, CRA does not well account for such harm, often handing out “passing” CRA ratings to banks that do well in certain areas, while putting on blinders when it comes to how those same institutions also do much harm. In this sense, accounting for harm to communities is an important objective not captured by the Board **(Question 1)**.

CRA examiners should consider the quality of loans and investments to LMI communities and communities of color, and whether certain communities are particularly vulnerable to displacement and gentrification based on

¹³ Board of Governors of the Federal Reserve System, “Community Reinvestment Act: Advanced Notice of Proposed Rulemaking,” October 19, 2020, at 12 C.F.R. Part 228, p. 66424.



existing methodologies. The Urban Displacement Project¹⁴ is one organization that has established a methodology and resources for identifying and addressing displacement pressures. The Board should develop a methodology to determine when neighborhoods are vulnerable to displacement and to impose greater scrutiny of bank lending and investment activity in those communities to ensure CRA is encouraging banks to mitigate, and not fuel, displacement and gentrification pressures.

This could take the form of examiners using their judgment to rebut a presumption of a Satisfactory rating or to lower a recommended ratings conclusion (**Question 23**) for lending that comes with high costs, abusive terms, high defaults, numerous and predatory debt collection, and other harmful features; or lending that is underwritten to higher than current rents in a census tract subject to displacement pressures. Currently, one financial institution is seeking a national bank charter while relying on a CRA plan that promises online bank accounts and double-digit interest rate consumer loans targeted to Latino and LMI consumers, where such lending has resulted in numerous defaults subjecting consumers to abusive debt collection practices. This is the opposite of CRA.

The Board should require the collection and CRA consideration of data on marketing, pricing, terms, defaults, and collections (**Questions 26, 29, and 36**) to aid examiners and the public in forming determinations as to whether bank practices are helping or exacerbating community credit needs. Displacement and consumer harm, as well as violations of the Americans with Disabilities Act (ADA), should be explicitly added to discrimination and violation of consumer protection laws as triggers for CRA ratings downgrades (**Question 87**). All of these considerations should be informed by community input.

It is crucial that the Board specify in Regulation BB that violations of the Military Lending Act, the Service Members Civil Relief Act, and UDAAP are considered when reviewing discriminatory or other illegal credit practices to determine CRA ratings. As noted above, we would add the Americans with Disabilities Act (ADA) to the Fair Housing Act, ECOA, and other fair housing and fair lending laws that are considered. We urge the Board to also consider incorporating a displacement financing analysis here, perhaps looking to whether loans were made that were underwritten, designed, or reasonably likely to lead to the displacement of LMI individuals or people of color in violation of federal, state or local tenant protection laws. (**Question 87**)

- 4. Consider both quantity and quality of retail reinvestment to ensure bank activity benefits LMI, people of color and neighborhoods of color, and meets local needs.** CRA rules should retain a primary focus on low- and moderate-income people and communities, while also including a new and explicit focus on people and communities of color. This means that financial literacy, “affordable housing” and Community Development services should clearly benefit LMI and/or of color residents.

We thank the Board for moving away from a system that focuses on a dollar-based ratio to one that looks at units, smaller loans, and impact. To the end, in establishing what constitutes a major product line, the Board

¹⁴ <https://www.urbandisplacement.org/>



should focus on the lower of a percentage (15% of portfolio, for example) and number of loans originated (50, for example), and the percentage should focus on loans and not dollars, to elevate the importance of smaller sized loans. This analysis should also consider whether a lender has a high market share in rural or underserved areas. **(Question 33)**

We think that qualitative factors should be considered to reward impact, perhaps through the use of impact scoring, which can penalize discriminatory, displacing, and harmful conduct. **(Question 1)**

We also think that the board should retain separate consideration of lending to low-income borrowers and communities, and to moderate-income borrowers and communities, and not lump LMI together. The Bureau identifies several concerns with this approach with which we agree, namely that “Combining low and moderate-income categories together could potentially reduce the focus on lending in low-income census tracts and to low-income borrowers relative to lending to moderate-income tracts and moderate-income borrowers.”¹⁵ The presumption of “satisfactory” approach should not combine low and moderate-income categories. Otherwise, there will be a tendency to better serve middle-income over low-income. This will also frustrate community and policymaker efforts to understand which communities are being served and what solutions are needed, especially as homelessness increases and people suffer from the pandemic. **(Question 16)**

Mortgages. We believe that retail mortgage lending should not give banks equal credit for loan originations and loan purchases, but instead should prioritize loan originations to owner-occupants and only give loan purchase credit when banks purchase loans from nonprofit mission-driven lenders that are well serving the community. The Board notes that originations require more work, cost, outreach, and marketing for originating lenders as opposed to loan purchasers. Regardless, the CRA rules should not countenance or credit churning, which has no community benefit. **(Question 38)**

We also urge the Board to consider product lines separately. As the Board notes, a “potential drawback to combining all home mortgage lending products into one category is that the evaluation of home purchase lending could be obscured when combined with home refinance loans, particularly when levels of home mortgage refinancing increase.” The board additionally notes that HMDA now includes data on HELOCs which may not be tied to a particular loan purpose.¹⁶

Further, we think CRA should discourage single-family mortgage lending that fuels displacement in gentrifying communities, by providing less or no credit for mortgages to middle- and upper-income borrowers in LMI and of color neighborhoods impacted by displacement.

