National Community Reinvestment Coalition

NCRC Comments Regarding

Advanced Notice of Proposed Rulemaking

(Docket Number R-1723 and RIN Number 7100-AF94)

Community Reinvestment Act

February 2021

Contents

Overview and introduction

Docket Number R-1723 and RIN Number 7100-AF94

To Whom it May Concern:

The National Community Reinvestment Coalition (NCRC) appreciates the thoughtfulness of the Federal Reserve Board's (Board) approach to modernizing the regulations implementing the Community Reinvestment Act (CRA). NCRC is an association of community-based organizations whose mission is to increase access to credit and capital in traditionally underserved communities. On a daily basis, NCRC and our members use CRA in our collective work to help finance loans, investments and services to underserved communities. As our nation recovers from the COVID-19 pandemic, a stronger CRA is more imperative than ever in order to help our devastated communities recover.

CRA reform must update bank charter rules to reaffirm commitment to communities

As the Board embarks on CRA reform and considers how the reform can aide the recovery from the pandemic, the Board must also grapple with how CRA and bank charters are designed to promote accountability to the public and to prevent banks from arbitrarily changing their business models and discontinuing major product lines. Lost in the history of CRA enforcement is an abandonment of one of the most critical objectives of this civil rights law. Namely, that banks meet the credit needs of the neighborhoods they are chartered to serve. For decades banks have simply announced, without regulatory response, that they are no longer going to make mortgage loans or small business loans below $100,000 or ending of other products or services. One lender actually announced it was only going to issue jumbo home loans.

The act of ending a lending product must be considered in the context of the requirement for meeting the credit needs of a neighborhood. Continued permissiveness regarding this behavior amounts to regulators ignoring the fundamental precept of the CRA law that banks continually and affirmatively meet credit needs. When a major lender exits home or small business lending abruptly, this causes lending levels to drop precipitously—by tens of thousands of loans in some cases.

Banks are savvy enough to not state publicly that they are no longer going to lend in certain neighborhoods. But if they announce they are no longer doing small business loans, mortgages, and closing branches in those neighborhoods, then this is clearly tantamount to saying they are no longer going to meet the credit needs in those neighborhoods. Dropping products in poor or minority areas, without a consideration as to whether those products are needed, is precisely why this anti-redlining law was created.

To deter this abandonment of business that banks promised in their charter applications, NCRC suggests that banks must re-apply for charters once every decade and must re-apply before material changes in their business or product lines. These applications would be subject to public comment. In addition, changes in product lines should be a criterion on the retail lending and services test just like closings and openings for bank branches. Finally, refusal to offer retail loans below a specified dollar threshold is discrimination and must result in a ratings downgrade.

Strengthening CRA is a critical component of a just recovery

The Board must strengthen the rigor of CRA exams in order to promote recovery from the pandemic. The Board has described approaches in its Advance Notice of Proposed Rulemaking (ANPR) on CRA that will make CRA exams more objective and transparent. The Board has described proposed improvements to performance measures, data collection, and assessment areas that promise to bolster the robustness of CRA exams. Yet, questions remain about whether the Board's approach will reduce the high rate of CRA inflation. If nearly every bank continues to pass their CRA exams with high ratings, banks will not engage in strenuous efforts to help communities of color and low- and moderate-income (LMI) neighborhoods recover from the pandemic's devastation.

The National Community Reinvestment Coalition (NCRC) recently released a major report finding statistically significant correlations between redlining and susceptibility to COVID.[1] In the 1930s, the Home Owners Loan Corporation (HOLC) commissioned the production of maps that rated neighborhoods based on the risk of lending in them. Working class and minority neighborhoods usually received the riskiest designation of hazardous. The designations subsequently facilitated redlining and discrimination against these neighborhoods, which remain starved of credit and are predominantly lower income and minority. These neighborhoods also have the highest incidence of health conditions such as asthma, diabetes, hypertension, high cholesterol, kidney disease and stroke, which make residents more susceptible to COVID-19. Life expectancy is almost four years lower in the redlined communities than the neighborhoods not designated as hazardous by HOLC.

Since the start of the pandemic, the number of Black business owners dropped by 440,000 or 41%, compared to just a 17% decline in white small business owners.[2] Discrimination in lending contributes significantly to racial disparities in small business survival rates. An NCRC investigation found that African American testers applying for Paycheck Protection Program (PPP) loans for their small businesses during the pandemic were likely to receive less information or encouragement to apply than white testers.[3]

The Federal Reserve proposal must be strengthened to increase lending to people of color and investing in communities of color

CRA must be strengthened considerably in order to combat historical and present-day discrimination, and to help our communities recover from depression-like conditions caused by the pandemic. Although the Board recognizes racial inequities in its ANPR, its proposed remedies of considering underserved areas on exams and encouraging more financing to minority depository institutions are not of a large enough scale to address systemic inequities. The proposals do not embed increasing access to credit to communities of color into the CRA exam and subtests.

1 Jason Richardson, Bruce C. Mitchell, Helen C.S. Meier, Emily Lynch, Jad Edlebi, *Redlining and Neighborhood Health*, NCRC, September 2020, https://ncrc.org/holc-health/.

2 Rodney Brooks, "More than half of Black-owned businesses may not survive COVID-19," *National Geographic*, July 2020, https://www.nationalgeographic.com/history/2020/07/black-owned-businesses-may-not-survive-covid-19/; Governor Lael Brainard, *Modernizing and Strengthening CRA Regulations: A Conversation with Minority Depository Institutions,* October 2020, https://www.federalreserve.gov/newsevents/speech/brainard20201015a.htm; and R.W. Fairlie, *The Impact of Covid-19 on Small Business Owners: Evidence of Early-Stage Losses from the April 2020 Current Population Survey* (No. w27309). National Bureau of Economic Research, https://doi.org/10.3386/w27309

3 Anneliese Lederer, Sara Oros, Sterling Bone, Glenn Christensen, Jerome Williams, *Lending Discrimination within the Paycheck Protection Program*, NCRC, July 2020, https://ncrc.org/lending-discrimination-within-the-paycheck-protection-program/ and follow-up report, *Lending Discrimination during COVID-19: Black and Hispanic Owned Businesses*, November 2020, https://ncrc.org/lending-discrimination-during-covid-19-black-and-hispanic-women-owned-businesses/.

The Federal Reserve proposal must be strengthened to prevent grade inflation

In order to bolster the transparency of CRA exams, the Board describes thresholds associated with performance measures on its retail and community development tests. However, the Board does not discuss in detail the impact of these proposed thresholds on the ratings distribution except to hint that the ratings distribution would not change that much. This outcome would not achieve the overall objective of CRA reform, which must be increasing lending, investment and services in communities of color and low- and moderate-income (LMI) communities. Reproducing the same ratings distribution in which 98% of banks pass their CRA exams with high ratings will fail to significantly increase lending, investment and services in underserved communities. On the contrary, it may lead to stagnation in reinvestment since banks would not be motivated to improve their CRA performance.

Ratings need more nuance and gradations so that banks are motivated to continually improve their reinvestment performance. As well as urging the Board to be more clear regarding the implications of the thresholds on the final ratings, NCRC asks the Board to reconsider its proposal to reduce ratings on the subtests from five to four. Five ratings more effectively reveal distinctions in performance, thereby motivating the lagging banks to improve. For example, if a bank receives a rating of Low Satisfactory on a subtest instead of High Satisfactory, it would be more likely to seek improvements in its performance.

The Board proposes to blend Low and High Satisfactory into just one rating, Satisfactory. This could likely result in most banks receiving Satisfactory ratings on the subtests (as they currently do for the overall rating) instead of more distinctions in subtest performance. This is the wrong way to go on CRA reform. Instead, subtest as well as overall test ratings must reveal more distinctions in performance rather than producing a distorted ratings distribution that inaccurately indicates that the vast majority of banks perform in the same stellar manner.

In contrast to the Office of the Comptroller of the Currency (OCC), the Board recognizes that CRA cannot be reduced to a few performance measures or tests that will fail to accurately measure bank responsiveness to various needs in underserved communities. The OCC's predominant measure in its final rule is a ratio of the dollar amount of CRA activities divided by deposits. This measure will distort bank activity and encourage banks to pursue relatively few infrastructure or community development projects of a large scale nature. As a consequence, community needs for desperately needed loans and investments to rebuild housing and small businesses will be neglected. In contrast, by maintaining separate tests, including the service test, this aspect of the Board's proposal ensures that the needs for retail loans, community development financing, branches and deposit products and services will be met by banks.

Assessment areas must support and reflect a commitment to local lending, investments and services

NCRC is appreciative of the Board's proposals and discussions of expanding assessment areas since Board-sponsored research has demonstrated that assessment areas motivate lenders to increase retail lending in LMI communities.[4] The Board offers a number of approaches for expanding assessment areas in the case of online lenders and banks with a hybrid approach of lending through branches and via non-branch means. The Board needs to adopt an approach that captures the vast majority of a bank's loans on CRA exams, whether it is a traditional or non-traditional bank, in order to be most effective in increasing access to safe and sound loans for neighborhoods in recovery.

Along the same lines, we applaud the Board's proposal to eliminate distinctions between full-scope and limited-scope assessment areas. Full-scope assessment areas, which are usually the largest cities, count more on current CRA exams than limited-scope areas that generally are smaller cities and rural counties. Often, communities of color, Native American reservations, and other underserved communities continue to receive fewer CRA-related loans and investments because they are in limited-scope areas.

CRA modernization must maintain its focus on lower income communities and better target communities of color

Unlike the Office of the Comptroller (OCC), the Board generally does not stray away from the focus on LMI communities in its ANPR proposals. However, we do not support expanding financial education to any income level since low- and moderate-income (LMI) consumers and people of color are most likely to be unbanked or underbanked as revealed by surveys conducted by the Federal Deposit Insurance Corporation (FDIC). The Board can designate additional subgroups in the population such as people of color, people with disabilities or older adults for whom CRA credit for financial education or other community development activity can be earned instead of opening it up to everyone regardless of need. Likewise, the Fed should further develop its procedures for awarding CRA credit for financing affordable housing that is not subsidized so that such financing actually serves LMI tenants.

Collecting improved community development and deposit data

NCRC strongly supports the Board's proposals to improve data collection regarding community development financing, the geographical location of deposits and deposit products by income level of census tracts. A major shortcoming of current CRA exams and analysis is the lack of data of critical CRA activity. The service test sporadically and inconsistently involves data and discussion of deposit products for LMI customers, which makes it difficult to compare banks against each other and to determine scores and ratings for that part of the test. Likewise, the community development component of the tests produces data in an inconsistent manner, resulting in relatively rare peer comparisons and thwarting objective scoring. Moreover, the lack of a database on community development activities makes it impossible to determine CRA hot spots and deserts. Effectively targeting undeserved areas with community development financing is not possible without data being available at a census tract and county level.

Rigorous ratings, performance measures, assessment area definitions and data collection are necessary if CRA is to increase meaningfully access to credit and capital to communities of color, LMI

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

neighborhoods, Native American reservations and other underserved areas and populations, including older adults and people with disabilities.

An interagency process is imperative and Congress must apply CRA to non-bank institutions

While the Board's ANPR is a good start, NCRC believes that the process will remain incomplete and CRA will not be able to realize its full potential in stimulating reinvestment unless the Office of the Comptroller of the Currency (OCC) and the Federal Deposit Insurance Corporation (FDIC) join the Board in establishing an interagency process. The OCC must rescind its final CRA rule, which would significantly decrease lending and investing in LMI communities, and join the FDIC and Board in proposing a CRA rule that builds on the Board's ANPR. If CRA is not a uniform regulation across the three agencies, communities will not be able to engage various banks operating under the CRA rules. Needed cooperation on significant community projects would be difficult, if not impossible, to achieve among banks supervised by different agencies if the CRA rules differ by agency and provide disparate incentives for banks to engage in a disjointed range of activities.

An interagency rulemaking process must also build in periodic updates to the rule. One area for periodic updates is the list of eligible activities, since community needs will evolve over time. In addition, the thresholds for the proposed retail and community development tests will need to be adjusted on a periodic basis. The Board implies that the community development financing metrics will probably need to be refined as more data is collected and becomes publicly available. In general, a rulemaking process should consider thresholds after each CRA exam cycle of about two or three years and take into the account the ratings distribution and whether the ratings overall and in the subtests accurately reveal distinctions of performance or are inflated

In addition to a uniform CRA rulemaking, Congress needs to expand CRA broadly throughout the financial industry in order to encourage non-bank financial institutions to join banks in reinvesting in LMI and communities of color. Non-bank financial institutions, including mortgage companies, insurance companies and securities firms, are becoming formidable competitors to banks, with assets in the trillions of dollars. If they remain outside of CRA and the banking industry shrinks, the available pool of resources for reinvestment needed to combat decades of discrimination could diminish significantly, leaving underserved communities crippled in the wake of the pandemic.[5]

This letter now answers the Board's questions in the order in which the Board asks them. Accordingly, the letter is organized in major themes of CRA reform, including objectives for reform, racial equity of reform, assessment area reform, tailoring CRA exams to bank size and capacity, performance measures on CRA exams, CRA qualified activities, CRA strategic plans, and final CRA ratings:

Objectives of CRA reform must highlight increasing reinvestment in LMI and communities of color

Question 1. Does the Board capture the most important CRA modernization objectives? Are there additional objectives that should be considered?

5 Josh Silver, *Why The Community Reinvestment Act Should Be Expanded Broadly Across The Financial Industry*, NCRC, August 2020, https://www.ncrc.org/why-the-community-reinvestment-act-should-be-expanded-broadly-across-the-financial-industry/.

Since racial inequalities have been stubbornly persistent across decades, the Board appropriately elevates inequities in credit access to its first objective. NCRC's data analysis starting in the 1990s revealed disproportionately less lending by traditional lenders in communities of color, followed by subprime and high cost lenders targeting these communities, resulting in disproportionate levels of foreclosures. After the foreclosure crisis, another round of neglect by traditional lenders has afflicted communities of color. Therefore, this objective is appropriately placed as a priority, but the Board's proposals fall short of the systemic reforms necessary in CRA exams needed to address the inequities.

Tied to this objective is the Board's objective to "Recognize that CRA and fair lending responsibilities are mutually reinforcing."[6] The Board bolsters fair lending reviews and explicitly includes reviews of deposit products for the first time in fair lending reviews that are supposed to be conducted concurrently with CRA exams.[7] In addition to conducting enhanced fair lending reviews, incorporating assessment of lending, investment, and service in communities of color is needed in order to successfully address racial inequities. Applying an affirmative obligation to respond to needs in communities of color, coupled with ensuring no race discrimination, would be the most comprehensive and effective approach.

The Board includes the objective of clarity, transparency and consistency as a CRA reform aim. Clarity and transparency on CRA exams are critical in order to promote partnerships among banks and community organizations to undertake community development projects that they know will count on CRA exams. If significant confusion and uncertainty remain, banks will only offer the easiest types of loans and investments that they know will count, and will refrain from engaging in the more complex and responsive activities. As a result, the amount and quality of reinvestment will suffer. Reinvestment levels will also be curbed unless data can accurately capture it and allow for rigorous assessments on CRA exams.

In contrast to the OCC, the Board prominently lists community engagement as an objective of CRA reform.[8] The OCC removed regulatory language in its final rule that explicitly states that CRA exams are to consider public comments on the performance of banks.[9] The Board strives to preserve and enhance community engagement by making exams more transparent. However, the Board does not discuss how it will make it easier for community groups and the public to comment on CRA exams. The Board's website lacks basic information about whom to contact in the Federal Reserve Banks if a member of the public wants to comment on a bank's CRA performance, or how to comment.[10] In contrast, the Board provides the public with information about whom to contact in the Reserve Banks about obtaining bank merger applications and which staff receives comments. The Board should also automatically send follow-up information, including the subsequent CRA exam or the outcome of a merger application, to any member of the public who comments on a CRA exam or merger application.

6 Federal Reserve Board, Advance Notice of Proposed Rulemaking (ANPR), Community Reinvestment Act Regulation BB Docket No. R-1723, RIN 7100-AF94, Federal Register, Vol. 85, No. 202, Monday, October 19, 2020, Proposed Rules, p. 66410, https://www.federalreserve.gov/aboutthefed/boardmeetings/files/cra-memo-20200921.pdf. To see the Federal Register notice, https://www.federalregister.gov/documents/2020/10/19/2020-21227/community-reinvestment-act and for a copy of the PDF, https://www.govinfo.gov/content/pkg/FR-2020-10-19/pdf/2020-21227.pdf

7 ANPR, p. 66433.

8 Ibid., p. 66410.

9 NCRC Analysis of the Final OCC Rule, June 2020, https://www.ncrc.org/analysis-of-the-occs-final-cra-rule/.

10 This part of the Board's website has only generic information about commenting on exams, https://www.federalreserve.gov/apps/CRAPubWeb/Schedule/DistrictSchedule.

Lastly, the Board should explicitly list as an objective of CRA modernization increasing lending, investing and services in communities of color and LMI communities. All other aspects of the Board's proposals must be measured against this objective. The entire effort fails if CRA modernization does not meaningfully increase bank lending, investing and services in LMI communities and communities of color. The Board should commit to quantifying, to the extent possible, the impacts of its proposals. For example, if it estimates that assessment areas will increase by a certain number for non-traditional banks, what would be the resulting increase in retail lending, based on the Board's previous research?[11]

Question 2. In considering how the CRA's history and purpose relate to the nation's current challenges, what modifications and approaches would strengthen CRA regulatory implementation in addressing ongoing systemic inequity in credit access for minority individuals and communities?

Legislative history and purpose supports explicit CRA consideration of race

The Board recognizes that the purpose of CRA was not only to remedy shortages of credit in LMI communities but also in communities of color and to people of color. The Board states, "In particular, the statute and its implementing regulations provide the agencies, regulated banks, and community organizations with the necessary framework to facilitate and support a vital financial ecosystem that supports LMI and minority access to credit and community development."[12] The Board continues, "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."[13]

The 1977 hearings featured extensive testimony documenting lack of lending in communities of color. For example, representatives of neighborhood-based Advisory Neighborhood Commissions (ANCs) in Washington, D.C. testified that people of color had difficulty obtaining conventional bank loans and that the down payment requirements were often 25 percent of the loan amount. As a result, homebuyers had to rely on mortgage companies offering higher fee Federal Housing Administration (FHA) loans with higher default rates.[14] In addition, the ANCs protested the application of American Security and Trust Company to establish another branch in Washington DC, asserting that the institution would make loans west of Rock Creek Park in predominantly white neighborhoods but would redline communities of color east of the park. They reported that bank branch personnel in communities of color would often state that they lack the authority to make loans.[15] Lastly, they reported that a survey of small business owners found that just 12 percent had loans though 49 percent applied.[16]

Additional witnesses reported the difficulties of communities of color in accessing loans. Gale Cincotta of National People's Action reported that 93 percent of the homebuyers in the Logan Square neighborhood with a high percentage of Hispanic residents had high down payment FHA loans, while 90 percent of

11 Ding and Bostic, *Don't Know What You Got*.

12 ANPR, p. 66412.

13 Ibid.

14 *Community Reinvestment Act: Hearings on S.406 Before the Committee on Banking, Housing, and Urban Affairs*, United States Senate, 95th Congress, (44-46), March 23, 24, 25 1977.

15 Banking Committee Hearings on S. 406, March 1977 page 47.

16 Banking Committee Hearings on S. 406, March 1977, page 48.

the buyers in an adjacent neighborhood had low down payment conventional loans.[17] Similarly, the Massachusetts Commissioner of Banks confirmed that lower income neighborhoods had to rely on more expensive mortgage companies.[18] Finally, the Connecticut Commissioner of Banks reported that in eight cities, banks provided evening and weekend hours in their branches in suburban neighborhoods but not urban neighborhoods. When the banking department placed a moratorium on bank applications, more than 20 institutions changed their practices.[19]

While the 1977 CRA hearings effectively documented conditions of redlining and unequal access to lending in the 1970s, the phenomenon of redlining extends decades prior, to the 1930s. The Federal government under the Roosevelt Administration's Home Owner's Loan Corporation (HOLC) drew maps of city neighborhoods and differentiated them according to risk as perceived by industry professionals working for the Federal government. The highest risk and "hazardous" neighborhoods were overwhelmingly minority and lower income. With federal government approval, these neighborhoods were then systematically redlined by lending institutions for decades. In a recent report, NCRC found that the neighborhoods classified as "hazardous" have remained predominantly minority and lower income.[20]

Consideration of race must be a core component of tests and subtests on CRA exams

Because redlining and disinvestment have been a structural feature of public and private sector financing for decades, remedies to redlining must likewise be systematic and embedded in each and every test and subtest of CRA exams. The Board proposes to facilitate lending to and investments in minority depository institutions and to provide points for community development in underserved areas that are outside of banks' assessment areas. While helpful, these measures are ancillary instead of being core components of CRA exams. CRA exams should explicitly examine lending, community development financing and services in communities of color. A CRA reform effort must include a concerted effort to include communities of color more explicitly on CRA exams since a large body of research, including NCRC analyses, has found continuing and stark racial disparities in lending.[21]

Because of the history of redlining and ongoing disadvantages experienced by redlined communities, NCRC believes that the most direct way to increase access to credit and capital for people of color is to add performance measures on the CRA tests and subtests that assess lending, investing and services to people of color and communities of color. On the retail lending subtest, performance measures could include the percent of loans to people of color and the percent of loans in communities of color. On the community development subtest, a performance measure could be the number and percent of community development loans and investments in communities of color. Likewise, the service

17 Banking Committee Hearings on S. 406, March 1977, page 136.

18 Banking Committee Hearings on S. 406, March 1977, page 172.

19 Banking Committee Hearings on S. 406, March 1977, pages 174-177.

20 Bruce Mitchell, PhD and Juan Franco, *HOLC "Redlining" Maps: The Persistent Structure of Segregation and Economic Inequality*, March 2018, https://ncrc.org/holc/.

21 Aaron Glantz and Emmanuel Martinez, *For People of Color, Banks are Shutting the Door on Homeownership*, February 15, 2018, https://www.revealnews.org/article/for-people-of-color-banks-are-shutting-the-door-to-homeownership/ and NCRC, *Foreclosure in the Nation's Capital: How Unfair and Reckless Lending Undermines Homeownership*, April 2010, https://ncrc.org/foreclosure-in-the-nations-capital-how-unfair-and-reckless-lending-undermines-homeownership/. Even among LMI borrowers, there was substantial disparity in several key data points among races. In 2018, NCRC observed that the rate spread, the difference in the interest rate charged to the borrower from the average prime offer rate (APOR), was much higher for LMI Black and Latino borrowers compared with LMI white and Asian borrowers. LMI Black and Latino borrowers had rate spreads that were 50% to 100% higher than their white and Asian counterparts. LMI Black and Latino borrowers were also less likely to have their application result in a home purchase. While 70% of LMI white applicants and 69% of LMI Asian applicants closed on their loans, those figures fell to just 57% and 63% for LMI Black and Latino applicants, respectively.

retail subtest could measure banks' performance in placing branches and receiving deposits from communities of color. Direct measures in the subtests for people and communities of color are the most effective way to increase access to credit and capital for people of color and communities of color.

In addition, CRA exams can include racial and ethnic demographic data in performance context analysis and require banks to affirmatively include communities of color in their assessment areas (geographical areas on CRA exams. The Board could also provide CRA consideration for community development lending and investing in majority-minority census tracts outside of assessment areas just as the Board is considering for Indian Country and other underserved areas.

The agencies have shied away from these direct measures and NCRC asks for a reconsideration. As an alternative, NCRC proposes a new category of census tracts called underserved tracts that will effectively target lending, investing and services in communities of color. The Board's proposed retail test and subtests as well as community development tests and subtests should measure and score activities in underserved tracts.

Defining underserved tracts is one possible approach for incorporating race on CRA exams

In a recent report, NCRC described a methodology for identifying the quintile of tracts in metropolitan areas that had the lowest levels of home and small business loans per housing unit and business.[22] These tracts would be the new category of underserved tracts. If community development data on lending and investing were available on a census tract level, the analysis could also include a measure of low levels of community development financing on a per capita basis as part of the definition of underserved tracts.

When NCRC grouped tracts into quintiles based on retail lending levels, the tracts in the lowest quintiles were disproportionately LMI, though not entirely so. Thus, this approach would include middle-income communities in need of additional lending and investment. A significant subset of these tracts exhibited indicators of economic distress as shown by high poverty and unemployment levels. About 57% of the residents in the lowest quintile of tracts were people of color, on average.

The tracts identified via NCRC's analysis had been disproportionately redlined by the HOLC classifying them as definitely declining or hazardous. The HOLC classifications from the 1930s continue to disadvantage these tracts to the present day. The NCRC approach, therefore, successfully targeted redlined neighborhoods that were predominantly minority. Quercia and Park also documented a lack of bank CRA lending in the same neighborhoods targeted by NCRC's approach.[23]

A recent report conducted by the Center for American Progress (CAP) found that tracts with low levels of retail lending were also neighborhoods exhibiting high levels of environmental risk including exposure to cancer, diesel particulate matter, land surface temperature, respiratory hazards and hazardous

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

23 Kevin A. Park and Roberto G. Quercia, *Who Lends Beyond the Red Line? The Community Reinvestment Act and the Legacy of Redlining*, a Penn Institute for Urban Research working paper, September 2019, https://penniur.upenn.edu/uploads/media/Park_Quercia.pdf.

waste facilities.[24] Thus, targeting underserved tracts would promote lending, investing and services that could facilitate environmental clean-up, rejuvenation, and reduce hazards and therefore improve quality of life and extend life expectancy.

CRA had focused its attention on LMI communities, as it should. However, communities of color remain underserved because of decades of redlining and discrimination. A new underserved tracts criterion on the tests would direct needed lending and investments to underserved communities. For example, on the lending test, if examiners scrutinized the percent of loans in underserved tracts, banks would likely respond by increasing their lending in these tracts. It would also help alleviate pressure on LMI tracts that are gentrifying by giving banks additional geographical areas in which to serve and receive favorable CRA consideration. In sum, NCRC estimates that our proposal for adding underserved tracts on CRA exams would increase lending in communities of color by $10 billion over five years.[25]

Strengthening rigor of merger reviews and encouraging community benefit agreements can also address racial inequities

Strengthening merger reviews and approvals is also a necessary component of CRA reform and consistent with the history of CRA. The 1977 statute required federal agencies to review the CRA record of institutions when deciding whether to approve bank merger applications. In addition, the Federal Deposit Insurance Act and the Bank Merger Act require federal agencies to consider the convenience and needs of the communities to be served as a paramount criterion of merger review. The convenience and needs factor is prospective, requiring an analysis of the extent to which the bank(s) will meet community needs after mergers.

CRA exams can provide insight into convenience and needs analysis by indicating weaknesses and strengths in bank CRA performance. Banks must commit to improving areas of weaknesses identified in CRA exams during the merger application process. Moreover, the convenience and needs factor takes into consideration banks' performance in meeting needs of communities of color in addition to LMI communities. NCRC, in comments to the Department of Justice on merger review guidelines, suggested that mergers involving banks with assets of $10 billion or more must involve public benefit plans for all the geographical areas served by the banks. These plans would describe performance measures and goals for LMI and people of color and communities. In addition, NCRC suggested that mergers with anti-competitive impacts on a county or metropolitan level must include public benefit plans for those specific areas.[26]

The current implementation of the convenience and needs factor is weak, with few merger approval orders requiring concrete demonstration of public benefits. Significantly bolstering the implementation of the convenience and needs factor would help increase access to credit for people of color and communities of color.

24 Michela Zonta and Zoe Willingham, *A CRA To Meet the Challenge of Climate Change: Advancing the Fight Against Environmental Racism*, Center for American Progress, December 2020, https://www.americanprogress.org/issues/economy/reports/2020/12/17/493886/cra-meet-challenge-climate-change/.

25 Josh Silver and Jason Richardson, *NCRC Proposal For Underserved Tracts Would Increase Lending In Communities Of Color By Billions Of Dollars*, July 2020, https://ncrc.org/ncrc-proposal-for-underserved-tracts-would-increase-lending-in-communities-of-color-by-billions-of-dollars/.

26 NCRC comments on DOJ merger review guidelines, October 16, 2020, https://www.ncrc.org/ncrc-comments-on-doj-merger-review-guidelines/.

Assessment areas must cover the vast majority of lending and deposit activity

Question 3. Given the CRA's purpose and its nexus with fair lending laws, what changes to Regulation BB would reaffirm the practice of ensuring that assessment areas do not reflect illegal discrimination and do not arbitrarily exclude LMI census tracts?

The regulatory provision that assessment areas (AAs) may not arbitrarily exclude LMI tracts is vital to ensuring that redlining is not occurring. The provision must be amended to state that predominantly minority tracts must not be arbitrarily excluded as well.

Assessment areas must not arbitrarily exclude LMI census tracts

Tracts contiguous to branches should be automatically included in AAs. In addition, if a bank makes less than 100 loans on an annual basis, it must not exclude a tract or contiguous group of tracts that contains 20% of its loans. If a bank makes more than 100 loans annually, it cannot exclude a tract or contiguous groups of tracts that contains 10% of its loans. It would seem that exclusion of tracts with a significant number of loans could be an attempt to avoid being examined in those tracts.

Assessment area census tracts for each institution must be made publicly available

The Board should also consider requiring the public availability of a bank's AAs at the beginning of each new CRA exam cycle. The list should include the census tracts and branches for each of the AAs. If a bank's AAs change during the upcoming CRA exam due to a merger or some other event, the amended and updated list should be made publicly available.

Currently, members of the public must rely on the bank's most recent CRA exam for a list of AAs. However, the bank's AAs may have changed since the previous exam. When this happens, a member of the public may inadvertently analyze bank CRA performance in an area that is no longer an AA for comments on the bank's next CRA exam or a merger application. It becomes more difficult for members of the public to hold banks accountable for their CRA performance if they only have information on AAs from previous CRA exams that can be out of date.

Another reason to provide the public with a list of a bank's AAs at the beginning of the cycle is for the federal bank agencies and the public to ascertain if banks are leaving out any LMI tracts or predominantly minority tracts arbitrarily from an AA. In addition, the Board should encourage banks to include predominantly minority tracts, underserved tracts or counties as parts of their AAs and should encourage banks to publicly describe the inclusion of these areas in their CRA public files. Banks should be encouraged to include these areas as a means to adhere to their CRA obligations to serve communities in an affirmative manner. The Board should also require banks to indicate the location of their CRA public files on their websites. Currently, this is not clear on most bank websites.

Assessment areas for smaller banks should generally consist of whole cities or counties

Question 4. How should the Board provide more clarity that a small bank would not be required to expand the delineation of assessment area(s) in parts of counties where it does not have a physical presence and where it either engages in a de minimis amount of lending or there is substantial competition from other institutions, except in limited circumstances?

A recent media report concerning redlining of communities of color in the Southern part of Dallas should prompt a reconsideration by the Board of whether small banks should be allowed to designate areas smaller than a county as AAs. The report concluded that 20% of banks that operate in Dallas County do not have branches south of a major interstate, I-30, and have excluded communities of color south of I-30 from their assessment areas. This includes banks that have branches that are in close proximity to I-30. These banks include more affluent counties with predominantly white populations north of I-30 as part of their AAs. Data analysis revealed that the banks with AAs including communities south of I-30 issued a higher percentage of loans to people of color than banks that excluded these communities from their AAs.[27]

Because of these alarming patterns, the AA procedure should be that a county or city should be presumed to be an AA for a smaller bank unless the bank can demonstrate that it is not discriminating or arbitrarily excluding LMI tracts by establishing an AA that is a portion of a county. The existing regulation at §228.41 (c)(1) that designates whole political subdivisions such as cities or counties in most cases as AAs is still needed.[28] Current subsection (d) "allows a portion of a political subdivision to be served if including the entire subdivision would be extremely large, of unusual configuration, or divided by significant geographic barriers." However, the Dallas media report included instances of large areas extending north of I-30 for a bank's AA but not south into the communities of color. Thus, if anything the language in the regulation should be stronger and say that partial counties or cities can be allowed only if the bank is not purposefully excluding communities of color or LMI areas.

Exceptions to whole counties should be granted if a bank wants to focus on underserved communities. For example, if a Dallas-based bank had a branch near I-30 and wanted an AA that only included the communities of color and lower income areas south of I-30, the examiner should allow this. However, the reverse of a bank designating an AA of more affluent areas to the north when it is close to I-30 should not be allowed.

Examiners should use performance context analysis to determine when banks might be using AA designations as a means of redlining. Performance context analysis should disallow partial county AAs serving more affluent areas when findings indicate relatively few loans and bank branches south of a major highway or other physical barrier that has been a historical dividing line used to segregate communities. In addition, examining the particular bank's data should also be a factor for AA designation. If a bank is making more than an incidental amount of its loans (10% or more) in a group of neighborhoods near a physical barrier but wants to exclude these neighborhoods as part of its AA, then it is likely that a bank does not want to be held accountable via a CRA exam for performance in those neighborhoods.

27 David Schechter, Jason Trahan, Chance Horner, T. Nicole Waivers, *"They underestimate what we can do": WFAA finds banks exclude Blacks, Hispanics in Southern Dallas from access to loans*, ABC Ch. 8, November 2020, https://www.wfaa.com/article/news/local/investigates/banking-below-30-southern-dallas-cut-off-by-freeway-also-left-off-banking-maps/287-10557dd3-bbf4-44a2-b786-44c6347a6e48.

28 For the Board's version of the CRA regulation, see https://www.federalreserve.gov/supervisionreg/reglisting.htm.

Assessment areas for large banks should be no smaller than a county

Question 5. Should facility-based assessment area delineation requirements be tailored based on bank size, with large banks being required to delineate facility-based assessment areas as, at least, one or more contiguous counties and smaller banks being able to delineate smaller political subdivisions, such as portions of cities or townships, as long as they consist of whole census tracts?

Large banks must be required to delineate AAs that are no smaller than a county. A large bank with assets of greater than $1 billion generally has lending that covers a substantial amount of a county. In addition, AAs that are portions of counties for large banks are difficult for community-based organizations to monitor. Community groups will often conduct data analysis to prepare comments on an upcoming merger or CRA exam. When large banks have AAs that are portions of counties, the exams do not provide the census tracts for these AAs, which makes it impossible for the members of the public that wish to comment on CRA performance to conduct accurate data analysis. Sometimes, the bank in question will challenge the data analysis as faulty, which is unfair considering there is no way for the member of public to know the groups of census tracts corresponding to the AA.

Small banks can designate areas smaller than a county subject to the conditions described in the answer to Question 4. In some cases, requiring a small bank to serve a county when it concentrates its lending activity in a smaller area may divert the small bank from its service area that could consist of communities of color. On the other hand, if a bank excludes parts of counties that are LMI and/or minority and that contain more than an incidental number of its loans, then the bank could be seeking to exclude examination and accountability for serving those communities.

If a small bank designates an area smaller than a county as an AA, the CRA exam must list the census tracts that correspond to the AA so community-based organizations can conduct data analysis and comment on CRA exams and merger applications.

Facility-based AAs should include geographical areas that surround Loan Production Offices

Question 6. Would delineating facility-based assessment areas that surround LPOs support the policy objective of assessing CRA performance where banks conduct their banking business?

Facility-based AAs should include geographical areas that surround loan production offices (LPOs) since this would encourage banks to make sure that the LPOs are also serving LMI customers and people of color. LPOs not only conduct loan underwriting but also interact with members of the public, describing loan products and the lending process.[29] LPOs must therefore be included as facility-based AAs so that exams can determine if banks are affirmatively serving all members of the community, including LMI consumers, in these areas.

An example of LPOs factoring into the designation of AAs is contained in the bank charter application of Oportun. Oportun delineates AAs in areas encompassing their retail outlets, which the lender considers LPOs.[30] NCRC agrees that AAs should include areas with LPOs.

29 Julia Kagan, "What is a Loan Production Office," March 2020, Investopedia, https://www.investopedia.com/terms/l/loan-production-office-lpo.asp#:~:text=A%20loan%20production%20office%2C%20or,handles%20other%20types%20of%20loans.

30 Oportun's application can be obtained via https://foia-pal.occ.gov/App/ReadingRoom.aspx. It was filed on November 24, 2020.

Delineating assessment areas around ATMs is a statutory requirement and should not be optional

Question 7. Should banks have the option of delineating assessment areas around deposit-taking ATMs or should this remain a requirement?

NCRC does not support making the delineation of assessment areas around deposit-taking ATMs optional. Evaluating areas around ATMs is a statutory requirement. §2906 of the statute requiring written evaluations in subsection (e) mandates that exams should cover states where an institution has domestic branches. Domestic branches include deposit-taking ATMs in this subsection.[31]

Removing mandatory creation of AAs in areas with deposit taking ATMs would disadvantage rural areas and smaller cities. Banks often serve rural counties or smaller cities with deposit-taking ATMs only. Consequently, removing a mandatory application of AAs in these areas would likely exacerbate the divide between CRA hot spots and deserts, with rural areas and smaller towns finding it more difficult to attract bank CRA activity.

The Board acknowledges that providing banks with an option, instead of a requirement, to designate AAs around areas with deposit-taking ATMs could end up omitting areas with significant amount of a bank's business. The Board states, "However, if deposits from deposit-taking ATMs generate considerable bank deposits or comprise a comparatively large market share within a community, it may still be appropriate to delineate assessment areas around them."[32]

The use of the word "may" is of concern regarding delineating AAs in areas in which ATMs generate significant business for banks. AAs in these areas must be mandatory, not optional. In addition, a requirement to establish AAs in areas with deposit-taking ATMs should not be regarded as a burden. If the deposit-taking ATMs generate substantial levels of deposits or helps a bank establish a high market share of deposits or loans in an area, the AA should be important on the CRA exam. If the deposit-taking ATMs generate relatively few deposits and the bank has a small market share in the area, the AA usually will not be as important on the exam.

Deposit- and lending-based assessment areas should apply to any bank engaging in significant lending or deposit-taking beyond their branch footprint

Question 8. Should delineation of new deposit- or lending-based assessment areas apply only to internet banks that do not have physical locations or should it also apply more broadly to other large banks with substantial activity beyond their branch-based assessment areas? Is there a certain threshold of such activity that should trigger additional assessment areas?

The delineation of deposit- or lending-based AAs should not only apply to internet banks but also to other large hybrid banks that engage in significant lending or deposit-taking outside of areas with their branches. Banks must have an obligation to serve LMI and communities of color in all the areas in which they engage in significant amount of business, not only in areas with their branches. If they are not held accountable for making loans, investments and services to underserved communities in areas beyond their branches, racial and income disparities in access to credit will widen. It would also be

31 For text of the CRA statute, see https://www.law.cornell.edu/uscode/text/12/2906.

32 ANPR, p. 66417.

counter to the purposes of the statute to allow banks to escape CRA examination in areas in which they conduct a significant amount of their business.

Board-sponsored research has shown that lending increases in geographical areas designated as AAs.[33] Not designating additional areas as AAs where banks engage in significant amount of business would likely deprive underserved communities of needed increases in lending, investment and services.

Precedents exist for applying assessment areas beyond headquarters for non-traditional banks

Although the current CRA regulations have not developed a robust method for designating AAs for non-traditional lenders, a few CRA exams of non-traditional banks established important precedents that can be built upon when reforming the CRA regulations. There are some case examples of CRA examiners scrutinizing the lending of non-traditional banks beyond their headquarters in areas called supplemental areas. These exams relied upon a Question and Answer in an interagency document for considering lending beyond areas with bank headquarters of branches.