¹⁵ Board of Governors of the Federal Reserve System, “Community Reinvestment Act: Advanced Notice of Proposed Rulemaking,” October 19, 2020, at 12 C.F.R. Part 228, p. 66422.

¹⁶ Board of Governors of the Federal Reserve System, “Community Reinvestment Act: Advanced Notice of Proposed Rulemaking,” October 19, 2020, at 12 C.F.R. Part 228, p. 66422.



We support the suggestion of ANHD and urge that all multifamily loans be considered as part of the retail lending test. This approach can focus analysis on lending in LMI tracts, whether loans support affordable housing and at what level, and whether lending will fuel displacement. Examiners could use impact scoring to provide positive credit for adoption of and adherence to anti-displacement measures such as CRC's Anti-Displacement Code of Conduct¹⁷ and impose downgrades for displacement mortgages. The Code of Conduct urges financial institutions to conduct due diligence on borrowers, ensure borrowers are aware of existing state and local tenant protection laws, underwrite to current rents, communicate with tenants in financed buildings, and enforce these anti-displacement loan provisions, along with developing a CRA Plan that more broadly promotes community stability.

Mortgage servicing, forbearance, post-forbearance, debt collection, REO policies, offering tenants and community groups the right to purchase foreclosed homes, and related activities should impact ratings, perhaps through impact scoring. Bank efforts to work with homeowners and mom and pop landlords in distress (as well as all customers) are particularly important as the pandemic devastate family incomes and drives households towards foreclosure and eviction (and consumer and small business default). A report that CRC published with the San Francisco Office of Financial Empowerment¹⁸ provides insight on what programs banks were offering in this regard, where those programs fell short, and what bank and public policy solutions are needed. Additionally, there are unique, impactful, innovative, and particularly responsive ways that banks can help communities build and retain assets, such as through investing in and developing products for Community Land Trusts, and supporting local initiatives like California's SB 1079,¹⁹ which enables tenants, CLTS and nonprofits to compete with investors at foreclosure sales, but which requires funding support.

Small business. The Board highlights the needs of smaller businesses for smaller loans, but does not propose that the rules prioritize them. In fact, the board proposes to increase the threshold for what the CRA considers a small business loan and a small business, from \$1 million to \$1.6 million. In its own words, "The Board recognizes the importance of small business and small farm loans as essential financial services, particularly in underserved communities. Smaller revenue firms (with gross annual revenues of \$1 million or less) frequently have small-dollar financing needs and typically have distinct credit challenges, but may not meet traditional bank underwriting criteria. Additionally, when applying for credit, small firms, in general, seek smaller loan amounts."²⁰ The Federal Reserve's own Small Business Credit Survey found that nearly half of small firms that

¹⁷ <https://calreinvest.org/about/code-of-conduct/>

¹⁸ California Reinvestment Coalition and the San Francisco Office of Financial Empowerment, "Pre-existing conditions: Assessing the Financial Services Response to Racism, Inequality, and COVID-19," August 2020, available at: https://calreinvest.org/wp-content/uploads/2020/08/CRC-Banking-Relief-Report_Final.pdf

¹⁹ <https://calreinvest.org/press-release/governor-newsom-signs-sweeping-housing-foreclosure-bill-prevent-private-equity-firms-from-gobbling-up-foreclosed-properties/>

²⁰ Board of Governors of the Federal Reserve System, "Community Reinvestment Act: Advanced Notice of Proposed Rulemaking," October 19, 2020, at 12 C.F.R. Part 228, p. 66435.



sought financing applied for loans of less than \$100,000, and 90% sought credit of less than \$1 million.²¹
(Question 37)

The Board can provide that serving the smallest businesses and those owned by people of color and in neighborhoods of color could garner extra credit perhaps through impact scoring **(Question 57)** We look forward to the release of Section 1071 race, ethnicity, gender, and neighborhood small business lending data that can further inform CRA examinations and allow examiners to reward banks that well serve women and Black, Indigenous and People of Color (BIPOC)-owned businesses through good products like term loans and lines of credit, and penalize banks that serve these communities with Merchant Cash Advance and other high priced loan products. Servicing, forbearance and loan modifications, post-forbearance, debt collection, and related activities are a concern²² and should impact ratings, perhaps through impact scoring.