The former Office of Thrift Supervision (OTS) supervised several lenders without traditional branch networks. The OTS relied upon the Interagency Question and Answer (Q&A) document allowing examination of retail lending outside of AAs provided the retail lending inside the AAs had adequately responded to needs. However, good lending performance to LMI borrowers outside of the AAs would not compensate for poor lending performance in the AAs according to the Q&A.[34]

For example, the OTS 2009 CRA exam of Citicorp, a non-traditional thrift located in Wilmington, Delaware that made loans through 77,000 agents located throughout the country, included analyses of 10 metropolitan areas and three non-metropolitan areas with the largest percentage of lending outside of the Wilmington assessment area.[35] Likewise, the OTS examined Capital One's lending in 20 areas beyond its one assessment area. These 20 areas comprised 25 percent of the thrift's lending.[36]

The approach laid out by the OTS has been adopted by other agencies (including the Office of the Comptroller of the Currency), and as a result, it has become the de facto standard. We would contend that the OTS approach deserves re-examination, and that the gains in market share of these companies places significant urgency on the resolution of a better method for assigning AAs.

A more recent Office of the Comptroller (OCC) exam of the Bank of the Internet further developed procedures for considering loans outside of AAs.[37] Since AA lending in San Diego accounted for 1% of total lending activity, an examiner with the OCC evaluated retail lending in six states outside the San Diego assessment area.[38] Bank of the Internet's activity in these six states accounted for 30 percent of

33 Lei Ding and Leonard Nakamura, *Don't Know What You Got Till It's Gone: The Effects of the Community Reinvestment Act (CRA) on Mortgage Lending in the Philadelphia Market*, Working Paper No. 17-15, June 19, 2017, https://www.philadelphiafed.org/-/media/research-and-data/publications/working-papers/2017/wp17-15.pdf and Lei Ding, Raphael Bostic, and Hyojung Lee, *Effects of the CRA on Small Business Lending*, Federal Reserve Bank of Philadelphia, WP 18-27, December 2018, https://www.philadelphiafed.org/-/media/research-and-data/publications/working-papers/2018/wp18-27.pdf.

34 The consideration of lending outside of AAs is described in Q&A § __ .22(b)(2) & (3)—4, see Federal Register, Vol. 81, No. 142, Monday, July 25, 2016, page 48538. The OCC reiterated this procedure in a recent bulletin, https://www.occ.gov/news-issuances/bulletins/2018/bulletin-2018-17.html#ft6.

35 OTS 2009 Citicorp CRA exam, see http://www.occ.gov/static/cra/craeval/OTS/CRAE_14470_20091109_64.pdf.

36 OTS 2005 Capital One CRA exam, see http://www.occ.gov/static/cra/craeval/OTS/CRAE_13181_20050718_64.pdf.

37 OCC 2016 CRA exam of Bank of the Internet, https://www.occ.gov/static/cra/craeval/nov16/716456.pdf.

38 Bank of Internet exam, p. 11.

total deposits and 56 percent of home mortgage and small business lending.[39] The retail lending in the states outside of the San Diego assessment area was factored into the rating for the lending test.[40]

These exams are important precedents. They show it is feasible to use data on lending and deposit taking activity for non-traditional banks to designate states, metropolitan areas and rural counties as geographical areas on CRA exams. As pioneering cases, these examples also have limitations. For instance, it is not clear how much weight the areas beyond the bank headquarters had on the CRA exams.

If an institution is mostly a deposit-gathering institution, then deposit data needs to be used to designate local and state assessment areas rather than adopting a national assessment area. Most banks will engage in both lending and deposit gathering; thus, both loan and deposit data should be used to identify areas with significant amounts of activity.

Assessment areas must cover at least 75% of lending activity

Likewise, a threshold for designating assessment areas must be chosen that results in 75% or more of a bank's loans being captured by assessment areas. NCRC's research suggests that when assessment areas cover a minority of bank lending, CRA rating inflation is more likely.[41] NCRC found that when assessment areas cover less than 50% of a bank loans, the banks are more likely to receive Outstanding ratings on their lending test and less likely to receive Low Satisfactory ratings on their lending test. This suggests that if a test covers less than a majority of a business activity, a bank will have an easier time focusing on the relatively fewer areas in which it is responsible for its CRA performance. This does not mean, however, that the bank is lending in an equitable manner throughout its business footprint and it is less likely to be doing so in the areas in which it is not examined.

A loan threshold of 250 loans is too high; use 100 loans or a 5% market share threshold

The Board offers an approach that would use a threshold of 100 loans. This is preferable to their suggestion of 250 loans or only creating non-branch-based assessment areas for institutions with more than 75% of their loans outside of branch-based assessment areas.[42]

The Board should also investigate the impact of a 5% loan or deposit market share threshold that we have suggested in previous comments to the OCC.[43] In these comments, NCRC demonstrated that the market share threshold covers a great majority of bank activity for smaller metropolitan areas in more rural states than thresholds contemplated by the OCC. Likewise, the Board's 100-loan threshold may not cover a sufficient amount of lending activity, while a 5% market share threshold would in rural counties and smaller metropolitan areas.

39 Bank of Internet exam, p. 7.

40 Bank of Internet exam, p. 1.

41 Josh Silver, *The Community Reinvestment Act and Geography*, NCRC, May 2017, https://ncrc.org/the-community-reinvestment-act-and-geography/.

42 ANPR, p. 66418.

43 NCRC Comments Regarding Notice Of Proposed Rulemaking (Docket ID OCC–2018-0008 And RIN 3064-AF22), https://www.ncrc.org/ncrc-comments-regarding-notice-of-proposed-rulemaking-docket-id-occ-2018-0008-and-rin-3064-af22/.

The Board must not adopt a restrictive approach for designating AAs beyond bank branches. For example, the Board calculates that an approach designating additional AAs only in cases where a bank makes more than 75% of its loans outside of its branch network would result in just 33 banks designating AAs.[44] It makes sense that only a small number of banks would be required to add assessment areas if the threshold was 75% because both the Board and other researchers calculate that currently, AAs defined as areas around branches capture about 70% of most banks' home lending.[45]

As an alternative, the Board suggests using thresholds of 100 or 250 loans to designate lending-based AAs. A threshold of 100 loans would result in about 167 banks needing to establish at least one more AA; a threshold of 250 loans would result in about 65 banks needing to do so according to the Board.[46]

If the 100-loan threshold was used, NCRC estimates that the number of additional AAs would be manageable. Using Home Mortgage Disclosure Act (HMDA) data from 2019 and loan totals for large banks calculated by the CFPB, NCRC estimates that the 157 banks, on average, would, create ten more AAs. This is an average amount, meaning that several of the banks would be creating fewer than ten additional AAs.[47] Likewise, NCRC used the 2018 CRA small business loan data to calculate that these banks, on average, would create 12 more AAs for small business lending. The higher average of AAs for small business loans is most likely driven by large loan volumes of credit card banks. It is our best guess that the AAs for home and small business lending would overlap to a large extent.

The number of AAs is also related to measuring performance in the AAs. Is it feasible to assess hybrid bank performance in lending-based AAs since NCRC research has found that banks without branches in a geographical area perform worse in terms of the percentage of loans to LMI borrowers and communities than banks with branches in a geographical area.[48] A way to account for this is to compare hybrid banks against peers in these AAs rather than traditional banks. In other words, a hybrid bank's percent of loans to LMI borrowers would be compared to the percent of loans to LMI borrowers made by other hybrid or branchless banks. Alternatively, an exam can compare hybrids against other hybrids and traditional banks but weigh the hybrid comparison to a greater extent in the calculation of the rating. In the early years of expanding CRA exams to lending-based AAs, a balancing act should ensure that hybrids are not simply failed en masse in these AAs, but are encouraged to improve their performance by a careful calibration of the performance measures.

44 ANPR, p. 66418.

45 Bhutta and Popper, *The 2014 Home Mortgage Disclosure Act*; Laurie Goodman, Jun Zhu, and John Walsh, *The Community Reinvestment Act: Lending Data Highlights*, November 2018, Urban Institute, https://www.urban.org/research/publication/community-reinvestment-act-lending-data-highlights.

46 ANPR, p. 66418.

47 NCRC used Table 10 on pp. 58-59 of the Consumer Financial Protection Bureau, *Data Point: 2019 Mortgage Market Activity and Trends A First Look at the 2019 HMDA Data*, https://files.consumerfinance.gov/f/documents/cfpb_2019-mortgage-market-activity-trends_report.pdf. NCRC used the closed-end loan totals for large banks (assets above $1 billion) and the number of large banks to calculate an average loan count. We then multiplied this loan count by 70%, which then produced an average number of loans inside AAs. The average number of loans inside AAs was subtracted from the average total number of loans to derive the average number of loans outside AAs. Assuming that lending is evenly distributed in areas outside of AAs, we then divided the average number of loans outside of AAs by the suggested threshold of 100 to derive an average number of AAs. A similar procedure was applied to large banks in the case of small business lending using FFIEC table 4-3 for the year 2018, see https://www.ffiec.gov/craadweb/national.aspx. NCRC assumed that about 90% of small business lending was conducted in branch-based AAs, which is the percentage we found in our report on assessment areas, see page 9 of *The Community Reinvestment Act and Geography: How Well Do CRA Exams Cover the Geographical Areas that Banks Serve?* (April 2017), https://ncrc.org/wp-content/uploads/2017/05/cra_geography_paper_050517.pdf.

48 Bruce Mitchell, PhD, *Proposed OCC and FDIC Geographic Analysis of Home and Small Business Lending: Permission to Decrease Lending for the Largest Banks?*, March 2020, https://ncrc.org/proposed-occ-and-fdic-geographic-analysis-of-home-mortgage-and-small-business-lending-permission-to-decrease-lending-for-the-largest-banks/.

Honed over the years, CRA exam performance measures of retail lending have become standardized and widely accepted. Thus, an expansion of AAs to scrutinize retail lending using the standard performance measures is feasible. Community development financing is less standardized than retail lending and opportunities for community development financing will vary widely across geographical areas. Hence, the Board is considering other geographical areas that would be eligible for community development financing in addition to AAs that will be discussed more below. However, expanding AAs for hybrid banks to areas in which they engage in significant retail business will also encourage these banks to complement their retail lending with community development financing in the new AAs. Targeting community development financing in AAs in which retail business occurs will help revitalize LMI communities in the AAs and thus help ensure the success and viability of the retail lending.

Since most lending for most banks still occurs in geographical areas with their branches, a transition period of including lending-based or deposit-based AAs is feasible. The number of new AAs would not be overwhelming. Moreover, performance measures can be calibrated carefully using weights for comparisons with hybrid banks and traditional banks. Banks would be encouraged to develop new branchless bank models that can reach LMI people and communities since they would be required to designate lending-based and/or deposit-based AAs.

Nationwide assessment areas would decrease reinvestment in local areas

Question 9. Should nationwide assessment areas apply only to internet banks? If so, should internet banks be defined as banks deriving no more than 20 percent of their deposits from branch-based assessment areas or by using some other threshold? Should wholesale and limited purpose banks, and industrial loan companies, also have the option to be evaluated under a nationwide assessment area approach?

NCRC does not support a nationwide AA for internet banks. This would allow internet banks to cherry-pick which areas to serve in their retail and community development activities. In other words, internet banks would gravitate towards serving those areas in which it is easiest to conduct CRA activities rather than areas most in needs of credit and capital.

Writing in the Penn Institute for Urban Research, Mark Willis, a former CRA officer at JP Morgan Chase and current Senior Fellow at the Furman Center, New York University, warns against national AAs for evaluations of retail lending for internet banks and suggests that local evaluations are more in line with CRA's statutory purpose and more accurately measures banks' responsiveness to local needs:

> It might appear that one option would be to compare the LMI share of a bank's national mortgage production to the joint LMI share of the mortgage market of all originators at the national level. Such a comparison, however, provides no useful information on the quality of a bank's LMI performance in any particular locality. Even worse, a test based only on dollar volume at the national level might encourage banks to focus on goal-rich markets, which are unlikely to be currently underserved markets. Such an approach also cannot take into account such qualitative aspects of these products as to their responsiveness to the varying needs of LMI customers across communities—an important variable for any evaluation of impact on LMI communities.

> A better option would be to employ the very benchmarks that are already being used by CRA examiners to evaluate a bank's mortgage, small business, and farm lending at the local level. These same tests can be applied to the local retail markets served through the internet…This system for covering all the markets where a bank has a retail presence is consistent with the legislative focus on local communities in which the institution is chartered to do business; the key is the retail presence regardless of the presence of a physical deposit-taking facility.[49]

Use loans per thousand residents to designate AAs for branchless banks

In a recent white paper, NCRC analyzes the home and consumer lending activities of two large online and branchless lenders.[50] It is not only feasible to create state and local AAs, it is desirable in that these AAs can be targeted to relatively underserved areas. NCRC develops a new method of delineating these AAs, which consists of using loans per thousand residents. This method can effectively identify underserved states and localities.

In the case of home lending, NCRC used HMDA data to show that traditional lenders offered more loans per thousand residents in the most populous states. In contrast, the large branchless home lender made more of its loans per thousand residents in the least populous states, which were the states relatively underserved by traditional banks.[51] NCRC therefore recommends prioritizing the least populous states for the branchless banks as their AAs.

This pattern replicated itself on a metropolitan and micropolitan (areas with less than 50,000 residents) level for case studies of lending in the least populous states. Loans per thousand residents effectively identified metropolitan or micropolitan areas that were underserved by traditional banks but better served by the online home lender. The metropolitan and micropolitan case studies also suggested that loans per thousand residents can be used for online banks to weigh the importance of AAs in determining ratings.[52]

The case study of the consumer lender was similar to the one for the home lender. Publicly available consumer loan data for the industry is not available. However, NCRC found that the consumer lender also had higher loans per thousand residents in the smaller states and metropolitan areas.[53] Smaller states and metropolitan areas should be prioritized for online lenders since they are often of lower priority and designated as limited-scope AAs in CRA exams of traditional banks.

NCRC's white paper also shows that the number of AAs that would be created for the internet banks is feasible and in line with the number of AAs for large banks with commensurate lending volumes. If the online banks tend to lag traditional banks on performance measures such as the percent of loans to LMI borrowers, NCRC's suggestions discussed above for peer comparisons regarding performance measures could be used to take this into account but to also encourage the internet banks to catch up to the traditional banks over time.

49 Mark Willis, *Updating CRA Geography, it's Not Just about Assessment Areas*, Penn Institute for Urban Research, September 2019, https://penniur.upenn.edu/uploads/media/Mark_Willis_10-1.pdf, p. 6.

50 Josh Silver, *How Can Geographical Areas On CRA Exams Work For Branchless Banks?*, NCRC, January 2021, https://ncrc.org/how-can-geographical-areas-on-cra-exams-work-for-branchless-banks/.

51 Ibid.

52 Ibid.

53 This finding was consistent with a study conducted by the Federal Reserve Bank of Philadelphia. See Julapa Jagtiani and Catharine Lemieux, *Working Paper No. 17-17: Fintech Lending: Financial Inclusion, Risk Pricing, and Alternative Information*, Federal Reserve Bank of Philadelphia, July 2017, https://www.philadelphiafed.org/-/media/research-and-data/publications/working-papers/2017/wp17-17.pdf.

Designate a supplemental statewide AA for parts of states not selected as lending or deposit-based AAs

Another consideration for online banks is how to evaluate lending not occurring in metropolitan areas or rural counties selected as AAs. A "supplemental statewide" AA would examine lending and/or deposit activity that did not occur in the metropolitan areas or rural counties that were selected as AAs. This would be done to keep overall number of AAs manageable but also to ensure that the great majority of online bank loans were considered on CRA exams. This is also similar to the Board's notion of creating statewide measures for community development activity. It would also ensure that retail lending in areas like Native American reservations with sparse volume but where the lending is nevertheless important is still scrutinized on CRA exams.

The downside to statewide AAs is that demographic and economic conditions can differ greatly across a state so that a performance measure or benchmark on a statewide level may not be the most accurate in terms of reflecting the degree of difficulty or ease in making loans to LMI consumers or communities. For this reason, it would be NCRC's preference to err on the side of more metropolitan and rural county AAs. However, if implemented carefully, statewide AAs can consist of contiguous geographical areas or areas with similar economic conditions and demographic characteristics. Still another option is to create multi-county AAs consisting of rural counties in a state or areas in distinct regions of a state that are likely to be similar in terms of demographics and economics.

NCRC's research has determined that it would be a disservice to underserved communities to design nationwide AAs for internet banks when feasible and effective approaches exist to designate AAs at the state, metropolitan and rural county-level for these banks. Financial technology companies (fintechs) are increasingly applying for bank charters, so now is the time to devise rigorous CRA requirements to make sure they are equitably serving communities rather than cherry-picking the easiest communities to fulfill their CRA requirements.

Only wholesale and limited purpose banks can be examined using a nationwide assessment area

Question 10. How should retail lending and community development activities in potential nationwide assessment areas be considered when evaluating an internet bank's overall CRA performance?

The only class of institutions for which NCRC would be supportive of a nationwide AA would be non-retail banks that are designated as wholesale and limited purpose banks. Consumer lenders, including credit card banks, should no longer be designated as wholesale and limited purpose (more below). Wholesale or limited purpose banks, regardless of whether they are traditional banks or internet banks, can have nationwide AAs. Currently, CRA exams of wholesale and limited purpose banks will consider community development activities on a nationwide basis provided that these institutions have satisfied needs in their AAs. Therefore, precedent exists for nationwide consideration of community development activities in the case of wholesale and limited purpose banks.[54]

The AA designation currently for wholesale and limited purpose banks is arbitrary since the AAs are usually geographical areas around their headquarters. This procedure could exacerbate the disparities between CRA hot spots and deserts since several wholesale and limited purpose banks tend to be concentrated in relatively few large metropolitan areas.

54 See §__.25(e) Benefit to Assessment Area(s) in Interagency Questions and Answers regarding CRA, Federal Register, Vol. 81, No. 142, Monday, July 25, 2016, Rules and Regulations, p. 48544 and for an example of nationwide consideration of community development activities, see July 2019 Federal Reserve Bank of New York CRA exam of Goldman Sachs available via https://www.federalreserve.gov/apps/CRAPubWeb/CRA/BankRating.

The creation of underserved areas would reduce the tendency for wholesale or limited purpose banks to focus on hot spots in which to conduct community development financing. The community development subtests for these institutions could have two sections – underserved areas and other areas. The weight for the underserved portion of the exam could be double or at least higher in order to provide incentives to direct community development financing to these areas. This would assist Native American reservations and other underserved areas in attracting needed community development financing.

Create underserved areas to better target CD financing of wholesale and limited purpose banks

NCRC suggests that the agencies designate underserved areas that could be counties anywhere in the country that are underserved in terms of CD lending and investing. The agencies could develop measures to identify underserved counties such as the dollar amount of CD lending and investing on a per capita basis. Counties in the lowest quartile or quintile of CD financing per capita then could be candidates for designation as underserved.

The agencies could also use demographic and economic criteria for designating underserved areas much as they do now for identifying underserved and distressed rural middle-income census tracts. A combination of retail lending, CD financing, demographic and economic criteria could be used to designate underserved counties. The counties receiving an underserved designation could be updated annually as is the case now with rural underserved and distressed tracts.

Using measures of retail lending levels, a recent NCRC white paper demonstrated it would be feasible and desirable to establish underserved counties.[55] NCRC's paper revealed how its designation of underserved counties would indeed target CRA resources into underserved counties that have low levels of home and small business loans, higher numbers of African Americans, and higher levels of poverty and unemployment.

The designation of underserved counties would diminish the possibility of cherry-picking counties that are easier places for CD financing. Underserved county designation would alleviate the issue of hotspots and deserts by directing CD financing to places most in need. In addition, since the designation of counties would be conducted annually, counties may come off the list if they received substantial amounts of CD financing and others may be added that have pressing needs.

Banks would not need to worry that they would not receive credit for any CD financing in counties that come off the list since the agencies have established lag periods to account for CD financing in cases of rural tracts coming off lists of distressed or underserved rural tracts. This procedure would be applied to any new category of underserved counties.[56]

55 Josh Silver and Bruce Mitchell, PhD, *How To Consider Community Development Financing Outside Of Assessment Areas By Designating Underserved Counties*, NCRC, January 2019, https://ncrc.org/how-to-consider-community-development-financing-outside-of-assessment-areas-by-designating-underserved-counties/.