While small businesses may need larger loans, and larger businesses may as well, the CRA should retain its focus on loans under \$1 million and on businesses with under \$1 million in revenue, as the needs of such businesses for such loans is great and woefully unmet, especially in light of COVID-19 and its harsh impact on small businesses, especially those owned by people of color.

Consumer. A bank's consumer lending should be considered under CRA when it constitutes a major product line. As noted above, such consideration should include the number and not the dollar value of loans, the rates, terms, defaults, collections, and related data, as well as community input to determine whether such lending is helping to meet community credit needs, or is harmful. **(Question 35)** Banks should not have the option of including or excluding consumer lending from CRA consideration. Consumer loans should be subject to separate evaluation and account for acceptable pricing and default rates. **(Question 36)**

So, too, all bank lending affiliates should be part of the depository bank's examination. During the financial crisis, many of the largest banks were affiliated with subprime lenders (and Wall Street subprime securitizing firms) which devastated low-income and communities of color while the bank affiliate passed its CRA exam. Today, banks serve certain communities with their bank loan products, while affiliate credit card companies offer more limited and more expensive offerings to other communities. As with the subprime crisis, this dynamic raises fair housing and fair lending questions. If CRA is to more effectively fight credit discrimination, and if CRA ratings are to truly reflect how well an institution is serving the community, all activities and all affiliates should be subject to CRA, fair housing, and fair lending scrutiny.

²¹ Federal Reserve Banks of Atlanta, Boston, Chicago, Cleveland, Dallas, Kansas City, Minneapolis, New York, Philadelphia, Richmond, St. Louis, and San Francisco, "SMALL BUSINESS CREDIT SURVEY 2021 REPORT ON EMPLOYER FIRMS," p. 24.

²² See, California Reinvestment Coalition and the San Francisco Office of Financial Empowerment, "Pre-existing conditions: Assessing the Financial Services Response to Racism, Inequality, and COVID-19," August 2020, available at: https://calreinvest.org/wp-content/uploads/2020/08/CRC-Banking-Relief-Report_Final.pdf



It is preferable to establish benchmarks for consumer lending. But there must be accounting for potential harm. Not all consumer loans are helpful. What if a lender does a lot of LMI lending that results in default and collections? How is this accounted for? **(Question 17)**

Credit and access for people with disabilities. The CRA must do a better job of moving banks to help meet the credit needs of LMI individuals of color and/or with disabilities. We support several recommendations of the National Disability Institute to help accomplish this, including highlighting particular credit and community development needs (workforce development and upskilling, reskilling and entrepreneurship training; support of broadband access for mobile banking; availability of financial education and counseling; or affordable small dollar and consumer loans for purchase of assistive technology and/or home or vehicle modifications, and accessible and affordable housing development) in any illustrative list of eligible CRA activities, and perhaps using impact scoring to further reward banks that are innovative and responsive to these community needs. And as noted elsewhere, retail and community development services must be accessible, and the ADA should be added to the list of protections where violations trigger CRA ratings downgrades.

5. **Maintain a separate focus on community development lending and investment.** Community development is critical and deserves its own test, but combining lending and investment could disrupt the affordable housing finance system. We support the proposal to establish a separate community development test, but oppose the suggestion that CD lending and CD investments would be combined. We are very concerned that doing so would disfavor Low Income Housing Tax Credit (LIHTC) investments, which can be complex and expensive for banks to transact, and may provide a lower return than CD lending. Similarly, equity investments and contributions are vital to communities while providing lower returns to banks, and must therefore continue to be valued and evaluated separately. The board also proposes to encourage patient CD lending which could further favor CD lending as compared to CD investing. Both lending and investment are critical to affordable housing and economic development such that they should be examined separately. We think the rules should prioritize annual lending and investments. Impact scoring could be used to reward patient and portfolio CD activity, as well as impactful CD efforts. **(Question 42)**

For large retail banks, the Board should look at both number and dollar amounts of community development deals to ensure smaller but impactful deals are not discouraged. If deposits are used to measure community development financing activities, the board should look to all of the deposits attributed to an assessment area. **(Question 43)**

The Board should utilize impact scoring and supplemental metrics. We encourage the Board to track separately CD lending, the types of CD investment (LIHTC, MBS, NMTC, EQ2, and equity), and contributions. Evaluations should consider outcomes such as the number of deed-restricted affordable units and the depth and duration of that affordability, jobs created and the wages earned by those workers, the number of accounts opened, the number of small business loans generated, homeowners created, small business plans developed, etc. **(Questions 47, 49)**



Impact scoring can further refine credit for multifamily housing by incentivizing green buildings, Transit Oriented Development, and projects that serve Extremely Low Income residents, homeless persons, disabled persons and/or seniors. Impact scoring should also reward banks that adopt and adhere to CRC's Anti Displacement Code of Conduct, ANHD's Best Practices for Multifamily Housing, or similar policies that are effectively designed to mitigate gentrification and displacement. Impact scoring can also reward innovative and wealth-building measures such as providing tenant services like homeownership counseling for affordable housing tenants. Given the scale of California's housing crisis, we are very interested to see CRA encourage and account for bank efforts to promote long-term, deeply affordable housing.