56 The FFIEC web page has a section on CRA that discusses a one-year lag time period for underserved and distressed rural tracts, see https://www.ffiec.gov/cra/pdf/Regulatory%20Background%20-%20Distressed%20and%20Underserved%20Tracts%20FINAL.pdf.

Tailoring exams to bank size must not excuse banks from CD financing that currently engage in CD financing as part of their CRA exams

Question 11. Is it preferable to make the default approach for small banks the current framework, with the ability to opt in to the metrics-based approach, as proposed, or instead the metrics-based approach, with the ability to opt out and remain in the current framework?

Small banks should not have the option of using the current test

NCRC does not support the option of allowing small banks to opt in to the current small bank test. The Board's proposal for a revised small bank test is not substantially different from the current test. In addition, as the Board suggests, allowing for various test options, "would not deliver the consistency and predictability of the evaluation process desired by many banks and other stakeholders and would increase overall complexity because it requires multiple performance evaluation frameworks."[57]

The major difference between the current small bank exam and the proposed one is that the proposed one would have metrics that have minimal thresholds that small banks would need to exceed in order to be presumed to have at least Satisfactory performance. The Board has already tested its proposed thresholds in terms of the impacts on CRA ratings and appears to be comfortable with the results in terms of avoiding radical increases in fail rates. Thus, the thresholds do not appear to jolt the expectations small banks would have regarding the degree of difficulty or complexity on their CRA exams. Moreover, recent research suggests that smaller banks outperform large banks on key metrics such as the percent of home loans to LMI borrowers.[58]

Large banks must have retail and CD tests including the four subtests

Question 12. Should small retail banks that opt in to the proposed framework be evaluated under only the Retail Lending Subtest? Should large retail banks be evaluated under all four subtests: Retail Lending Subtest, Retail Services Subtest, Community Development Financing Subtest, and Community Development Services Subtest?

Large banks must continue to be evaluated under tests that consider their retail activities and community development financing. The Board's four proposed subtests are reasonable tests that will capture and evaluate fairly the variety of retail and community development activity. Small banks can continue to be evaluated mainly under a retail test.

Consistent with the current approach, the Board proposes to provide an option for small banks to pursue community development and submit these activities for extra credit. However, the "extra credit" procedures should be carefully developed. A small amount of community development financing or services should not increase a rating. Likewise, if the activity is not significantly responsive to community needs, it should not increase a rating. For example, general volunteer activity such as ushering at classical concerts should not increase a rating. When a small bank submits community development activity for consideration, the Board's examiners should apply the metrics used on the community development test to evaluate the activities' quantitative and qualitative performance in deciding whether it merits any bonus points.

57 ANPR, p. 66419.

58 Paul Calem, Lauren Lambie-Hanson and Susan Wachter, *Is the CRA Still Relevant to Mortgage Lending?*, Penn Institute for Urban Research, September 2019, https://penniur.upenn.edu/uploads/media/Calem_Lambie-Hanson_Wachter.pdf

Raising the threshold for a large bank would result in billions of lost CD financing

Question 13. Is $750 million or $1 billion an appropriate asset threshold to distinguish between small and large retail banks? Or should this threshold be lower so that it is closer to the current small bank threshold of $326 million? Should the regulation contain an automatic mechanism for allowing that threshold to adjust with aggregate national inflation over time?

Raising the threshold to $750 million or $1 billion would result in an unacceptable and devastating loss of community development financing. In a white paper released in the fall of 2017, NCRC pulled the most recent CRA exams of intermediate small banks (ISB banks).[59] Our sample size consisted of 399 CRA exams and the median length of the CRA exam time period was three years. The banks in our sample engaged in $9.3 billion of community development lending and investing. ISB banks under $750 million in assets conducted $5.6 billion or 60% of that amount. Banks under $1 billion did $7.8 billion or 83% of the total. If the Board and the other agencies adopted either of these thresholds, they would reduce by more than half the community development financing of the ISB banks.

Classifying most ISB banks as small banks not subject to a community development exam would not only deprive LMI communities of billions of dollars of community development finance, it would also disproportionately impact undeserved communities in rural counties and smaller metropolitan areas where the ISBs are typically headquartered. Thus, the agencies would exacerbate CRA hot spots and deserts in terms of community development financing with this proposal. The losers in this proposal would be largely rural counties and smaller metropolitan areas.

The Board's proposal to allow community development financing to qualify for extra credit on CRA exams would not compensate for the elimination of the community development test for ISB banks. Extra credit would not be a sufficient substitute in terms of motivating the same or similar levels of community development financing as a separate community development test for ISB banks.

Community development activities that these ISB banks examined by NCRC's report had engaged in included: loans to Habitat for Humanity and Meals on Wheels, lines of credit to a water authority and businesses to finance construction of new physical plants, Low Income Housing Tax Credit investments, in-kind donation of solar panels to a homeless shelter for battered women, participation in Federal Home Loan Banks' Affordable Housing Programs, a loan to build a pharmacy in a low-income area, and a loan for developing an assisted living facility for LMI residents. This list demonstrates that ISB banks have the capacity to respond to a variety of community development needs in LMI and underserved communities.

ISB banks have been engaging in community development financing since the 1995 reforms to the CRA regulations. They have developed significant capacity to do so during the last 25 years. Raising the asset threshold that triggers a community development test would amount to destroying an infrastructure for community development in small town and rural America.

59 Adam Dettelbach, Josh Silver, and Bruce C. Mitchell, *Intermediate Small Banks: The Forgotten but Significant Resource for Affordable Housing and Community Development*, October 2017, https://ncrc.org/intermediate-small-banks-forgotten-significant-resource-affordable-housing-community-development/.

Evaluation of Retail Lending Must be Rigorous and Empirically Based

Question 14. Is the retail lending screen an appropriate metric for assessing the level of a bank's lending?

The proposed retail lending screen would be appropriate

The Board's proposed retail lending screen would represent an improvement over the current lending test. The small bank test considers a loan-to-deposit ratio while the large bank exam considers "lending activity" to ensure that banks are making sufficient numbers of loans and are not merely taking deposits but then not making loans (this is the classic definition of redlining).[60] The current exams lack consistency or meaningfulness in how they evaluate lending activity. The large bank exam compares a bank's market share of loans to its market share of deposits in the lending activity criterion. The comparisons usually do not lead to any conclusions about whether the level of lending is adequate.

In contrast, under the Board's retail lending screen, a consistent measure would be compared to an industrywide aggregate. A bank's home, small business and small farm loans would be the numerator and would be divided by the bank's deposits in an AA. An examiner would then compare a bank's ratio to the aggregate ratio for all banks operating in the AA. If the bank's ratio was less than 30% of the aggregate's ratio, the bank would not be eligible for a presumption of Satisfactory performance on the retail lending subtest.

The proposed 30% threshold for the retail screen is too low

While the comparison to an industry aggregate represents an improvement over current procedures, the ratio of 30% is set too low and is inconsistent with other parts of banking law. In 1994, the Riegle–Neal Interstate Banking and Branching Efficiency Act (Riegle-Neal) established loan-to-deposit ratio requirements for interstate banks. Congress wished to ensure that interstate banks were not establishing branches in states beyond their home states for the purposes of generating deposits but not lending. Section 109 of Riegle-Neal requires that branches in so-called "host" states outside of an interstate bank's home state maintain sufficient levels of lending. Specifically, an interstate bank's loan-to-deposit ratio in host states had to be at least half of the host state's aggregate ratio.[61] If it was below that ratio and an examiner deemed a bank unresponsive to credit needs in the host state, the bank could experience sanctions such as the closure of branches in the host state or prohibitions from opening new branches.

The 50% Section 109 loan-to-deposit ratio requirement coupled with the possible sanctions seems to have worked to keep banks at 50% or higher of host state loan-to-deposit ratios. NCRC has not heard of any bank over a several year period being sanctioned due to Section 109 violations. Thus, the Board's 30% proposal is too low in this context. NCRC recommends that the Board investigate the incidence of Section 109 violations. If they are quite low as NCRC suspects, this would argue for 50% as a minimal ratio. In fact, a ratio of 60% (which is an informal industry benchmark) might be feasible and desirable in terms of preventing deposit harvesting and redlining.

60 See §228.26 under the small bank Board CRA regulations and §228.22 for the large bank Board regulations available via https://www.ffiec.gov/cra/regulation.htm.

61 Federal Reserve Board, Regulation H Section 109 of the Riegle–Neal Interstate Banking and Branching Efficiency Act, in the Compliance Handbook, https://www.federalreserve.gov/boarddocs/supmanual/cch/sec109.pdf, also see https://www.occ.gov/news-issuances/bulletins/2020/bulletin-2020-61.html.

The retail distribution metrics are appropriate for all retail banks

Question 15. Are the retail lending distribution metrics appropriate for all retail banks, or are there adjustments that should be made for small banks?

The retail distribution metrics are appropriate for all retail banks; no adjustments are needed for small banks. The borrower distribution metric (percent of loans to LMI borrowers or small businesses with revenues under $1 million) and the geographic distribution metric (percent of home loans or small business loans in LMI tracts) have been used on both small and large bank CRA exams since 1995. Therefore, both large and small banks are accustomed to these metrics and can readily handle them as evidenced by annual pass rates of 98% or higher.

The new addition in the Board's proposal is the use of thresholds for determining whether to grant a bank a presumption of Satisfactory on the retail tests. The thresholds are based on comparisons to industrywide performance on the metrics, meaning that that most banks will be able to pass their CRA exams on these metrics. Whether 90% of banks should still receive Satisfactory ratings instead of more nuanced ratings is another topic discussed in more detail below.[62] However, the Board's proposal is reasonable and can be handled by the great majority of banks.

The presumption that small banks need different treatment or more lenient treatment is not valid. Research of home lending trends discussed above revealed that smaller community banks out-performed larger banks in the percentage of home loans made to LMI borrowers and communities over the last several years.[63] In addition, a considerable body of literature discusses how smaller banks employ relationship-based small business lending in which they acquire knowledge about the creditworthiness of small businesses through regular interactions with small business customers in bank branches.[64] This familiarity with the small business customers facilitates more manual underwriting approaches that enables lending to small businesses without established credit histories or credit scores. Consequently, research has found that smaller bank loan portfolios contain a larger percentage of loans to small businesses than those of large banks.[65]

Loan products and income categories should not be combined for the presumption of satisfactory determination

Question 16. Should the presumption of "satisfactory" approach combine low- and moderate-income categories when calculating the retail lending distribution metrics in order to reduce overall complexity, or should they be reviewed separately to emphasize performance within each category?

Home loan products should not be combined and low- and moderate-income categories should not be combined when calculating whether performance passes the Satisfactory thresholds on the retail lending

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

63 Calem, Lambie-Hanson, Wachter, *Is the CRA Still Relevant*.

64 Josh Silver and Archana Pradhan, *Access To Capital And Credit In Appalachia And The Impact Of The Financial Crisis And Recession On Commercial Lending And Finance In The Region*, NCRC report for the Appalachian Regional Commission, July 2013, https://www.ncrc.org/access-to-capital-and-credit-in-appalachia-and-the-impact-of-the-financial-crisis-and-recession-on-commercial-lending-and-finance-in-the-region/.

65 Stacy Mitchell, *Access to Capital for Local Businesses*, Institute for Local Self Reliance, https://ilsr.org/rule/financing-local-businesses/.

distribution metrics. The Board favors combining products and income levels in order to reduce complexity. However, banks have been accustomed to the separate consideration of income groups and product types on CRA exams for several years. Moreover, as the Board admits, combining low- and moderate-income categories could create an incentive for banks to focus on lending to moderate-income borrowers. Likewise combining product categories would obscure bank performance in the different types of home lending. Needs for home mortgage lending as opposed to refinance, cash-out refinance or home improvement lending will differ across AAs. A more precise analysis of whether these needs are met will not be possible when combining them for the presumption of Satisfactory calculation.

New HMDA reporting requirements for banks with higher loan volumes include home equity lines of credit (HELOC) and reverse mortgages. Banks with significant amounts of these loans will end up having metrics that are even more confounded since home equity lines of credit and reverse mortgages are more likely to be used by older and higher-income borrowers than other types of home loans.

Multifamily and manufactured home lending should have its own separate analysis in the retail test

The Board has not discussed how to analyze HMDA related to multifamily housing. For banks involved in a significant amount of multifamily lending, it would not be appropriate to combine multifamily lending with other product lines for the presumption of satisfactory determination. Multifamily lending is currently considered in the retail portion of the lending test and should continue to receive this treatment. Performance measures for a separate analysis of multifamily lending should consider:

* Total lending (# / $)

* Lending LMI tracts (# / $ and percent of loans and dollar amounts in LMI tracts)

* Affordable housing (using the new data points in HMDA - # buildings, # affordable units, $'s loaned)

Similar to multifamily lending, the Board does not discuss manufactured home lending. This is an important need in parts of the country and should have a separate evaluation for banks with significant volumes of manufactured home loans.

To determine whether a bank has achieved a presumption of Satisfactory on the retail distribution metrics, the Board can take an average of the scores across the metrics for low-income and moderate-income groups and product types or a weighted average (weights determined by the percentage of each product in the bank's portfolio).

The exception to separating product type and income groups would be for smaller banks with smaller loan volumes, most likely in the range of 50 to 100 loans during the entire CRA exam cycle of two or three years. For these lenders, combining home loan products would probably not be problematic since these lower-volume banks are most likely not offering a complex set of products including HELOCs and reverse mortgages. Yet, before the Board decides to combine income groups for these lower-volume banks, it should conduct analysis to determine how many observations for low-income and moderate-income borrowers are typical for these banks and whether the number of observations are statistically meaningful.

CRA evaluations should scrutinize consumer lending and make sure it is not abusive

Question 17. Is it preferable to retain the current approach of evaluating consumer lending levels without the use of standardized community and market benchmarks, or to use credit bureau data or other sources to create benchmarks for consumer lending?

NCRC supports the inclusion of consumer lending on CRA exams but believes that inclusion of this lending on CRA exams must be implemented carefully so it becomes an affordable alternative to payday and other fringe non-bank lending. If the agencies do not carefully examine consumer lending on CRA exams, inclusion of this lending could encourage high-interest rate and abusive credit card lending and other lending with high and hidden fees. CRA examiners should analyze data on fees, costs and default rates to ensure that the consumer lending is responsible and sustainable. If it is not, a ratings downgrade should be possible, depending on the extent and degree of harm of the abusive lending.

Furthermore, CRA exams must retain the qualitative criteria like responsiveness and innovativeness (as the Board's ANPR would). If the qualitative criteria are not retained, CRA exams could provide considerable credit to subpar products including secured credit card products that do not include pathways for LMI consumers graduating to lower cost products that are more helpful in building savings and creditworthiness.

CRA exams must scrutinize pricing in a more systematic manner on CRA exams. Recently, Native American representatives at a webinar conducted by the Federal Reserve Bank of Minneapolis' Center for Indian Country Development stated that Native Americans residing near or on reservations encounter interest rates and fees on a variety of loan products, including vehicle loans, which are considerably higher than going rates. Fair lending reviews accompanying CRA exams must ensure that no price discrimination is occurring.

In addition, the CRA qualitative criteria should give lower scores to banks that are charging high fees and rates to underserved populations and should award higher scores for affordable and sustainable products. The Home Mortgage Disclosure Act (HMDA) has the most detailed publicly available data on interest rates and fees. Examiners should analyze HMDA data to score banks appropriately on the qualitative criteria of responsiveness and innovation. HMDA data analysis should serve as a guide for analyzing other lending including consumer lending in this manner.

A bank's indirect consumer lending activity must also be examined. A bank may not be making consumer loans directly but could be partnering with an abusive payday lender that is "renting" the bank charter in order to exceed state interest rate caps and issue unaffordable loans that trap consumers in a cycle of debt. Under these types of rent-a-bank charter arrangements, the bank is not meeting credit needs in a responsible manner but instead facilitating harmful and wealth-extracting lending. The bank must be downgraded on its CRA exam.

Consumer lending should be evaluated routinely on CRA exams if the lending exceeds the thresholds for a major product category on CRA exams. The current treatment of consumer lending as optional on CRA exams unless consumer lending is a substantial majority of a bank's portfolio[66] leaves too much lending unexamined, thereby increasing the chances that such lending is not legitimately meeting the credit needs of LMI consumers in a safe and sound manner.

Consistent with regular inclusion of consumer loans on CRA exams is the use of more accurate benchmarks to measure bank performance in making consumer loans. If the Board believes that a private sector resource for measuring aggregate consumer lending in LMI tracts is robust and accurate, the Board should use it. In addition, over time, the data collected on CRA exams from banks making consumer loans can be used to produce industry aggregates for LMI borrowers and in LMI tracts.

Consider affordability measures when determining if an area is underserved by all lenders

Question 18. How can the Board mitigate concerns that the threshold for a presumption of "satisfactory" could be set too low in communities underserved by all lenders?

The Board should consider comparing affordability indices and aggregate lending trends to determine if an AA is underserved. If an AA is affordable for LMI borrowers to purchase homes but aggregate lending is at a relatively low level, the Board would then impose more stringent thresholds to motivate banks to increase their home lending to LMI borrowers. For example, instead of taking the lower of the two thresholds of the community benchmark or the market benchmark for determining a Satisfactory rating,[67] the Board should use the higher threshold.

NCRC asks to the Board to reconsider its proposal of taking the lower of the thresholds and instead suggests a weighted approach. Since the community benchmark is usually the more difficult benchmark, it will usually be lower and if used, will drive aggregate lending levels and percentages of loans to LMI borrowers lower over time. Instead, the community and aggregate benchmark could be weighted to reflect relative difficulty, giving the more difficult benchmark a lower weight. For instance, the community benchmark can be weighed at 40% and the market benchmark can be weighed at 60%. If a metropolitan area or rural county is deemed affordable by housing affordability indices, the lower benchmark should be discarded for the higher benchmark, which would create a higher threshold.

The National Association of Realtors (NAR) developed a well-known housing affordability index that produces data for metropolitan areas indicating if homes are affordable for buyers with median incomes.[68] An index of 100 indicates that a median priced home is affordable for a buyer with median income levels. The metropolitan areas can be grouped into quintiles ranging from the least affordable areas to the most affordable areas. The board could then compare the index scores against market benchmarks grouped by quintiles for metropolitan areas. If a metropolitan area is in a more affordable quintile for the NAR index and in a lower quintile (lower percentage of loans to LMI borrowers) for the market benchmark, this suggests that the market could be underperforming in terms of issuing home loans to LMI borrowers and communities. The Board could then increase the thresholds for the lending retail test as suggested above.

66 See Federal Reserve's CRA regulation (BB), §228.22(a) Lending test, via https://www.federalreserve.gov/supervisionreg/reglisting.htm.

67 ANPR, p. 66424.

68 National Association of Realtors, *Housing Affordability Index: Methodology*, https://www.nar.realtor/research-and-statistics/housing-statistics/housing-affordability-index/methodology and indices for various geographical areas, https://www.nar.realtor/research-and-statistics/housing-statistics/housing-affordability-index. For an additional description of the index, see https://www.frbsf.org/education/publications/doctor-econ/2003/december/housing-affordability-index/.

The Board could also develop indices using loan amounts compared to income levels derived from HMDA data. Loan amounts compared to income levels could be computed for all borrowers and separately for LMI borrowers. This ratio could also be compared to the market benchmark using a quintile approach. A similar approach could be used in the case of small business lending, perhaps comparing loan amounts to small business revenue levels for the purposes of constructing an affordability index. The CRA data would not have enough granular information on business revenue sizes for these purposes, which increases the urgency of the federal bank regulatory agencies working with the CFPB to implement the data reporting requirements of Section 1071 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.

The presumption of satisfactory can increase transparency but must not become a safe harbor

Question 19. Would the proposed presumption of "satisfactory" approach for the Retail Lending Subtest be an appropriate way to increase clarity, consistency, and transparency?