Unsubsidized affordable housing should count for CRA purposes only if tenant income is verified, if the landlord is a mission-driven nonprofit, or if the owner agrees to not raise rents for a period of years. Without some documentation that the end user is LMI, upper-income tenants will access that housing. There should be ways to support Naturally Occurring Affordable Housing (NOAH), but there needs to be some kind of covenant and longevity. This is necessary to address Board and CRC concerns around displacement after the awarding of CRA credit. The Board should also consider public input on displacement as a downgrading factor. **(Question 52)**

The Board should specify that certain activities could be viewed as particularly responsive to affordable housing needs, such as addressing the needs of people who are homeless, housing for very low-income persons, TOD, energy-efficient housing, etc. These activities should get impact or additional credits. **(Question 54)**

The Board should NOT change how it currently provides pro rata consideration for unsubsidized and subsidized affordable housing. Credit should only be given for projects that primarily further community development. **(Question 54)**

Volunteer activities should be related to the provision of financial services, or those without a primary purpose of community development. Perhaps there can be an exception for rural areas, but there should be a showing that there are not sufficient CD opportunities present. **(Question 50)** Financial literacy and housing counseling activities should retain a focus on LMI consumers to be eligible for CRA credit. Most of the beneficiaries of these programs should be LMI. This is CRA. If banks or bank staff want to support programs that serve higher-income consumers, they are free to do so on their own time. An exception should possibly exist for programs that serve consumers of color, either directly or through impact scoring. **(Question 51)**

The Board should exclude support for public safety facilities from CRA consideration. To allow CRA credit for bank financing of police stations would be tone deaf to the current moment where communities meant to benefit from the CRA are mourning the historic and recent deaths of people of color at the hands of law enforcement. **(Question 61)**

The Board should include disaster preparedness and climate resilience as qualifying activities in LMI and of color neighborhoods within CRA assessment areas. **(Question 62)**



We commend the board for proposing data collection on community development activity as current data here is sparse. It is always best to collect data in a common (Board prescribed) format. **(Question 94)** Community development financing data points proposed for collection and reporting are appropriate. **(Question 95)**. We would urge the Board to distinguish between CD loans and CD investments, and ensure LIHTC transactions and equity investments are pulled out. Collecting community development data at the loan or investment level and reporting that data at the census tract level is preferred, though providing the data at the county level is an appropriate way to gather and make information available to the public. **(Question 96)** The burden associated with data collection and reporting is justified to gain consistency in evaluations and provide greater certainty for banks in how their community development financing activity will be evaluated. **(Question 97)** Community development services data points should ensure LMI benefit and demonstrate impact (how many served, how many derived a tangible benefit). **(Question 99)**

- 6. Expand scrutiny of financial services such as branches and bank accounts.** We strongly support the Board’s focus on enhancing the services test by providing a more detailed review of services, branches, and bank product impacts on communities. Bank presence remains important to LMI communities and communities of color and banks should be examined for their presence in these communities, as well as their record in opening and closing branches. Banks should not receive consideration for delivering services to LMI consumers from branches located in middle- and upper-income census tracts unless there will be a corresponding discounting of CRA credit for LMI branches that are also serving middle and upper-income consumers, and only for outstanding service to LMI consumers. **(Question 27)**

The Board should heavily scrutinize branch closure applications, especially those that will leave communities without any local branches. Such affected communities should be informed of the proposed closure, and hearings on the matter should be readily granted. Physical branches and non-branch services must be accessible to persons with disabilities. We are concerned that banks will take advantage of COVID concerns and ensuing branch avoidance to move more aggressively to close branches citing evidence that customers have used branches less during this time. The bank regulators cannot allow banks to use consumer efforts to remain safe as an excuse to close branches.

While critically important, branch presence is not the only indicator of how well banks are providing financial services to communities. In determining the accessibility of delivery systems, including non-branch delivery channel usage data, the Board should track LMI consumer and tract penetration and ensure a qualitative analysis to determine that products are helping to meet community credit and deposit needs. The Board should evaluate the nature of products offered and their usage by LMI and of color residents. **(Question 26)**

We fully support the Board’s proposal to create a second prong of the Retail Services Subtest that focuses specifically on the degree to which deposit products are responsive to the needs of LMI consumers, and we support the examples provided:

- Low-cost transaction accounts which are accessible through debit cards or general-purpose reloadable prepaid cards;



- Individual development accounts;
- Accounts with low or no monthly opening deposit or balance fees;
- Accounts with low or no overdraft and insufficient funds fees;
- Free or low-cost government, payroll, or other check cashing services; and
- Reasonably priced remittance services.