The presumption of "satisfactory" approach is reasonable if the performance measures and thresholds are not only fair but also rigorous. The result must not be an increase in CRA ratings inflation. Above, NCRC has suggested a more disaggregated approach for income groups and products that we believe will increase rigor and better assess whether banks are meeting needs for various loan types and products. In addition, NCRC agrees with the proposal that a bank must meet the presumption of satisfactory across the major product lines, and not only for a subset of the products.[69]

The presumption of satisfactory must not become a safe harbor, rendering a ratings downgrade by an examiner virtually impossible despite evidence of discrimination or evidence of neglecting a particular credit need in an AA(s). The Board proposes that an examiner can only downgrade in response to evidence of discrimination.[70] However, the record in an AA or AAs could be quite uneven with a bank meeting needs for certain types of lending such as refinance or home improvement but performing considerably worse than peers in home mortgage lending. In this case, a presumption of satisfactory may not be warranted, especially if the bank is a significant home lender and stakeholder comments backed by data analysis suggest that plenty of peers are more successful in making home mortgage loans to LMI borrowers and communities.

Threshold levels for the retail lending test must not reproduce the current inflated CRA ratings distribution

Question 20. Is the approach to setting the threshold levels and a potential threshold level set at 65 percent of the community benchmark and at 70 percent of the market benchmark appropriate?

The Board states that it developed the presumption of satisfactory thresholds based on banks that had high satisfactory or outstanding ratings on the lending test. NCRC appreciates that the Board used previous CRA exams of banks with High Satisfactory and Outstanding ratings to develop the thresholds instead of also including banks with Low Satisfactory ratings. The Board also suggests that the 65% and 70% would generally reproduce Satisfactory or Outstanding ratings for banks with High Satisfactory or Outstanding ratings.[71]

69 ANPR, p. 66424.

70 ANPR, p. 66425.

71 ANPR, p. 66426

NCRC also appreciates that the ANPR discussion states that banks would not automatically pass in all AAs with the proposed thresholds. The pass rate ranges from 60% to 66% depending on the economic cycle, metropolitan status of the AA and asset size of the bank.[72] Although the banks passed in the majority of AAs and would thus pass overall, the failure rate of up to 40% would motivate them to seek improvements in performance at the AA level instead of stagnating.

While NCRC credits the Board with a careful approach, important questions remain unanswered regarding final ratings for the retail lending test. Overall, CRA reform must result in more rigorous CRA ratings, not the same or less-rigorous ratings. Overall pass rates of approximately 98% must be reduced as well as the 90% of banks that receive Satisfactory ratings.[73] The Board should present estimated retail lending subtest ratings and how these ratings would likely influence the final ratings distributions. A reproduction of the current ratings scheme would lead to stagnation or worsening in CRA performance as banks would conclude that it could be as easy to pass after CRA reform as before.

The example that the Board uses to illustrate how the thresholds would work creates an impression that ratings inflation would occur. The Board offers an example of the community benchmark at 30% and the market benchmark at 35% in an AA. Since the community benchmark is lower, it would be used for the presumption of satisfactory calculation. Multiplying 30% by 65% would equal 19.5%.[74] A bank would need to make 19.5% of its loans to LMI borrowers in order to pass. This seems low based on NCRC's experience comparing bank lending at an AA level. Bank lending is usually clustered around the industry aggregate, in this case 35%. Banks would usually be within 5 percentage points of the aggregate, and rarely 10 percentage points lower. Yet, in this example, a bank 15.5 percentage points lower than the aggregate would have a presumption of satisfactory. Given this, NCRC urges the Board to explain in more detail how its proposal would not result in the same or greater CRA ratings inflation.

As mentioned above, NCRC urges the Board to reconsider using the lower of the two benchmarks because this approach may result in banks reducing their lending to LMI borrowers and communities over time. Instead, the Board could use a weighted average along the lines discussed above.

For the market benchmark, NCRC appreciates that the Fed will include non-bank mortgage companies in the peer comparisons since they play an important role in serving LMI borrowers and hold considerable market share.[75] Banks, particularly the larger banks that have lost market share to independent mortgage companies, should be encouraged to compete against them. The inclusion of mortgage companies in the market benchmark would encourage healthy competition overall and in the area of pricing (NCRC has found that independent mortgage companies charge higher interest rates and fees to undeserved borrowers than banks).[76]

72 ANPR, p. 66427.

73 Silver and Richardson, *Do CRA Ratings Reflect Differences In Performance*.

74 ANPR, p. 66425.

75 ANPR, p. 66423.

76 Jason Richardson and Josh Silver, *An Examination Of High-Cost Lending By Banks, Non-Banks, Credit Unions*, NCRC, May 2019, https://www.ncrc.org/an-examination-of-high-cost-lending-by-banks-non-banks-credit-unions/.

A presumption of satisfactory approach would work for all banks

Question 21. Will the approach for setting the presumption for "satisfactory" work for all categories of banks, including small banks and those in rural communities?

The Board's proposed presumption approach would work for all categories of banks. The Board's ANPR discussion reveals an estimated pass rate of 59% in AAs for the smallest asset category of banks, which is not too different from the pass rates for other banks. In addition, the pass rate in non-metropolitan AAs at 62% is not much different from the pass rate of 64% in metropolitan areas.[77] Finally, smaller banks perform well in terms of making retail loans to LMI borrowers and small businesses so they do not need exemptions from retail performance measures. In a recent study, NCRC found that smaller banks with up to $10 billion in assets often issued a higher percent of home loans or small business loans to LMI borrowers and tracts than the largest banks.[78]

The measure that might present some difficulty in rural AAs is the percent of loans in LMI tracts. Due to low absolute income levels, some rural areas ironically end up with a dearth of LMI tracts. Over the years, the agencies have designated middle-income tracts in distressed or underserved non-metropolitan counties that qualify for CRA community development activity.[79] These tracts could also be grouped with LMI tracts for purposes of the retail lending test.

The Board could calculate the number and percent of LMI tracts for rural counties. The Board should then consider the counties in the lowest quintile of the percent and/or number of LMI tracts. If the number and percent of LMI tracts in certain of the lowest quintile counties remain quite low even when including any middle-income tracts in the cases of underserved or distressed counties, then the Board could consider jettisoning the geographic distribution metric (the percent of loans in LMI tracts) in those counties for purposes of calculating presumption of Satisfactory.

Performance ranges is workable but must contain ranges for five ratings to create meaningful distinctions in performance

Question 22. Does the performance ranges approach complement the use of a presumption of "satisfactory"? How should the Board determine the performance range for a "satisfactory" in conjunction with the threshold for a presumption of "satisfactory"? How should the Board also determine the performance ranges for "outstanding," "needs to improve," and "substantial noncompliance"?

NCRC supports the proposal of performance ranges and urges the Board to retain five ratings on the subtests instead of reducing them to four ratings. The performance ranges would work better with five ratings for creating ratings that accurately reflect distinctions in bank performance.

The Board proposes to reduce the number of possible ratings on the subtests from five to four.[80] The five ratings on the current subtests are Outstanding, High Satisfactory, Low Satisfactory, Needs to Improve, and Substantial Noncompliance. Five ratings should be preserved because CRA exams need

77 ANPR, p. 66427.

78 Silver and Richardson, *Do CRA Ratings Reflect Differences*.

79 For the annual list of middle-income tracts in underserved and distressed non-metropolitan counties, see https://www.ffiec.gov/cra/distressed.htm.

80 ANPR, p. 66427.

more nuance in ratings, not less, in order for banks to be motivated to continually and affirmatively serve their communities as required by the statute. Currently, about 90% of banks receive Satisfactory as a final grade.[81] It is inconceivable that such a high percentage of banks perform in the same manner. When ratings blur distinctions in performance like this, the ratings lose their motivating power to encourage banks to improve their performance, particularly those that are not genuinely performing in a Satisfactory manner.

Thus, the five ratings on the subtests serve an important purpose to separate bank performance into High and Low Satisfactory in addition to the other ratings. The public should have access to a searchable database that can be downloaded into Excel so the public can more readily observe distinctions among banks and also within a bank's performance across assessment areas.

Immediately below, NCRC offers performance ranges for the market and community benchmarks that would correspond to the five ratings on the subtests.

> **Outstanding:** greater than 100% because the bank would be better than its peers.
>
> **High Satisfactory:** 80% to 99% because the bank would be approximately in line with its peers.
>
> **Low Satisfactory:** 60% to 79% because the bank would be below its peers, but not so far below to be considered not satisfactory.
>
> **Needs to Improve:** 40% to 60% because the bank would be at approximately half the level of its peers.
>
> **Substantial Noncompliance:** 39% and lower because the bank would be far below the level of its peers.

Under these suggested ranges, the presumption of Satisfactory would change from the Board's proposed 70% to 60% under NCRC's suggested performance ranges. Another way to state this is that the presumption of High Satisfactory would be 80%. NCRC asks the Board to test performance ranges so that any adopted performance range would result in exams in which subtest and final ratings do not continue to place 90% of banks in any one ratings category.

Performance ranges may need to be adjusted for size of and prices in AAs

A recent NCRC research report suggests that the scale should be adjusted for medium and smaller metropolitan areas, at least for home lending.[82] In our report, a much higher percentage of banks scored Outstanding in medium-size cities like Sacramento than larger cities such as Chicago when we applied our suggested performance ranges to the percent of LMI borrowers receiving home loans. It is possible that the size of the metropolitan area is a proxy for the cost of housing; thus, it is more difficult for a bank to score Outstanding in Chicago than in Sacramento. An adjustment for medium and smaller cities could be Outstanding corresponding to 125% and above and High Satisfactory corresponding to

81 Silver and Richardson, *Do CRA Ratings Reflect Differences*.

82 Bruce C. Mitchell, Josh Silver and Jason Richardson, *Proposed OCC And FDIC Geographic Analysis Of Home Mortgage And Small Business Lending: Permission To Decrease Lending For The Largest Banks?,* March 2020, https://www.ncrc.org/proposed-occ-and-fdic-geographic-analysis-of-home-mortgage-and-small-business-lending-permission-to-decrease-lending-for-the-largest-banks/.

80% to 124% on our suggested scale. This results in the percent Outstanding in Sacramento being more similar to Chicago's in NCRC's research findings.

On the bottom of the scores, NCRC's research had findings similar to the Board's in that banks would fail in about 30% to 40% of their AAs. It seems that banks would be more likely to earn Outstanding ratings on the home lending performance measures but also more likely to fail in some AAs. The overall objective is to produce a ratings system that does not produce very high percentages of banks earning one rating, which does not reveal much meaningful information nor reveal distinctions in performance. The Board should continue to fine-tune its performance ranges to create a meaningful ratings system. In addition, the Board should investigate whether performance ranges need to be adjusted for size of an AA in small business lending like home lending.

Performance ranges for five subtest ratings could create a point scale to supplement overall ratings

The agencies have hesitated to establish five overall ratings, citing the CRA statute that lists just four ratings. However, the Board could establish point scales that would roughly correspond to the performance ranges for the five ratings on the subtests and that more effectively differentiate the performance of the banks with Satisfactory ratings. On a point scale of 1 to 100, for example, banks with Satisfactory ratings could have points ranging from 60 to 90; those with scores of 60 to 75 would have Low Satisfactory ratings and those scoring 76 to 90 would have High Satisfactory ratings. Alternatively, if Low and High Satisfactory were not assigned to point ranges in the final ratings, it would still be clear that banks scoring lower on the Satisfactory point scale of 60 to 90 were performing in a manner that was effectively Low Satisfactory.

Conduct separate analyses by income level and product lines for performance ranges

NCRC appreciates that the Board proposes to analyze separately the lending performance to low-income borrowers and communities from moderate-income borrowers and communities on the performance ranges for the reasons discussed above.[83] We also appreciate that separate analyses would be conducted for product lines and that weighted averages would combine the scores at the AA level to derive a rating for the lending retail subtest.[84] The Board should provide more detail about how it would use weighted averages so that the public can judge whether the weights would help motivate banks to serve undeserved borrowers and various credit needs.

NCRC agrees that performance ranges provide more incentive for banks to strive for higher ratings than only using a presumption of Satisfactory, which would encourage some banks to lower their performance closer to the level needed for Satisfactory. In addition, the separate analysis of product lines does allow for flexibility for some banks to concentrate on product lines at which they excel as stated in the ANPR.[85]

Allow performance in some product lines to compensate for poor performance in other product lines only to a certain extent

83 ANPR, p. 66427.

84 ANPR, p. 66428.

85 ANPR, p. 66428.

Compensating for poor performance on some products with better performance on other products should be allowed to a point. For example, if half of a bank's loans were home purchase and half were refinance loans and this bank was in the Outstanding range for refinance but in the Needs-to-Improve range for home purchase loans, it should either not pass its retail test for home lending or receive a Low Satisfactory on this part of its test. Home purchase lending is critical for building wealth for LMI households. In this case, the bank made high volumes of home purchase lending but did not succeed in serving LMI homebuyers. Therefore, it should not score High Satisfactory or Outstanding because it did well on the refinance part of its test. Weights should be calibrated carefully to allow for some compensation but not too much.

Separate tests for retail lending and CD lending would create more accurate performance ranges and ratings

In a recent study, NCRC found that the percent of home or small business loans to LMI borrowers or tracts issued by different asset categories of banks generally increased as the ratings increased. However, exceptions occurred in which the median percentage of loans for LMI borrowers and/or tracts was higher in a lower rating than a higher rating category.[86] It is possible that by combining retail lending and community development lending, the current lending test sometimes blurs a clear relationship between the subtest rating and the performance on the retail lending metrics. The Board's proposal for separate retail and community development tests would hopefully make the pairing of ratings and performance measures more consistent. In addition, NCRC urges the Board to carefully develop performance ranges that would clearly reflect differences in performance.

Impact scores should be used on the retail test and work better with five ratings on the subtests

Question 23. Should 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? If specific kinds of activities are listed as being related to "outstanding" performance, what activities should be included?

The Board should develop a robust impact scoring system that should become an integral part of the CRA exam process. Rigorous and clear qualitative criteria should be used to make adjustments to the performance ranges approach. CRA exams should not blindly award high points to large amounts of retail loans or community development financing that are not the most impactful for responding to needs or, worse, are abusive. If impact scores are well developed, they should count for 20% to 30% of each subtest score so that quality as well as quantity is encouraged by CRA exams.

Adjustments based on qualitative criteria would be more likely to be accurate and avoid CRA ratings inflation if the subtests had five ratings as opposed to four. No matter how well constructed, qualitative criteria will be subjective to some extent. Therefore, it is desirable to reduce the possibility of qualitative criteria moving a bank from failure to passing or vice versa. That possibility is less likely under a five ratings scheme.

86 Silver and Richardson, *Do CRA Ratings Reflect Differences.*

The Board does not seem to propose impact scores for the retail lending subtest as opposed to the community development subtests. Impact scores would be a way to inject more objectivity into the qualitative criteria. Under the Board's proposal, impact scores would range from 1 to 3; these scores could correspond to subpar, good or excellent. The lending subtest could have three qualitative criteria: responsiveness, innovation, and complexity. These terms are already defined under the current regulation and could be imported to a new regulation.

The qualitative criteria would take performance context into account. For example, the degree of responsiveness depends on the extent to which a bank is responding to pressing needs in an AA, particularly a need that is not being addressed well by its peers. Innovation would also take into account performance context factors such as whether an approach a bank adopts for a product or program is well thought-out, increases the chances of clients' success, or is relatively new to either the AA or the bank.

Criterion of responsiveness judges how well a bank addresses a variety of critical needs

Under the criterion of responsiveness, the examiner could assign a score based on the range of retail lending activities the bank offered to respond to needs. For example, if an AA has a cold climate and a great need exists to weatherize houses and conserve energy, an examiner could award a score of three if a bank has a home improvement program that offers high volumes of loans to LMI borrowers to weatherize their homes. In addition, a home improvement loan product that focuses on home retrofits for older adults and people with disabilities should receive high impact scores.

Impact scores could also be used to judge the responsiveness of multifamily lending. For example, the impact scores would be raised depending on the depth of affordability as judged by whether a high number of very low-income tenants could afford the units, and best practices associated with vetting landlords in order to avoid slumlords and appropriate underwriting so that rents do not need to be raised to repay the loans. Likewise impact scores should award higher scores to retail manufactured home lending or community development financing that supports manufactured housing when this financing supports affordable and sustainable housing.

Finally, impact scores can award higher scores to projects that take into account environmental considerations and health of community residents. Affordable housing, economic development and community facilities are more responsive to needs if they also include components that reduce pollution, promote climate control and conservation, and improve the health of neighborhood residents. Often, environmental initiatives such as transit-oriented development and reduction of lead-based paint simultaneously work to improve the health of neighborhood residents.

Recently, stakeholders have emphasized the importance of the contributions of the health care community to community revitalization. Nonprofit hospitals are required to periodically conduct community health needs assessments (CNHAs).[87] These assessments have prompted major health care institutions to contribute significant funding for community development that improves resident health and assess outcomes from a health perspective. Retail lending and community development finance should score higher on impact scores if banks have collaborated with health care institutions

87 Karen Kali and Marjana Smith, *Hospitals Can Partner With Banks Under The Community Reinvestment Act To Create Healthy Communities*, NCRC, January 2021, https://www.ncrc.org/hospitals-can-partner-with-banks-under-the-community-reinvestment-act-to-create-healthy-communities/.

and other community-based organizations to explicitly account for and assess the environmental and health impacts of the community development.

Criterion of responsiveness should judge how well banks reach underserved populations

The criterion of responsiveness should assess the extent to which banks serve underserved populations that are often overlooked. These include people with disabilities, older adults and veterans. Retail lending and services should score higher on impact scores if banks can provide tangible evidence and data showing that the products are particularly successful in serving these populations.

NCRC advocates for an explicit consideration of race on CRA exams, including performance measures that assess the percentage of loans to people of color and communities of color. However, if the Board does not adopt this approach, banks should receive higher impact scores on retail lending and services to the extent to which data shows a higher percentage of people of color, including Native Americans, are served.

Criterion of responsiveness should also include price analysis

As stated above, Native American stakeholders commented that Native Americans near or on reservations are often confronted with high cost loans. Loans that are more affordable and sustainable for underserved populations should be considered more responsive to needs since they help to build wealth instead of extracting wealth through high interest rates and fees. For all retail product lines, CRA exams should consider loan pricing and award higher impact scores to those loans that are more affordable.

An alternative to this approach is to divide retail lending into prime and subprime categories and to weigh prime lending to a greater extent on the retail lending test. Examiners would need to do this for each product line. Regardless of the approach taken, pricing and affordability analysis needs to be elevated in importance on CRA exams so that the examination process ensures that safe and sound lending is occurring, and that abusive lending is swiftly and severely penalized.

Criterion of innovativeness refers to affordable products using alternative underwriting to qualify borrowers

Innovation refers to activities that involve flexible underwriting or complement a lending program with counseling according to Interagency Q&A §__.22(b)(5)—1.[88] Flexible underwriting would include the use of alternative credit histories such as rental payment history to help an applicant qualify for a loan (the use of alternative credit histories is not innovative if it ends up making it harder for LMI applicants to qualify for loans). Innovation also refers to a program or product that may already be in the market but is new for the particular institution.[89]

88 Interagency Questions and Answers regarding CRA, Federal Register, Vol. 81, No. 142, Monday, July 25, 2016, Rules and Regulations, p. 48539.

89 Interagency Questions and Answers, §__.21(a)—4:, p. 48535.

Criterion of complexity refers to number of innovative features

Complexity refers to the degree of difficulty of a particular investment or loan, usually a community development loan or investment. The agencies also judge community development finance as complex if it is not routinely provided by the private sector.[90] In the context of retail lending, complexity could refer to combining a number of innovative features in a loan product such as a portfolio product that has low down payments, allows for a variety of sources for the down payment, and has flexible underwriting.

Combining the three criteria to produce an impact score could involve weighing responsiveness more

On the three criteria of responsiveness, innovation, and complexity, a bank could earn the highest score of 9 and the lowest score of 3 if each of these were weighed the same. If a bank earns an 8 or 9, it could be eligible for a ratings upgrade. If it earns a score of 1 to 3, it would be knocked down a rating.

A case could be made that responsiveness is the most important of the three criteria and should be double-weighted so it would range from 1 to 6. Adding the other two criteria, the total possible score would then range from 1 to 12. If a bank scored in a range of 10 to 12 on the qualitative criteria, it would be eligible for a ratings upgrade. If it scored in a range of 1 to 4, it would be knocked down one rating.

The Board could establish rules that prevent unjustifiably large changes in ratings due to impact scores. A bank that receives a Needs-to-Improve cannot be deemed to pass due to a good impact score. A bank with Low Satisfactory could be increased to High Satisfactory but not two ratings categories to Outstanding.

Instead of specific activities being taken into account or qualifying a bank for a certain rating, exams should have a transparent description of impact scoring

In response to the Board's question, NCRC does not think there should be a preset number of activities that would be judged on the qualitative part of the retail subtest since needs vary across AAs. It would not make sense to use the same set of activities across AAs because these may not be responsive to the most pressing needs in some AAs.

In order to ensure transparency, the examiner would describe the activities he or she considered under the qualitative criteria, the scores under each criterion and the rationale for the scores. As much as possible, data should support the conclusions such as the number of loans under a responsive lending program and whether the number of loans represent a significant portion of a bank's portfolio or compares well against peers. Current CRA exams calculate the number and percent of innovative and flexible retail loans in the lending test.[91] This practice should continue since it motivates banks to offer responsive, innovative and complex loans.

90 Interagency Questions and Answers, **§__.23(e)—2:, p. 48541.**

91 Josh Silver, *Do CRA Exams Measure Retail Lending Well?*, NCRC, December 2019, see section on flexible and innovative, https://ncrc.org/do-cra-exams-measure-retail-lending-well/.

Retail services subtest must continue to emphasize branching and collect robust data on deposits and bank services

Retail service test must retain current components of the service test

Question 24. In addition to the number of branches and the community and market quantitative benchmarks discussed above, how should examiners evaluate a bank's branch distribution?

NCRC appreciates that the Board is proposing to retain the core components of the current service test and to enhance the service test by adding a separate deposit products test. The branching component is critical. As the Board notes, branches remain important for LMI consumers and small businesses accessing loans. Research documents that small business loans and home mortgage loans increase as the number of branches increase in LMI tracts.[92] Federal Reserve sponsored research has also found that CRA has helped retain profitable branches in LMI tracts, most likely due to the scrutiny of the current service test.[93]

The community benchmarks the Board proposes are good measures regarding whether banks are providing branches in proportion to the population and businesses in LMI tracts. Likewise, NCRC appreciates that the Board includes a market benchmark that measures the percentage of peer banks' branches in LMI tracts.[94] Current CRA exams often do not include a market benchmark, which is a weakness of the current exams.

The Board is proposing that it not provide thresholds or ranges to award ratings for a bank's branch distribution. The Board hints that thresholds may not be workable in some AAs because of an unusually small number of low-income tracts or some other unique demographic or economic characteristic. In the absence of thresholds, the Board should develop examiner guidance that is more specific than previous guidance that uses adjectives and vague phrases such as "its service delivery systems are readily accessible to geographies and individuals of different income levels in its assessment area(s)" corresponds to Outstanding performance.[95] Guidance should state that if a bank has consistently significantly lower percentages of branches in low-income and moderate-income tracts than the community and market benchmarks, it should receive a low rating on this part of the services retail test. In contrast, if a bank consistently exceeds the benchmarks, it should receive a high rating on this part of the test.

NCRC also supports the retention of the other factors of the retail services test that include the record of opening and closing branches, branch-related services and non-branch delivery systems.[96] While branch distribution is a necessary and important factor for a retail services subtest, it is not a sufficient factor by itself for the subtest. If a bank is closing several branches, particularly in LMI

92 For a literature review, see Josh Silver, *The Importance Of CRA Assessment Areas And Bank Branches*, June 2018, https://ncrc.org/the-importance-of-cra-assessment-areas-and-bank-branches/.

93 Lei Ding and Carolina Reid, *The Community Reinvestment Act (CRA) and Bank Branching Patterns*, Federal Reserve Bank of Philadelphia, Working Papers, WP 19-36, September 2019, https://www.philadelphiafed.org/-/media/research-and-data/publications/working-papers/2019/wp19-36.pdf.

94 ANPR, p. 66430.

95 Appendix to Part 228, Federal Reserve Board's CRA regulations (Regulation BB) at https://www.federalreserve.gov/supervisionreg/reglisting.htm.

96 Ibid.

communities, it is reducing access to banking services and loans. Conversely, opening branches in LMI and communities of color should help a bank's CRA rating. In addition, examiners must evaluate the range of services, including hours of operation and bilingual services, in order to ensure that no disparities are present across income categories of census tracts. Finally, the evaluation of non-branch delivery systems needs to be augmented with better data on CRA exams as discussed below.

The Board could identify quintile of tracts with lowest number of branches per capita as banking deserts

Question 25. How should banking deserts be defined, and should the definition be different in urban and rural areas?

The Board should proceed cautiously with this proposal so it does not end up awarding generous consideration on CRA exams to one or a few branches in deserts. A method for meaningfully considering branches in banking deserts is to add this as a criterion on the service retail subtest and then developing a methodology for defining banking deserts and comparing banks against each other in the number and percent of branches they have in banking deserts.

A banking desert could be defined by dividing up LMI tracts into quintiles based on the number of branches per capita and the percent of branches. Both of these indicators could have equal weight or could have weight the Board decides reflects their importance in measuring bank deserts. LMI tracts in the lowest quintile using these measures would then be considered banking deserts. The calculations could be done for metropolitan areas and rural counties separately.

Above, NCRC described the development of underserved tracts based on low levels of retail lending activity. The underserved tracts would be those in the lowest quintile based on levels of retail lending. Underserved tracts could also be considered on this criterion of the service test since increasing branches would increase retail lending in underserved tracts.

Number and percent of branches in deserts could be a criterion on the service test

On the retail services subtest, banks could be compared against each other in an AA on the number and percent of branches they have in banking deserts and in underserved tracts. Banks that are above the aggregate percentage (the market benchmark) would score higher or be presumed to have a High Satisfactory or Outstanding rating on this measure. In contrast to the proposal of the Board to forego threshold measures on the retail service test, this criterion might warrant a threshold measure since the objective is to differentiate banks that are Outstanding or High Satisfactory from the rest of the pack. This would give banks more incentive to place branches in deserts.

In Appendix 1, NCRC presents an alternative methodology for the Board's consideration of identifying census tracts considered to be bank deserts based on distances from existing branches, and the density of population and small businesses in the tracts.

Question 26. What are the appropriate data points to determine accessibility of delivery systems, including non-branch delivery channel usage data? Should the Board require certain specified information in order for a bank to receive consideration for non-branch delivery channels?

The Board acknowledges that the current service test analysis of the use of alternative non-branch delivery has been inconsistent. It is one of the most poorly developed parts of the service test. In order to improve this, quantitative data is needed in order to develop consistent performance measures.

Rates of usage for alternative delivery systems should be data collected as part of the retail service test

The Board suggests that the rates of usage of online and mobile services could be grouped by income category of census tracts. The rates of usage of ATMs could likewise be grouped by income category of census tracts. The Board, however, then says that some of this data could be proprietary. NCRC does not understand how trade secrets or proprietary information could be revealed by a relatively simple chart showing rates of usage by customers of low- and moderate-income tracts. Without this data, it is not possible to judge how accessible non-branch delivery mechanisms are to traditionally underserved populations.

If this data is a regular feature of CRA exams, then accompanying qualitative information on pricing or other features would make more sense. For example, if a bank excelled at rates of usage in LMI tracts and offered discounts or other features desired by LMI customers, then the qualitative information would back up the quantitative findings. However, if a CRA exam simply discussed the qualitative information and then awarded a high rating on this criterion, a member of the public would think that CRA ratings inflation could be occurring. Without quantitative data, it is hard to understand how this part of the service test would not be inflated.

Another aspect of service that CRA examiners usually do not discuss is the cost of accounts. The Interagency Q&A encouraged the provision of low-cost deposit accounts and stated that cost of alternative service delivery should be compared against the cost of the other delivery systems of the bank.[97] Further developing an analysis of cost of services is desirable since high-cost services marketed to LMI consumers do not truly serve community needs. In an interagency proposed rule, we urge the inclusion of qualitative criteria with guidelines calling for a comparison of pricing within and across banks for LMI and non-LMI customers.

CRA exams should not consider branches in middle- and upper-income tracts

Question 27. Should a bank receive consideration for delivering services to LMI consumers from branches located in middle- and upper-income census tracts? What types of data could banks provide to demonstrate that branches located in middle- and upper-income tracts primarily serve LMI individuals or areas?

Consideration of branches in middle- and upper-income tracts has occurred in an inconsistent manner on CRA exams. Some exams use different distances from LMI census tracts to decide whether to consider branches in middle- and upper-income tracts. NCRC opposes adding middle- and upper-

97 Interagency Q&A, op cit., §__.24(d)(3)—1, Fed. Reg. 81, 142, p. 48542.

income tracts to the distribution analysis of branches that the Board discusses above, and is encouraged that the Board is not proposing to do that.[98] Branches in middle- and upper-income tracts are not in LMI tracts and adding them to a measure of branches in LMI tracts distorts that measure.

Some counter that a branch in a middle- or upper-income tract may be a short distance away from a LMI tract. That is possible, but it is unlikely that this would happen several times on an AA level. It would seem that the simplest way to deal with this issue is to have a robust deposit products subtest, which we are pleased that the Board is proposing. If a branch in a middle- and upper-income tract is successfully serving LMI customers, it would contribute to increasing the number of deposit products LMI customers are receiving and would therefore help banks score better on the deposit products part of the test.

Non-branch delivery channels should be subject to quantitative benchmarks, but require additional data collection

Question 28. Would establishing quantitative benchmarks for evaluating non-branch delivery channels be beneficial? If so, what benchmarks would be appropriate?

As stated in Question 26, NCRC believes that non-branch delivery channels can be assessed rigorously only if data is regularly collected and included in examination tables. If this is done, the Board could consider developing performance ranges that compare banks against each other and rate banks based on that comparison.

Question 29. What types of data would be beneficial and readily available for determining whether deposit products are responsive to needs of LMI consumers and whether these products are used by LMI consumers?

Data on deposit products is needed in order to rigorously assess whether banks are providing affordable products to LMI customers and neighborhoods. This part of the current service test is under-developed and subject to CRA ratings inflation because of inconsistencies and spotty data leading to subjective conclusions in exams. The Board states:

> To accomplish these objectives, the Board is exploring whether it would be beneficial to have additional data to inform the analysis of deposit products, such as the types of deposit products offered, product costs, account features tailored for needs of LMI consumers, and product usage by LMI consumers versus usage by all consumers.[99]

CRA exams should use data on deposit products as part of the service test

NCRC believes that it is not only desirable but imperative to have data for an analysis of deposit products so performance measures such as the percent of deposit products for LMI customers and tracts can be used on CRA exams. Costs and account features should also be used and compared across banks on CRA exams.

98 ANPR, p. 66432.

99 ANPR, p. 66433.

Exams now periodically collect data and readers of CRA exams will see descriptions such as this one that conflate usage statistics on alternative delivery systems with those on deposit accounts:

> The growth rate of new accounts for customers residing in LMI geographies is significantly higher than the growth rate of new accounts for customers residing in MUI geographies. The bank's internal data also shows an increase in the usage of Alternative Delivery Systems (ADS) by customers residing in LMI geographies, and ADS usage by customers residing in LMI geographies exceeds the ADS usage by customers residing in MUI geographies. The proportion of the bank's LMI customers using ADS is significantly greater than the conservatively estimated population of fully banked LMI consumers.[100]

This description is a step in the right direction but is not complete in terms of a rigorous evaluation of bank service provision. The examiner actually compared the percentage of fully banked customers in the area (using the FDIC survey on unbanked and underbanked populations) to the percentage of bank customers using ADS. The examiner concluded that the percentage of LMI customers using the bank's ADS was greater than the percentage of fully banked LMI customers in the area.

While this is encouraging, the data in this CRA exam narrative was confusing and hidden. The exam did not present actual numbers and percentages of accounts although the examiner clearly had this data. In addition, it was not clear when the exam was referring to accounts in general and accounts generated via ADS. It would be an advance for the exam to contain a table comparing the percentage of LMI people in an AA to the number and percent of accounts for LMI customers presented separately for ADS and traditional branches. NCRC has advocated that data on the number and percentage of accounts for LMI customers and/or by income of census tracts be provided on exams. It would seem that this is possible per this example, but has not been implemented on a wide scale.

Previous research on the availability of internal bank data at one large bank also suggests that services test data on account access, fees, and other account features would be readily available to determine the take-up of services by LMI customers, rather than simply the presence of a delivery channel.[101] If the agencies implemented regular data collection and dissemination similar to HMDA data, examiners could engage in more consistent and rigorous analysis for this important measure.

Data on fees and other costs for deposit costs should be analyzed on CRA exams

Data on fees and other costs associated with deposit products should be collected and analyzed, particularly for impact scores on the deposit products subtest. If deposit products have high fees and extract wealth from LMI consumers, the impact scores should be low. If deposit products are affordable and help LMI consumers build wealth and establish credit history, impact scores should be higher. Finally, data and information on innovative partnerships should be considered as part of impact score analysis. For example, Bank On is a coalition effort spearheaded by the CFE Fund, which has established standards for affordability and transparency for deposit products. If banks adhere to these types of standards and engage in these partnerships to design affordable deposit products, impact scores can acknowledge these efforts.[102]

100 Capital One CRA exam 2017, p. 28, https://www.occ.gov/static/cra/craeval/jul18/13688.pdf.

101 Geoff Smith, Sarah Duda, and Malcolm Bush, Benchmarking Branch Outcomes: Using Available Data to Analyze and Improve the Delivery of Retail Bank Services to Low-Wealth Communities. Woodstock Institute, May 2009, https://woodstockinst.org/research/reports/benchmarking-branch-outcomes-using-available-data-analyze-and-improve-delivery-retail-bank-services-low-wealth-communities/.

102 See the website for Bank On for more information, https://joinbankon.org/about/.

Large banks have the capacity to provide deposit product and usage data

Question 30. Are large banks able to provide deposit product and usage data at the assessment area level or should this be reviewed only at the institution level?

This data culled from the CRA exam immediately above was for a particular AA and not for the institution as a whole. It would seem that this data can be collected for AAs and that proprietary considerations can be overcome. In addition, as discussed in the prior section, these data are readily available from at least one large bank and provide useful information on account pricing and total account cost for accounts held by low- and moderate-income people.[103]

Large banks with assets for $10 billion and higher should provide a strategic statement regarding retail banking products

Question 31. Would it be beneficial to require the largest banks to provide a strategic statement articulating their approach to offering retail banking products? If so, what should be the appropriate asset-size cutoff for banks subject to providing a strategic statement?

The Board suggests that banks above a certain asset size (it suggests either $10 billion or $50 billion) develop and submit strategic statements regarding their delivery of retail banking products as part of their CRA evaluations.[104] NCRC believes these would be helpful in further understanding the factors that explain differences in performance as revealed by the quantitative and qualitative measures that the Board is considering. For example, a bank that offers a higher level of deposit products to LMI populations may discuss in its strategic plan that it has a great number of partnerships with community-based organizations to provide counseling and introduce under-banked and un-banked populations to banking. These types of descriptions would therefore encourage other banks to replicate successful models.

Some may complain that this reveals a bank's competitive advantage. However, it may instead encourage banks to seek ways to stay one step ahead of their peers in serving LMI populations and earn higher ratings. The best companies do not worry that competitors will imitate them. Instead, they continually search how to innovate. It would be desirable to use the spur of competition to encourage banks to continually and affirmatively serve LMI communities as CRA's statute requires them to do.

NCRC encourages the Board to use a cutoff of $10 billion in assets. This would impact relatively few banks but apply to enough of them so that innovations through strategic plan discussions would be stimulated. It also accords with NCRC's recommendations regarding the Department of Justice review of merger guidelines requiring public benefit plans for banks with $10 billion or more in assets.[105]

103 Smith, Duda, and Bush 2009.

104 ANPR, p. 66433.

105 NCRC Comments On DOJ Merger Review Guidelines, October 2020, https://www.ncrc.org/ncrc-comments-on-doj-merger-review-guidelines/.

Large banks should receive separate conclusions for delivery systems and deposit production subtests

Question 32. How should the Board weight delivery systems relative to deposit products to provide a Retail Services Subtest conclusion for each assessment area? Should a large bank receive a separate conclusion for the delivery systems and deposit products components in determining the conclusion for the Retail Services Subtest?

A large bank should receive separate conclusions for the delivery systems and deposit production subtests in determining the conclusion for the retail services test. Separate conclusions increase transparency and objectivity, whereas one conclusion would make the CRA exam less clear about how it reached its conclusions regarding performance on the retail services test.

The Board states that it could apply different weights to the criteria on the delivery systems component depending on the bank's business model and performance context. The Board should not leave this too vague because weights could then vary significantly from one exam to the next, rendering exams less objective. Instead, three weighting schemes would seem to work for the great majority of banks. These are schemes for traditional banks, hybrid banks and online banks. The traditional banks would have heavier weights for the distribution of branches and the record of opening and closing branches than hybrid banks that have branches and offer the great majority (perhaps 75%) of their services online. Online banks would be judged on their alternative service delivery instead of the distribution of branches and record of opening and closing branches criteria.

Delivery systems should be weighed more than deposit products

NCRC also agrees with the Board that delivery systems should be weighed more than deposit products. The deposit products subtest would be improved over time as data collection becomes better and analysis techniques improve, so its weight, especially in the beginning, should be less. In addition, delivery systems, including branches, significantly influences access to loans, meaning that more weight for delivery systems motivates banks to improve how they provide access to loans.

The Board does not discuss performance context much regarding retail services, but NCRC believes it is an important consideration for this test. In particular, the Board should consider impact scores for the retail services test that takes performance context into account when assessing the responsiveness, innovation, and complexity of retail services. For example, a bank's impact scores would be improved if it enhanced accessibility to deposit products, branches and online/mobile service delivery for people with disabilities.

The Board states that any unfair, deceptive or abusive acts or practices could have a negative impact on the retail services test conclusion.[106] NCRC urges the Board to add that discriminatory practices would have this impact as well. The Board should stress that compliance with the Americans with Disabilities Act (ADA) will be an important factor. Depending on the severity of the violations, the Board should state that the final rating could also be impacted.

106 ANPR, p. 66433.

Retail lending subtest definitions and qualifying activities must facilitate examination of product lines and target activities to LMI populations and communities

Thresholds should be based on number, not dollar amount, of loans

Question 33. Should the Board establish a major product line approach with a 15 percent threshold in individual assessment areas for home mortgage, small business, and small farm loans?

Question 34. Would it be more appropriate to set a threshold for a major product line determination based on the lesser of: (1) the product line's share of the bank's retail lending activity; or (2) an absolute threshold?

The Board proposes to consider a bank's home, small business or small farm loans if the lending constitutes 15% of the total dollar amount of loans in an AA.[107] A threshold should be based on the number of loans, not dollar amounts of loans, since the predominant evaluation methodology in CRA exams is considering number of loans. Number of loans is used most often as the unit of measurement because dollar amounts can result in banks' efforts being diverted to large dollar financing regardless of the need for smaller dollar financing in AAs.

For large banks, the threshold should be 15% or 50 loans, whichever is smaller

A percentage threshold could be workable for a large bank that makes more than 500 or 1,000 loans in each of the product areas. However, if a significant difference exists between loan totals for two products, the 15% threshold could be problematic. For example, a major lender in two product lines could have 5,000 home loans but 500 small business loans. In this case, the CRA exam should examine the 500 small business loans, but under the 15% threshold, the small business loans would not be examined since they are 9% of the loan portfolio. For large banks, the threshold should be based on two criteria: 15% or 50 loans, whichever is smaller.

Examiners can use weighted averages to consider scores from each product line so that large differences in loan volumes across product lines can be appropriately accounted for in calculating the overall score on the retail lending subtest.

For small banks, threshold should be 15% or 30 loans, whichever is smaller

For small banks, their smaller loan volume may result in lending not being examined in an AA when such lending is a major line of business if the 15% threshold is used. Using the CFPB's HMDA loan tables for 2019, NCRC calculated that a smaller bank under $1 billion made 242 HMDA loans, on average. This lending could be spread across two to four or even more AAs, making it less likely that it would qualify under a 15% threshold.[108] Thus, it would make more sense to use an absolute number such as 30 loans for a small bank.