Types of data that would be beneficial for determining whether deposit products are responsive to the needs of LMI consumers and whether these products are used by LMI consumers, include: usage rates, costs and cost savings, and graduation of LMI consumers to lower-cost products or wealth building products. Additionally, banks should be encouraged to offer bank accounts tailored to meet the unique needs of seniors as well as survivors of domestic violence. Banks should be encouraged to participate in the Bank On program, to offer no and low cost and no overdraft accounts, to provide remittance and money order services, to provide ATM surcharge-free access to public assistance delivered on cards, and to reasonably operate other state-controlled assistance programs like Unemployment Assistance.²³ **(Question 29)**

The Board should reward banks that increase access to the immigrant community for products and services through the provision of translation and interpretation services, and acceptance of alternative forms of identification including Individual Tax Identification Numbers (ITIN) for account opening and mortgage and small business loan qualification. Branch staff should reflect the surrounding community, develop strong partnerships with local organizations, and make branch space available for community events as appropriate. We appreciate the Board suggesting that more data on bank products should be collected to inform CRA ratings and the public's appreciation of bank activities.

It would be beneficial to require the largest banks to provide a strategic statement articulating their approach to offering retail banking products. Such a requirement would further elevate these issues and force banks to more thoughtfully consider how they are serving this market, which will likely lead to better service. The threshold should be set for banks with \$10 Billion in assets and above. **(Question 31)**

Priority should be on branch distribution by income and race. Separate conclusions for delivery systems and deposit products for large banks is better than combined. **(Question 32)**

7. **Increase community participation.** The Board identifies this as an objective of the rulemaking, but does not clearly propose ways to achieve the objective. Enhancing the role for community contacts, input, comments, participation, and performance context in the CRA process will help to ensure that bank activity is more closely tied to community needs. Additionally, enhanced data collection and public access will enable community members to better inform the regulators and provide more rigorous input. All CRA dashboards under the new framework should be available to the public. We appreciate the Board's acknowledgment of the importance of

²³ How banks run statewide programs, not merely whether they do, is important. See, <https://calmatters.org/economy/2020/11/how-bank-of-america-helped-fuel-californias-unemployment-meltdown/>).



performance context “and the bank’s record of taking action, if warranted, in response to written comments submitted to the bank about its performance in responding to the credit needs in its assessment area(s),”²⁴ though we rarely see this occur.

Bank regulators should more aggressively conduct outreach to engage in community contact discussions, assess community needs, gather input on bank performance, and, especially, solicit comments during bank exams and merger applications. This is also true for branch closure applications which can have huge impacts on communities that generally have no idea that a closure is being proposed and that they can provide comment and request a hearing on the matter. The Board should establish a minimum of ninety (90) days for public comment during applications to form a bank or merge or close branches, provide that public hearings will be held on mergers if community concerns are raised, expedite Freedom of Information Act (FOIA) requests during mergers, and encourage banks to develop Community Benefits Agreements with community groups. CBAs can help banks and regulators identify community credit needs and should be incorporated into the merger process, with agreed upon CBAs written into any merger approvals and be included in future bank CRA reviews and examinations. CRA examiners should conduct more community contacts and review community group and related research to determine community needs, bank performance, whether products and services are helping or hurting communities, whether Minority Depository Institutions (MDIs) and Community Development Financial Institutions (CDFIs) are truly serving communities (more below), and to inform subjective examiner determinations such as through impact scoring.

Any illustrative, but non-exhaustive, list of CRA eligible activities would provide greater clarity on activities that count for CRA purposes, but should be subject to public comment at some appropriate point. **(Question 71)** So, too a pre-approval process for community development activities could have benefit if focused on either specific proposed transactions, or on more general categories of eligible activities, though these transactions and categories should be subject to public review and comment at some appropriate point. **(Question 72)**.

- 8. Bank obligations should be tied to bank presence and activity, while encouraging reinvestment in underserved areas like rural communities and Native American lands, in tailored ways.** CRA rules focus bank CRA activity in assessment areas which are generally around bank branches. CRA reform efforts, in the name of updating CRA to reflect the expansion of online banking, threatens to undermine the CRA concept of banks serving their local communities. CRA assessment areas for banks should be required to be centered around all bank branches, deposit-taking **(Question 7)** and non-deposit taking ATMs (which may be designed to evade CRA responsibility), Loan Production Offices (which often show more bank engagement with customers and the community than bank headquarters which are made part of CRA assessment areas) **(Question 6)** and anywhere the bank conducts significant business and tries to interact significantly with consumers, such as via lending, marketing, online deposit taking, debt collection, and other activities that represent a significant share of bank business, but also represent significant market share in a given community (the top lenders in areas with no branches which are not part of any bank assessment areas should have an obligation to serve those areas). Note

²⁴ Board of Governors of the Federal Reserve System, “Community Reinvestment Act: Advanced Notice of Proposed Rulemaking,” October 19, 2020, at 12 C.F.R. Part 228, p. 66422.



that the CRA statute itself specifically contemplates deposit-taking ATMs in the definition of branches and therefore there should be no question that deposit-taking ATMs trigger CRA responsibility **(Question 7)**.²⁵ CRA rules should ensure that banks are unable to profit from a neighborhood without reinvestment in that neighborhood.

But small banks should be required to expand the delineation of assessment area(s) to entire counties. Why should we allow otherwise? If there are LMI neighborhoods near the branch, the bank should do well on its CRA evaluation. If there are few LMI neighborhoods near the branch, the assessment area might have been improperly drawn to exclude such neighborhoods. Consumers in even large counties can find their way to banks located within the county, and so too banks should be able to find their way to LMI consumers within the same county through marketing, outreach to community organizations, and word of mouth. **(Question 4)** Facility-based assessment area delineation requirements should be similar for banks regardless of size. **(Question 5)**

So, too all banks, including small banks, should be subject to the proposed framework. Having an opt-in or opt-out approach is essentially the same thing. This is not the same as consumers receiving an email about participation in a class-action lawsuit. Banks will be well aware of the choice presented, are in a strong position to analyze the implications of either approach, and will most likely exercise their discretion by choosing the framework they think will impose the fewest reinvestment obligations. **(Question 11)**

The retail lending distribution metrics are appropriate for all retail banks, including small banks, though perhaps the thresholds should be different for small banks (which could be compared to other small banks). We understand the desire to ease regulatory burdens on small banks, but we think allowing for opting in or out allows banks to game the system at the expense of communities. **(Question 15)**

Nonretail bank reinvestment obligations should follow similar principles and be developed with an eye toward increasing reinvestment in bank deserts. Nonretail banks should not be enabled in efforts to evade CRA responsibility by structuring themselves to operate without branches. Countrywide Bank, which grew to over \$100 Billion in assets, proposed to operate as a Bank without branches by creating a legal fiction that Countrywide Home Loan offices that marketed bank products and received deposits from customers were not branches if deposits were placed in a lockbox in the lobby. It is time to end these charades. If a bank is seeking and deriving significant business from a community, it should have an obligation to serve that community.

Assessment Areas should extend to areas where banks do a significant amount of lending OR represent a significant amount of an area's lending activity. This should apply equally to non-retail banks and retail banks. **(Question 8)** A large retail bank may be a big lender in states where it has no branch presence, and it should then have CRA responsibility there. CRC supports the Board setting a threshold of loans in a county to trigger assessment area designation (option B in the ANPR) but also would urge the Board to look at market share so that if a bank hits a certain market share threshold in a given county, it should have CRA responsibility there.

The Board should strive to increase assessment area coverage to include a significant percentage of bank presence and activity, as opposed to making it easier for banks to get credit for activities outside of assessment

²⁵ The term "domestic branch" means any branch office or other facility of a regulated financial institution that accepts deposits, located in any State. 12 U.S.C. section 2906(e).



areas. Any approach that allows banks to get credit for activities outside of their assessment areas should be structured so that the result is increased lending and investment, not merely reallocated investment.

There should be a presumption against national assessment areas that sever CRA from the obligation for banks to serve local communities. An assessment area that is everywhere is not tied to anywhere. **(Question 9)** Counties should be the largest geography to comprise assessment areas. It is difficult to imagine how the retail lending and community development activities in potential nationwide assessment areas could be effectively considered when evaluating an internet bank's overall CRA performance. For community development tests, a nationwide assessment area would likely encourage lending and investments in national intermediaries, at the expense of local CDFIs and other partners, which could reduce connections to local organizations and local communities. **(Question 10)**

Rural. We thank the board for proposing to significantly enhance CRA activity in rural areas by removing the distinction between full scope (usually urban) areas subject to greater scrutiny, and limited scope (more often, rural) areas subject to less regulatory scrutiny and therefore less investment. **(Question 78)** This framework has created a dual CRA system, leaving rural communities with no or subpar CRA activity. The new system must scrutinize lending, investment, and services in all communities, including rural communities. This can be impactful, if long overdue, change to CRA rules and implementation. We do raise the question as to whether averaging deposits and lending will disadvantage the many rural areas that have deposits but not lending.