107 ANPR, pp. 66433 – 66434.

108 See Consumer Financial Protection Bureau, *Data point: 2019 mortgage market activity and trends, Table 10 for HMDA lending by size of institution*, https://www.consumerfinance.gov/data-research/research-reports/data-point-2019-mortgage-market-activity-and-trends/.

Same thresholds should be used for consumer loans as for other retail loans

Question 35. What standard should be used to determine the evaluation of consumer loans: (1) a substantial majority standard based on the number of loans, dollar amount of loans, or a combination of the two; or (2) a major product line designation based on the dollar volume of consumer lending?

As stated above, NCRC believes that CRA exams should scrutinize consumer lending since it is a major credit need and CRA should be utilized to ensure that such lending is serving LMI consumers in a responsible, affordable, and sustainable manner. Consumer lending should be examined when it exceeds a threshold for a major product line designation, not only when it is a substantial majority of loans. The same standards for product designation should apply for consumer loans as for other loans discussed in the answer to Question 34 immediately above.

CRA exams should have separate evaluations for various types of consumer loans

Question 36. Should consumer loans be evaluated as a single aggregate product line or do the different characteristics, purposes, average loan amounts, and uses of the consumer loan categories (e.g., motor vehicle loans, credit cards) merit a separate evaluation for each?

Just as with home lending, various types of consumer loans respond to different needs. As the Board states, motor vehicle loans are important for LMI populations without easy access to mass transit.[109] Lower-priced credit card lending may help with emergency spending needs. Other consumer loans may help with larger purchases that are home or small business-related. Thus, CRA exams should analyze these loan types separately to assess whether banks are meeting different needs within and across AAs.

Question 37. Should the Board continue to define small business and small farm loans based on the Call Report definitions, or should Regulation BB define the small business and small farm loan thresholds independently? Should the Board likewise adjust the small business and small farm gross annual revenues thresholds? Should any or all of these thresholds be regularly revised to account for inflation? If so, at what intervals?

Revenue size increase would not be justified for defining a small business

The CFPB has found that the great majority of small businesses had revenues under $1 million.[110] As the CFPB documented, about 20 million firms or 76 percent of all firms had annual receipts of under $100,000. An additional 5.2 million or 19 percent of all businesses had receipts between $100,000 and $999,999.[111] Together these two categories of businesses contained 95 percent of all businesses in the United States.

The revenue size limit to define a small business must not be automatically updated to account for inflation. Instead, when considering any revenue increases to define a small business, the agencies should consult with the CFPB, Small Business Administration and the Census Bureau for the most

109 ANPR, p. 66434.

110 Consumer Financial Protection Bureau (CFPB), *Key Dimensions of the Small Business Lending Landscape*, p. 10, May 2017, https://www.consumerfinance.gov/data-research/research-reports/key-dimensions-small-business-lending-landscape/.

111 CFPB, *Key Dimensions*, p. 10.

current revenue estimates for businesses with no employees and those with few, such as one or two, employees. This would be the most accurate way of determining appropriate revenue size estimates for small businesses. The great majority of small businesses under $1 million in revenue (about 82 percent) had no employees.[112] Since these businesses are very small, it is unlikely that their revenue size will increase at the rate of inflation. These businesses, such as landscaping, are likely concentrated in the services sector and thus experience small revenue growth.[113]

Increase in loan size to take inflation into account might be reasonable

NCRC believes that the current definition of small business lending as non-residential loans of $1 million or less is sufficient but could be updated to take inflation into account. A GAO report found that the $1 million limit for a small business loan should be updated to $1.6 million to account for inflation.[114] It would be reasonable to update this limit to account for inflation since the costs of equipment and other needs have increased for small businesses.

However, the data do not support a further increase beyond inflation. Using CRA loan data, NCRC conducted research to investigate dollar amounts of loans to the largest businesses with revenues above $1 million during 2016. NCRC excluded lenders with average loan amounts of $10,000 or less as these were banks that focused on smaller credit card loans. NCRC constructed the sample to identify the loans of the largest dollar amounts. The average loan amount was $70,611, and the average loan amount for the quartile of loans with the largest amounts was $343,469.[115] These loans do not come close to the $1 million limit. Therefore, according to the publicly available data, NCRC did not observe that banks are constrained by the $1 million limit.

Increasing the loan size to account for inflation would cause less of a diversion of financing from the smallest entities than increasing the revenue size of the small business or farm. Moreover, there are likely to be instances in LMI tracts where higher loan size limits above $1 million might be needed to finance new space or equipment for smaller firms, particularly in more expensive parts of the country.

Before the agencies increase the loan size, however, they need to conduct more data analysis to determine if loan sizes near or above $1 million are occurring in LMI tracts in more expensive metropolitan areas. If the data does not indicate much of this lending activity, then the $1 million loan size limit may still be appropriate and needed to target resources towards smaller enterprises.

Board, CFPB and Other Agencies Must Coordinate Data Collection via Section 1071

Section 1071 amends the Equal Credit Opportunity Act (ECOA) and helps achieve ECOA's statutory objectives of preventing discrimination in credit transactions by providing publicly available data on

112 Ibid., p. 8.

113 The Small Business Administration (SBA) estimates that small businesses employ about 85% of all workers in the service sector, see Office of Advocacy, *SBA, 2018 Small Business Profile*, p. 3, https://www.sba.gov/sites/default/files/advocacy/2018-Small-Business-Profiles-US.pdf.

114 GAO, "Effect of Regulations on Small Business Lending and Institutions Appears Modest, but Lending Data Could be Improved," August 2018, p. 15, https://www.gao.gov/assets/700/693755.pdf.

115 NCRC comment on the OCC Advance Notice of Proposed Rulemaking, November 2018, see section of comment titled, *Evaluations Of Small Business Lending Must Be Focused On The Smallest Businesses*, https://ncrc.org/ncrc-comments-regarding-advance-notice-of-proposed-rulemaking-docket-id-occ-2018-0008-reforming-the-community-reinvestment-act-regulatory-framework/.

race, gender and other demographics of small business applicants for credit. Publicly available data on the demographics of applicants exposes racial and gender disparities and focuses the attention of the lending industry, community-based organizations and regulatory agencies on reducing those disparities and combating instances of discrimination.

Currently, other laws and regulations, including the Community Reinvestment Act (CRA) and call report requirements, also require lending institutions to collect and report data on small business lending. CRA requires the reporting of the location of the small business (census tract location) and information on the revenue size of the small business. Call report data requirements include the reporting of outstanding small business and farm dollar loan amounts. In addition, the Department of Treasury's Community Development Financial Institutions (CDFI) Fund requires CDFIs to report data on their small business lending activity. The Small Business Administration (SBA) also has data reporting requirements.

On an interagency basis, the agencies should determine if Section 1071 can become comprehensive enough to replace CRA, SBA and CDFI data collection efforts. Section 1071 requires more detailed reporting than the CRA regulation in addition to the data elements that CRA now requires. Just like the Home Mortgage Disclosure Act (HMDA) data, Section 1071 data could become the data source that CRA exams use in the future. Banks and CDFIs would find it more efficient to submit data in one format as Section 1071 data than to have one or possibly two more annual data submission requirements. The public would also have an easier time working with and understanding one database than more than one.

After Section 1071 is implemented, CRA exams could use the more granular data of Section 1071 to more precisely measure whether the smallest businesses are receiving loans. The current CRA exam analysis of whether small businesses under $1 million in revenue are receiving loans is incomplete. Within this broad category of under $1 million in revenue are several businesses with much less annual revenue and even less access to loans.

The Census Bureau reports have a categorical data field for business revenue sizes with the following categories: below $10,000, $10,000 to $49,999, $50,000 to $99,999, $100,000 to $249,999, $250,000 to $499,999, $500,000 to $999,999, and $1 million or more.[116] In 2017, the vast majority of small businesses had receipts under $100,000.[117] CRA exams could analyze lending separately to categories of small businesses similar to the Census Bureau's so that exams could become more precise at assessing whether banks are making loans to the smallest businesses. This would also alleviate some pressure on the Board to determine whether $1 million in revenue is the appropriate revenue size for defining small businesses. CRA exams would not depend as much on that one definition (which is arbitrary to some extent) but would be better able to assess lending to different revenue size categories of small businesses.

116 Annual Business Survey Methodology, https://www.census.gov/programs-surveys/abs/technical-documentation/methodology.html.

117 2017 SUSB Annual Data Tables by Establishment Industry, United States Census, March 2020, https://www.census.gov/data/tables/2017/econ/susb/2017-susb-annual.html.

Churning or the repeated purchasing of loans must not be allowed on CRA exams

Question 38. Should the Board provide CRA credit only for non-securitized home mortgage loans purchased directly from an originating lender (or affiliate) in CRA examinations? Alternatively, should the Board continue to value home mortgage loan purchases on par with loan originations but impose an additional level of review to discourage loan churning?

Question 39. Are there other alternatives that would promote liquidity by freeing up capital so that banks and other lenders, such as CDFIs, can make additional home mortgage loans to LMI individuals?

The Board should take steps to ensure that loan churning or the repeated purchasing of loans made to LMI borrowers and communities do not count on CRA exams. As long as the Board captures and excludes churned loans, it does not seem to matter whether loans as securitized. The Dodd Frank enhancements to HMDA data should enable CRA examiners and Board analysts to spot churning. In addition, another method for ensuring that banks are not relying too much on purchased loans is to examine purchased loans separately from loan originations on CRA exams.

Purchases of loans should be analyzed separately from loan originations

This would be consistent with the NCRC recommendation of separately analyzing home loan products in order to ensure that different credit needs are being met by lenders. In this case, separately analyzing loan purchases has value in that CRA examiners can include analysis and narrative about whether banks are purchasing loans from CDFIs or smaller banks that need liquidity and have fewer secondary market outlets. Current CRA exams rarely, if ever, discuss whether banks are purchasing loans from CDFIs that are particularly responsive to local needs. A separate examination of purchasing activity should elevate the importance of these programmatic partnerships.

CRA exams should consider retail lending activities in Indian Country, including those outside of AAs

Question 40. Should CRA consideration be given for retail lending activities conducted within Indian Country regardless of whether those activities are located in the bank's assessment area(s)?

Question 41. Should all retail lending activities in Indian Country be eligible for consideration in the Retail Lending Subtest or should there be limitations or exclusions for certain retail activities?

NCRC strongly supports consideration of retail lending activities conducted within Indian Country regardless of whether those activities are located within a bank's AAs. This is needed because reservations have been afflicted by decades of discrimination and oppression. The result is high levels of poverty and disinvestment. According to Federal Reserve Governor Lael Brainard, "Majority-Native American counties, on average, have only three bank branches, which is below the nine-branch average in nonmetro counties, and well below the 26-branch overall average for all counties."[118]

118 Governor Lael Brainard, *Modernizing and Strengthening CRA Regulations: A Conversation with the National Congress of American Indians*, November 2020, https://www.federalreserve.gov/newsevents/speech/brainard20201110a.htm.

As stated above, NCRC developed a methodology for designating counties as underserved based on low levels of retail lending.[119] Counties consisting almost entirely of Native American reservations (Native American counties) are disproportionately considered underserved using NCRC's methodology. Almost one-third of Native American counties are underserved in contrast to about twenty percent of all counties across the country. When excluding counties in Oklahoma, 58% of Native American counties are underserved (see Appendix 2 below for underserved Native American counties).

A timely example of the continuing barriers faced by Native American reservations is the disparities in access to the Paycheck Protection Program, a COVID-related emergency small business lending program administered by the Small Business Administration (SBA) designed to encourage small businesses to retain staff. Small businesses on Indian Reservations received only 1% of the total PPP loans and loan dollars. In addition, just 12% of the small businesses in communities with more than 50% Native Americans received PPP loans in contrast to 20% of the small businesses in communities with less than 5% Native Americans.[120]

The Board will need to develop a means for considering CD financing as well as retail activities at a state or bank-level that occur outside of AAs. Below, NCRC offers more detail about how to do that.

Activities Outside of Facility/Lending/Deposit AAs could be considered in a supplemental AA

For retail lending outside of facility-based or lending- or deposit-based AAs, the Board could create an AA called "supplemental AA" for a state (see answers to Questions 64 and 68 about how the supplemental AA could have CD tests also). This AA would consist of areas that did not pass the thresholds for establishing lending-based or deposit-based AAs for a bank. In states with a concentration of reservations, this AA could be given a higher weight for determining the statewide rating. At the very least, the weight for the supplemental AA could be the average weight for AAs in the state.

The Board could use performance ranges to determine how to factor in a bank's record of lending on reservations. For example, on a statewide level, the Board could determine the percent of aggregate lending made on reservations. This would be the market benchmark. The Board then could consider if a bank is in the performance range for High Satisfactory or Outstanding ratings. If so, this performance could be considered for the supplemental AA and could elevate a statewide rating.

The reason to consider only High Satisfactory or Outstanding performance on reservations is to encourage retail activity on reservations and not to discourage banks from trying to lend there. It would not be productive and would discourage banks from serving reservations to score this activity as Low Satisfactory or below and then to use this performance in determining a statewide rating.

The Board is not proposing to create benchmarks and performance ranges for the retail service subtest, but may want to reconsider this proposal in the case of reservations. The Board should

119 Silver and Mitchell, *How To Consider Community Development Financing.*

120 Tyler Boesch, Casey Lozar, and Ryan Nunn, *Paycheck Protection Program leaves some businesses in tribal areas behind*, Federal Reserve Bank of Minneapolis, November 2020, https://www.minneapolisfed.org/article/2020/paycheck-protection-program-leaves-some-businesses-in-tribal-areas-behind.

develop a white paper describing the number and percent of bank branches and deposit accounts on reservations, which could help stakeholders determine appropriate benchmarks. Likewise, a paper on lending levels and benchmarks on reservations is needed to further develop a methodology for assessing lending on Indian Reservations.

Consider retail lending for all income levels on reservations with a high incidence of underserved tracts

NCRC is inclined to provide CRA consideration for retail lending to all income levels of borrowers on Native American reservations because of the high prevalence of economic distress and low levels of retail lending on reservations. Employing NCRC's methodology for identifying undeserved tracts, NCRC found a high incidence of underserved tracts on reservations, particularly in Arizona, New Mexico and South Dakota as shown in Appendix 2.

The Board, however, should further examine economic conditions and lending trends across all reservations and may want to consider whether to provide credit for all retail lending activity or retail lending to just LMI borrowers or communities based on the level of economic distress or degree to which reservations are underserved. One approach would be to provide credit for retail lending to all income levels on Indian Reservations with a majority of census tracts being classified as underserved. On other reservations in which the percentage of tracts classified as underserved is about equal to the national average, retail lending to LMI borrowers and census tracts would count. Another approach is to provide credit for all retail lending on reservations located in underserved counties (see discussion above regarding the incidence of underserved counties and Native American reservations).

The proposed community development test should have quantitative and qualitative components and hold banks to high standards focused on LMI communities

Question 42. Should the Board combine community development loans and investments under one subtest? Would the proposed approach provide incentives for stronger and more effective community development financing?

The separation of community development (CD) lending and investing in two different tests may have prevented banks from pursuing the optimal mix of CD lending and investing over the years. They may have been constrained by the need to hit a certain amount of financing for CD lending and investing in separate tests in order to pass the tests. With that said, NCRC is sensitive to CD investing becoming a lower priority in a new CD test. CD investing has lower median dollar amounts than CD lending, as NCRC has documented recently in a white paper.[121]

121 Josh Silver, *An Evaluation Of Assessment Areas And Community Development Financing: Implications For CRA Reform*, NCRC, July 2020, https://ncrc.org/an-evaluation-of-assessment-areas-and-community-development-financing-implications-for-cra-reform/.

Consider CD lending and investing in separate measures as well as together

A CD test can have an overall CD financing measure (combining CD loans and investments), but separate CD loan totals and CD investment totals should also be considered. If the separate totals for CD investing and lending are amiss, a score can be adjusted. For example, if a bank is not engaged in Low Income Housing Tax Credit (LIHTC) investments in an AA and community-based organizations comment on CRA exams stating this, an examiner can adjust the score. In this case, the bank would get a lower impact score (more on impact scores below).

Past and current CD financing should be considered separately as well as together

Likewise, separate measures of previous and current CD loans and investments should also be considered. NCRC understands the rationale for also considering previous CD lending as well as investing in order to encourage patient capital. However, if a bank is relying too much on outstanding CD investments and loans, particularly in comparison to its peers, it could merit a lower rating on its CD test. Banks should be encouraged to continually and affirmatively meet community needs per the statutory mandate. This means that they cannot rely too much on previous CD loans and investments to pass their CD tests.

Question 43. For large retail banks, should the Board use the ratio of dollars of community development financing activities to deposits to measure its level of community development financing activity relative to its capacity to lend and invest within an assessment area? Are there readily available alternative data sources that could measure a bank's capacity to finance community development?

The Board should use the ratio of CD financing to deposits to make sure AAs are receiving adequate or better levels of CD financing

The Board should use the ratio of dollars of CD financing to deposits to measure CD financing at the AA level. This would promote consistency across CRA exams by creating an objective measure of CRA performance. In addition, it should prevent situations in which a bank attempts to increase its rating on a CD test by performing poorly within AAs and then pursuing CD financing outside of AAs. NCRC found evidence of this gaming behavior on the investment test in its recent white paper. Specifically, we found:

> This report provided initial data suggesting that outside AA investments could be contributing to CRA ratings inflation. The median investment (prior and current) over three years was just under 1% (.8 %) of assets. Banks with below this median investment percentage were making more investments outside of their AAs at 22%. In contrast, banks above the median investment percentage were making a lower percentage of their investments (9%) outside of their AAs.[122]

Question 44. For wholesale and limited purpose banks, is there an appropriate measure of financial capacity for these banks, as an alternative to using deposits?

NCRC encourages the board to use assets in the case of wholesale and limited purpose banks. Assets are used currently on CRA exams to develop CD ratios. If assets are not used, the absolute

122 Ibid.

dollar amount of CD activity loses meaning since wholesale and limited purpose banks will have differing amounts of assets and thus differing capacities to engage in CD finance.

National and local benchmarks should be used in the CD test

Question 45. Should the Board use local and national benchmarks in evaluating large bank community development financing performance to account for differences in community development needs and opportunities across assessment areas and over time?

The Board should use local and national benchmarks because they could assist in reducing disparities across CRA hotspots and deserts. For national benchmarks, the Board is considering using one for metropolitan areas, and one for rural areas since rural areas have average CD ratios that are lower than for urban ones.[123]

Option 1 *– the national ratio is the floor*

The Board should use CD ratios for metropolitan and rural areas as a means for determining whether to apply the greater or the lower of the national or local CD ratio as the market benchmark with which to compare against a particular bank's CD ratio. For example, if a metropolitan CD ratio is considerably larger than a national metropolitan CD ratio, then the lower of the ratios (the national ratio) would be used in this case. The metropolitan area is likely a CRA hotspot and thus could be over-saturated, and it is probably desirable to encourage a bank to engage in more CD outside of this AA. On the other hand, if a metropolitan ratio is lower than the national ratio, the national ratio should be used to encourage banks to engage in more CD in this metropolitan area, which could be a CRA desert.

Option 2 *– use the larger of the ratios*

After input from stakeholders and additional data analysis, if the Board concludes that CD is too low in all areas, then CRA exams should use the greater of either the national or local ratio in all cases. This would elevate CD financing in all areas, regardless of whether they are metropolitan areas or rural counties.

Option 3 *– use a weighted ratio approach*

An alternative approach is to weigh the national and local ratios to derive a CD benchmark. A particular local AA ratio would be weighted at 40% if it was greater than the national ratio. This would prevent a bank from just aiming for the lower national ratio but would adjust a local ratio downward if an area was a hotspot.

In contrast, if a particular local ratio was lower than the national ratio, it could be weighed at 60%. In this case, the national ratio could be too high a benchmark, particularly if the locality does not yet have the necessary infrastructure to support CD financing. At the same time, however, it is desirable to factor (using a 40% weight) the national ratio into the benchmark in order to encourage banks to aim for a higher benchmark.