We also would urge the Board to encourage banks to increase their participation in financing manufactured housing. Research by the Housing Assistance Council demonstrates that approximately 35% of manufactured homes are located outside of urban metropolitan counties, 46% of manufactured homes are in rural counties using HAC's definition of rural, and that manufactured homes account for more than 20% of the occupied housing stock in 590 counties.²⁶ Yet, CRA-regulated banks are not well represented in the manufactured home lending market. Responsible bank lending in this arena can address the problem identified by HAC, the Pew Charitable Trusts and others, that many manufactured homeowners may rely on personal property chattel loans that may be less well regulated and come with higher interest rates, even though many such homeowners could qualify for lower-cost mortgage loans.²⁷ Banks should also be encouraged to invest in CDFIs and Community Development Credit Unions that are financing manufactured homeownership and mobile home park preservation and upgrades. As Prosperity Now and others have noted, these activities align well with GSE Duty to Serve obligations.

More, not less, must be expected of smaller banks that have an outsized impact on rural communities. Thresholds for "small bank" designations triggering lesser scrutiny and obligations should not be raised. The small bank threshold should be at \$326M, as currently. **(Question 13)** Generally, requirements and rules for all banks should be similar if not the same, so that rural banks are not permitted to do less. Small retail banks

²⁶ Presentation by Keith Wiley, Senior Research Associate, Housing Assistance Council, February 2021.

²⁷ Nick Bourke and Rachel Siegel, "Protections for Owners of Manufactured Homes Are Uncertain, Especially During Pandemic: Personal property loans facilitate purchases but have substantial risks." Pew Charitable Trusts, September 11, 2020, at: <https://www.pewtrusts.org/en/research-and-analysis/articles/2020/09/11/protections-for-owners-of-manufactured-homes-are-uncertain-especially-during-pandemic>



should not be evaluated under only the Retail Lending Subtest. **(Question 12)**. All banks, large and small, should be evaluated under all four subtests: Retail Lending Subtest, Retail Services Subtest, Community Development Financing Subtest, and Community Development Services Subtest. The Bureau acknowledges the importance of community development, so should not take CD obligations away from small banks either by choosing not to subject them to CD tests, or by raising small bank thresholds so that institutions can avoid CD obligations.

Importantly, the CFPB should lower HMDA reporting thresholds to recapture lending data for a significant share of rural home lending activity. Additionally, CRA, through qualitative analysis, impact scoring, or otherwise, should encourage banks to make small-dollar mortgages that would better serve manufactured home and rural homeowners.

Indian Country. Similarly, we appreciate the Board's search for suggestions on how best to structure the rules so banks can better serve Native American communities. **(Question 40)**.

One suggestion is to give banks credit for CRA activity in Indian Country even if not in a bank's CRA Assessment Area. We support this proposal if the activity is tied to serving LMI residents and census tracts, and the activity is actually helping meet local credit needs as determined by the impacted Native American community. Such activity should not replace or reduce bank CRA activity within assessment areas, essentially requiring, minimally, a maintenance of effort in assessment areas and not a zero-sum game. Such CRA activity could help a bank with a Satisfactory rating achieve and "Outstanding" rating.

We also question why banks that currently have Indian Country within their assessment areas are not well serving them, and whether other banks that located near Indian Country have impermissibly excluded such communities from their CRA Assessment Areas. The Board should scrutinize assessment area boundaries, as well as lending and investing activity to determine if CRA, fair housing and fair lending laws are being violated. All banks, but especially those with assessment areas that currently include Indian Country, should be encouraged to conduct more meaningful outreach to and engagement of Native American communities, to identify community needs, to lend and invest to meet those needs, to provide financial services such as establishing bank branches that provide accessible bank account access and that offer credit counseling and repair services, and to hire Native American staff.

- 9. Beware of creating loopholes or alternatives that do not serve the goals of CRA.** We support the Board's interest in supporting Minority Depository Institutions (MDIs) and Community Development Financial Institutions (CDFIs), as the vast majority of MDIs and CDFIs are well serving their communities and deserve to be supported. But some MDIs are large institutions that suffer the same shortcomings as other banks, discriminating, displacing, and overcharging communities. So, too, the CDFI certification process was not designed to be a stamp of approval (the CDFI Fund is reviewing its certification guidelines currently), and that CDFI status confers various benefits on such corporations may encourage people to start such entities without the purest motives. We propose instead that MDI and CDFI status confers merely a rebuttable presumption that the corporation is well serving the community and that loans and investments in them should earn CRA credit for banks. Examiners should consult community contacts, rates charged, defaults, collections, complaints filed, litigation, CRA records, evidence of discrimination or consumer protection violations, and findings from relevant



agencies like the CDFI Fund. Perhaps impact scoring can play a role here. Banks should not receive CRA credit for investing in MDIs that discriminate or displace, or CDFIs that charge high rates that push consumers into default and subject them to aggressive collection practices, for example.

Banks should be encouraged to invest in local CDFIs and those in their existing assessment areas. We are concerned that banks are allowed to chase activities outside of their assessment areas when they are not adequately serving their own existing assessment areas, despite regulatory determinations to the contrary. There should be some assessment that banks are adequately serving their assessment area communities based on community contacts and a review of potential discrimination, consumer violations, and harm. **(Questions 64 and 67)**

Similarly, MDIs and women-owned financial institutions should receive CRA credit for investing in other MDIs, women-owned financial institutions, and low-income credit union so long as there is a determination that these MDIs are serving LMI communities well through a review of their CRA performance, potential discrimination, violations, and harm, consumer complaints, and community contacts. **(Question 65)**

Consideration for an outstanding rating prompted by an investment or other activity in MDIs, women-owned financial institutions, and low-income credit unions should be contingent upon the bank at least falling within the “satisfactory” range of performance. **(Question 88)** It would be helpful to provide greater detail on the types and level of activities with MDIs, women-owned financial institutions, and low-income credit unions to elevate a “satisfactory” rating to “outstanding”, as well as whether there are any disqualifying activities, such as if an MDI is not itself helping to meet community credit needs. **(Question 89)**

CRA Strategic Plans. We are also concerned that the CRA Strategic Plans option may become the option of choice for institutions not interested in CRA, as it provides a mechanism to defer CRA planning until later in a charter or merger application process, through a process that it directs and that is opaque to community groups despite supposed community participation requirements. CRA Strategic Plan requirements need to be strengthened by requiring more transparency regarding planning, groups outreached to, comments submitted, and bank responses, at a minimum. Community contacts and outreach should not be restricted to a bank’s preferred organizations, and all contacts and the public at large must be given more time to comment. Requiring Community Benefits Agreements could go far in improving the Strategic Plan process. If enhancements are not made, the CRA Strategic Plan option should be discarded, at least for retail banks.

In fulfilling the requirement to share CRA strategic plans with the public to ensure transparency, banks should be required to publish them on the regulatory agency’s website and their own website. **(Question 73)**

To confirm that banks have had meaningful engagement with their community in developing their plan, and once the plan is completed, community members supposedly engaged by the bank should be consulted, and the bank should publicly list community contacts engaged, comments received, and bank responses to these comments. **(Question 74)**



The Board inquires about providing greater flexibility for banks to delineate additional assessment areas through CRA strategic plans. Banks choosing a strategic plan should be required to establish assessment areas that fairly capture the markets where they are seeking to profit and a majority of their lending, at a minimum. The Board should establish assessment area requirements and ensure that such institutions are not redlining communities. The Board should beef up requirements for community input and public participation. **(Question 75)**

Guidelines regarding what constitutes a material change would provide more clarity as to when a bank should amend its strategic plan. Any amendments to strategic plans should trigger an obligation to provide notice and an opportunity to comment to the public, and to prior contacts at a minimum. **(Question 76)**

A template with illustrative instructions would presumably help streamline the strategic plan approval process. We are concerned to the extent the Board is intent on making the strategic plan process easier and more attractive to financial institutions. We question whether strategic plans result in financial institutions better meeting community credit and deposit needs. We suspect not. This might be a good analysis for the Board to undertake if it has not already done so. **(Question 77)**

Expanding beyond assessment areas. The approach of considering activities in “eligible states and territories” and “eligible regions” will dilute emphasis on activities within assessment areas via the community development financing metric. Similar questions throughout the ANPR raise the prospect of CRA providing credit and otherwise encouraging bank activities that extend beyond assessments. We believe the preferred approach is to expand assessment areas. There may be instances where it is appropriate to allow for CRA credit outside of assessment areas, but we urge caution. The Board notes that a goal of CRA is to encourage banks to serve local communities. **(Question 68)**

Conclusion

The Community Reinvestment Act has done so much for LMI communities, creating trillions of dollars in lending and investment opportunities that help families and neighborhoods stabilize and build wealth. But the CRA rules have ignored the communities of color meant to be served by the nation’s anti redlining law, and have set the bar too low for banks by allowing weak reinvestment activity, discrimination, redlining, displacement, harm, and rejection of community input. CRA rules need to be strengthened to address these concerns. Thank you for seeking our input and for your efforts to update the CRA to increase responsible lending and investment in LMI communities and communities of color.

To discuss this comment letter, further, feel free to contact Kevin Stein at kstein@calreinvest.org.

Very truly Yours

Kevin Stein
Deputy Director