123 ANPR, p. 66440.

Option 4 – *use CD per capita as a method for weighing national and local ratios*

CD financing per capita could be calculated for each metropolitan area and rural county and would help in determining weights. This measure captures directly the extent of CD financing in an area by comparing dollars against population. An area that receives an abundance of CD will have a very high ratio while an area that is a CD desert will have a low dollar amount of CD per capita.

For example if a particular metropolitan AA had a ratio that was in the 90th or above percentile for the country, it would most likely be a hotspot. In that case, the lower national ratio would be appropriate. If the metropolitan area had a ratio between the 60th and 75th percentile, a 60% weight for the national ratio could be reasonable; weighing the local ratio at 40% would adjust the market benchmark downward but would still require banks to aim above the lower national ratio.

The Board would further develop a weighting scheme, using different weights of the national and local ratios for percentile ranges of CD per capita.

Option 5 – *collect data for the first few years and then develop a method*

It might be desirable to develop guidelines initially instead of thresholds for local and national benchmarks. Guidelines could advise examiners to consider whether a bank was far below or modestly below or above the benchmarks in scoring performance on this part of the CD test. After a few years, the agencies would be in a position to engage in more systematic data analysis in deciding upon one of the options described in this answer or developing another option.

Question 46. How should thresholds for the community development financing metric be calibrated to local conditions? What additional analysis should the Board conduct to set thresholds for the community development financing metric using the local and national benchmarks? How should those thresholds be used in determining conclusions for the Community Development Financing Subtest?

NCRC supports the use of thresholds, performance ranges and impact scores on a CD test but also agrees with the Board that in the early years after the Board enacts a new CRA rule, the thresholds could be regarded more as a guideline. Instead of a presumption of a passing rating, the thresholds and performance ranges would instead be a guideline for examiners in determining ratings. For example, if a bank scored above a major threshold, it would likely qualify for a passing rating, but examiners would take into account initial data limitations, performance context and impact scores in assigning a rating.

As the Board acknowledges, the data it collected to date on CD has:

> little or no information on prior period community development loans, on financing activities in broader statewide and regional areas, or on activities in many smaller cities and rural areas. Calibrating the thresholds appropriately based on thorough data and analysis is essential to developing an approach that neither sets performance standards too low relative to current levels of activities in some assessment areas nor unrealistically high in others.[124]

124 ANPR, p. 66441.

After the first two or three years into a new CRA rule, the Board would have sufficient data to develop more rigorous thresholds along the lines NCRC suggested in our response to Question 45.

CD performance ranges should be used as a means to improve performance

NCRC believes that performance ranges that the Board suggested for the retail lending test also be applied to a community development financing subtest. Recently, NCRC wrote a whitepaper in which we propose performance ranges for CD financing that would be similar to the performance ranges discussed above for the retail lending subtest. Performance ranges would stimulate more CD lending. The current CRA exams excuse very low or zero amounts of CD lending on an annual basis; NCRC found 90 banks that did not make any CD loans or offered minuscule amounts (less than one tenth of one percent) in relation to their deposits during 2018. We estimate that performance ranges could significantly increase the amount of CD financing by increasing the accountability of banks to engage in this financing.[125]

Impact scores should be used for the CD subtests

Question 47. Should the Board use impact scores for qualitative considerations in the Community Development Financing Subtest? What supplementary metrics would help examiners evaluate the impact and responsiveness of community development financing activities?

NCRC supports the use of impact scores on the subtests as indicated above in our response to Question 23. The impact scores should consider responsiveness, innovation and complexity. The Board should consider a broader scale per our previous response in order to assess more accurately the various aspects of an activity. NCRC appreciates the Board's proposal to assign an impact score to each CD loan or investment. These assignments should be explained clearly and justified rigorously in exam narrative and accompanying tables. The scores could then be averaged. NCRC agrees that this is a superior approach to using multipliers, which become overly complex, unwieldy and arbitrary as subjective decisions would need to be made and updated about which CD activities are multiplied.

Consider using impact scores to assess climate control efforts

Impact score analysis can also assess the degree to which CD activities achieve reduction in carbon emissions, improve climate resiliency, employ clean energy, improve energy efficiency and clean up environmental hazards. The recent paper by the Center for American Progress suggests a quantitative measure for climate control financing similar to CD divided by deposits.[126] Data collection would need to be improved and refined over the years to build towards a measure like this. While this should be a medium to long-term objective, a more immediate reform could be incorporating measures of climate control into impact scores.

Use performance context for impact score analysis that considers the mix of CD financing

The use of performance context should be improved in order to boost the rigor of impact scores. CRA examiners should not develop performance context. Instead, Federal Reserve economists

125 Josh Silver and Jason Richardson, *A New Approach To Bank Ratings Would Generate Billions More For Neighborhoods Reeling From The Pandemic*, NCRC July 2020, https://ncrc.org/a-new-approach-to-bank-ratings-would-generate-billions-more-for-neighborhoods-reeling-from-the-pandemic/.

126 Zonta and Willingham, *A CRA To Meet the Challenge of Climate Change*.

and community affairs staff should collaborate in developing a standardized method for developing performance context for metropolitan areas and rural counties. In a white paper, NCRC suggested that standard metrics be developed that highlight economic and community development conditions across geographical areas.[127] For example, vacancy rates and housing cost burdens could be compared across metropolitan areas. Areas with low vacancy rates and higher housing cost burdens would have a greater need for affordable housing. If a bank financed a low level of affordable housing in an area compared to its peers, its impact score would be downgraded. A similar analysis could be employed to identify areas in need of job creation or support of small businesses.

Comments from the general public on needs and banks' responsiveness to needs would also inform performance context analysis and impact scores. For example, if nonprofit developers needed different types of financing during various economic conditions, banks would have higher impact scores that altered their financing depending on the economic conditions.

In addition to assigning an impact score to each CD activity, CRA examiners would assign impact scores to the mix of activities that would capture how responsive the financing was to priority needs. This assessment could be a certain percentage (such as 20% to 30%) of the overall qualitative score. CD financing data would need to have a data field describing the type of CD activity, such as affordable housing or economic development in order to conduct assessments of the mix of CD activity for the qualitative part of the subtest.

Improve CD data submission to enhance analysis of impacts of CD financing

The Board should use supplemental data on the CD financing subtest in order to enhance the rigor of impact scores. Banks should submit data on the number of affordable housing units or the number of jobs created by the CD financing. The board could develop templates that would ease data submission. Banks currently provide this information in efforts to obtain high ratings. Standardizing this data submission would ease this task for both banks and CRA examiners. In addition, the publicly available database on CD financing would be more robust in terms of indicating the extent to which a bank is responsive to needs if it included these additional data points. In addition, NCRC supports the reporting of CD investments, grants and loans separately as well as together, which would enhance assessments of CD financing as described in the answer to Question 42 above.

Board should develop quantitative measures for evaluating CD services

Question 48. Should the Board develop quantitative metrics for evaluating community development services? If so, what metrics should it consider?

The Board should develop quantitative measures for evaluating CD services. NCRC has observed CRA exams with tables that contain total hours for CD services and additional columns that show hours for each category of community development such as affordable housing or economic development.[128] The Board's proposal to standardize CD services by computing a ratio of hours divided by the number of employees[129] would allow for comparisons against the industry aggregate and peer banks.

127 Josh Silver, *CRA Performance Context: Why it is Important for Community Development and How to Improve it*, NCRC, April 2016, https://www.ncrc.org/cra-performance-context-paper/.

128 Josh Silver, *How To Evaluate Community Development Financing And Services Under CRA*, NCRC, December 2019, https://ncrc.org/how-to-evaluate-community-development-financing-and-services-under-cra/.

129 ANPR, p. 66443.

Performance context should inform impact score analysis for CD services

Performance context should be used to assess the distribution of CD services, just like the distribution of CD financing discussed above. If an AA has a high level of unemployment, for example, the bank would score higher in impact score analysis if it had a higher number of CD services hours devoted to workforce development. Also, in areas with higher numbers and percentages of unbanked and underbanked populations, banks would score higher if they emphasized financial education.

Question 49. Would an impact score approach for the Community Development Services Subtest be helpful? What types of information on a bank's activities would be beneficial for evaluating the impact of community development services?

Impact scores would be an important component of the CD Services Subtest. Each CD service activity could be assigned an impact score, just as with CD financing. Higher scores would be assigned to CD services that were more innovative or responsive to local needs. Banks should submit supplemental data for the CD services, such as client outcomes for financial education. This data collection would enhance the rigor of impact scores. Just as with CD financing, the Board should develop templates for consistent data collection that could also be part of publicly available databases on CD financing. Banks should also feel free to submit additional data that are not part of the Board templates.

Advisory committees should be a CD service that receives high impact scores

Since CD services support community development activities, advisory committees that assist banks in serving the CD needs of undeserved communities should receive higher impact scores, the more these committees include representatives of underserved communities and the greater the extent to which banks use their recommendations. At the recent webinar about needs in Native American communities held by the Federal Reserve Bank of Minneapolis, Native American representatives stated that banks tend not understand how to effectively serve Native American reservations unless they have advisory committees that include Native American representatives that engage in regular dialogue.

NCRC has also negotiated the creation of advisory committees that help banks implement community benefit agreements (CBAs) which are specific commitments to lend, invest and offer services over a multi-year period. Implementation of these agreements is more successful if advisory committees exist to review progress and assess how to resolve barriers to lending and investing in underserved communities.

The CD service subtest should not consider general volunteering

Question 50. Should volunteer activities unrelated to the provision of financial services, or those without a primary purpose of community development, receive CRA consideration for banks in rural assessment areas? If so, should consideration be expanded to include all banks?

Community development services should be related to financial services or the regulatory definition of community development (including affordable housing and economic development). The Board is considering making an exception for rural areas and allowing activities such as volunteering in homeless shelters. The Board reasons that opportunities for offering community development are limited in rural areas, so banks need other opportunities for earning credit on the community development services subtest.[130]

130 ANPR, p. 66443.

Rather than providing a broad exemption, the Board should use the current definition of community development services in rural areas that would encourage banks to offer services such as financial education directly through its branch network if the area lacks a nonprofit organization or other established means of offering community development services. If scarce opportunities exist for providing CD services until the bank develops its own capacity to do so or assists in building the capacity of other stakeholders to offer these services, performance context can help account for these situations on CRA exams. In addition, if an AA has limited opportunities for CD service, the quantitative benchmarks and aggregate comparisons the Board is contemplating would reflect that effectively and would help in not creating unrealistic expectations for banks to offer high levels of CD services in such AAs.

Allowing banks to engage in general volunteerism, however, is not the solution because such volunteerism can involve activities that are tangentially or not related at all to community development, such as volunteering to usher sporting events. Instead of general volunteerism as CD services, banks should be encouraged to be creative and find stakeholders such as elder care providers that could also work in partnership with banks to provide CD services.

Financial education and counseling without regard to income levels should not be eligible for CRA credit: expand eligibility to underserved populations including people of color

Question 51. Should financial literacy and housing counseling activities without regard to income levels be eligible for CRA credit?

Financial education and counseling must not be offered without regard to income levels and remain eligible for CRA credit. The purpose and intent of CRA is to focus on historically redlined communities and the impact of this discrimination on generations of LMI populations. As documented by the FDIC, LMI households were the most likely to be under- or unbanked.[131] They had the lowest homeownership rates and the lowest level of assets.[132] Therefore, financial education and housing counseling must be targeted towards LMI households in order to correct for the impacts of discrimination and less access to banking for this population. Financial education must be targeted for LMI households in order to most effectively promote healthy lending and housing markets in LMI communities with educated consumers. Diverting limited resources away from the financial education of LMI people is not justified and counterproductive.

Any exceptions to the LMI focus must be justified based on need. For example, financial literacy and housing counseling to people of color of all income levels should count since people of color continue to experience widespread discrimination. Data analysis including the FDIC surveys of unbanked populations show less access to banking for people of color. Another population that should be targeted is people with disabilities, who confront significant barriers in accessing banking services.

131 FDIC National Survey of Unbanked and Underbanked Households, 2017, p. 19, https://economicinclusion.gov/downloads/2017_FDIC_Unbanked_HH_Survey_Report.pdf.

132 Rakesh Kochhar and Anthony Cilluffo, *How wealth inequality has changed in the U.S. since the Great Recession, by race, ethnicity and income*, Pew Research Center, November 2017: people of color in the lower income ranges had the lowest levels of wealth and homeownership rates among all population groups https://www.pewresearch.org/fact-tank/2017/11/01/how-wealth-inequality-has-changed-in-the-u-s-since-the-great-recession-by-race-ethnicity-and-income/.

Consider the use of pledges or covenants with tenure and use specified to ensure that affordable housing remains targeted to LMI households

Question 52. Should the Board include for CRA consideration subsidized affordable housing, unsubsidized affordable housing, and housing with explicit pledges or other mechanisms to retain affordability in the definition of affordable housing? How should unsubsidized affordable housing be defined?

CRA needs to remain targeted to developing and maintaining affordable housing for LMI households. In the case of unsubsidized housing, NCRC supports the use of covenants or pledges to retain units for LMI households. Some industry stakeholders have proposed that borrowers of multifamily loans commit to reserving units for LMI occupants.[133] In addition, non-profit development organizations routinely use long-term (up to 30 years) affordability covenants. The Board should consider a minimum period of years, perhaps consistent with LIHTC or other programs, for covenants.

The covenants should also contain descriptions of the end-use of the housing. Certain uses should be deemed ineligible. For example, college towns have a significant amount of housing with rents affordable to LMI households that are rented to students. While this is to be expected, students able to attend college are not the focus of CRA. Thus, housing should not be considered affordable if it is used for a transient population whose incomes are likely to be above the LMI incomes of the area.

The Board contemplates using proxies to identify affordable housing. These include rents affordable to LMI households in LMI tracts.[134] This is a possible approach since it is two-pronged: rents must be affordable to LMI households and the units are in LMI tracts. There is a higher probability that if the housing meets these two conditions, it will be occupied by LMI tenants. If this proxy is used, it should be accompanied, if possible, by documentation of tenants' incomes at move-in. The more thorough documentation is of LMI occupancy in the case of unsubsidized housing, the higher the impact scores should be for CD financing of this housing.

A difficulty with the Board's proxies, however, is that rental housing for LMI households should be encouraged in middle- and upper-income tracts as well so that economic integration can benefit LMI households with improved access to quality jobs and schools. Higher impact scores can be used to encourage housing that promotes integration. Perhaps the affordable housing in middle- and upper-income tracts needs to be accompanied by covenants or pledges that the tenants will be LMI.

Since the Board is proposing that outstanding CD financing, as well as new financing, can garner CRA credit, CRA examiners can assess a CD loan's structure and financing if the loan is held by the bank in its portfolio. This examination can determine if it is likely that rents will remain affordable. If the Board adopts proxies for a subset of affordable housing, examiners can double-check the durability and sustainability of the affordable housing loans held in banks' portfolios.

Question 53. What data and calculations should the Board use to determine rental affordability? How should the Board determine affordability for single-family developments by for-profit entities?

133 Comment letter in response to the CRA ANPR of National Association of Affordable Housing Lenders, p. 11, see https://naahl.org/wp-content/uploads/2018/12/NAAHL-CRA-Comment-FINAL.pdf.

134 ANPR, p. 66444.

The Board discusses using Census Bureau data and/or HUD Fair Market Rents (FMR) or LIHTC rents to determine rental affordability.[135] The Board should determine which data is timely and comprehensive. The use of HUD's FMR data is desirable in that rent levels adjust based on family size. The use of this data can be helpful in addressing the shortage of rental units for larger families.

The rent should be affordable to LMI tenants in 50% or more of the units. Affordability is measured by LMI tenants paying no more than 30% of their monthly income on rent.

Transit-oriented development and energy conservation should be viewed as responsive to needs

Question 54. Should the Board specify certain activities that could be viewed as particularly responsive to affordable housing needs? If so, which activities?

The Board proposes that affordable housing that involves transit-oriented development or energy conservation should be viewed as particularly responsive to needs.[136] NCRC agrees in both cases and such housing can score higher on impact scores.

Question 55. Should the Board change how it currently provides pro rata consideration for unsubsidized and subsidized affordable housing? Should standards be different for subsidized versus unsubsidized affordable housing?

The current treatment in CRA exams is to provide full CRA credit for mixed-income housing if 50% or more of the units are affordable for LMI households since this meets the primary benefits standard of the majority of the benefits accruing to LMI households. For developments in which fewer than 50% of the units are for LMI households, CRA exams will provide pro-rata consideration which is determined by multiplying the percentage of units for LMI households by the dollar amount of the CD financing.

The Board asks if this treatment should remain or if in the interests of integration, the housing should receive full credit if more than 20% of the units are for LMI households. In addition, the Board asks whether the treatment should be the same for subsidized or unsubsidized developments.[137]

Pro-rata consideration could be more stringent for subsidized than unsubsidized housing

A possible approach is that the standard should be more stringent for subsidized housing since the subsidies make it easier to accommodate a higher percentage of LMI households. Either the pro-rata procedure should continue or full credit can be provided only if 40% or more of the units are for LMI households. For unsubsidized developments, the percentage could be lowered to 30%.

Pro-rata procedures could be used to encourage integration

Another consideration is retaining pro-rata procedures if the mixed-income housing would not help integrate the surrounding neighborhood as identified by a census tract. If a tract's percent of LMI households was 20%, the development would not qualify for full credit if the percent of units for LMI households was under 20%. In this case, pro-rata procedures would apply since the housing would

135 ANPR, p. 66445.

136 ANPR, p. 66445.

137 ANPR, p. 66445.

not help integrate the community; the housing had a lower percentage of LMI people than the census tract. In contrast, if a tract was majority LMI, perhaps the percent of units for LMI could be 30% for full credit. In this case, the housing would help integrate the community since it had mostly non-LMI tenants. However, we would not advocate applying this treatment in gentrifying areas that are rapidly losing LMI tenants.

The number of units should also be a consideration. If a development is over 50 units, the percentage should not be lower than 40% LMI to qualify for full credit. It would be counterproductive for CRA to stimulate the production of large-scale developments with relatively few units for LMI households.

A final consideration is that the scenarios above complicate the calculations. The existing procedure entails just two treatments: one for less than a majority of units and one for a majority of the units for LMI. This is a reasonable approach and perhaps is preferable in terms of simplicity.

Question 56. How should the Board determine whether a community services activity is targeted to low- or moderate- income individuals? Should a geographic proxy be considered for all community services or should there be additional criteria? Could other proxies be used?

Geographical proxies are appropriate for determining eligibility of a community facility

A geographical proxy (such as whether the facility or activity is in an LMI census tract) is appropriate for determining whether a community facility such as a homeless shelter or a health care facility supports LMI communities. In addition, the current guidelines stipulating that 50% or more of the recipients of a federal or non-federal government program are LMI individuals is appropriate to determine if the community service benefits LMI people. NCRC supports the Board's proposal to also use Pell Grants and federal disability programs to measure whether community services benefit LMI and underserved populations.[138]

Question 57. What other options should the Board consider for revising the economic development definition to provide incentives for engaging in activity with smaller businesses and farms and/or minority-owned businesses?

Use size test only for economic development in case of the smaller businesses

Community development activities support economic development if they provide financial or technical assistance to intermediaries or nonprofit organizations that mentor or provide physical facilities for small businesses. The Board should implement its proposal that these community development activities count if they support minority-owned, women-owned and other small businesses defined by an established threshold such as revenues less than $1 million (see above discussion regarding establishing thresholds).[139] Since these are the smallest businesses, only a size test should apply and the purpose test (creating jobs for LMI people) should not apply. Most of the smallest businesses will be operated by just the owner and will not have other permanent employees so a job creation test seems like an unnecessary and possibly unproductive criterion.[140]

138 ANPR, p. 66446.

139 The CFPB estimates that about 98% of women- and minority-owned small businesses have revenues less than $1 million. Table 2, p. 10 of CFPB, *Key dimensions of the small business lending landscape*, May 2017, https://files.consumerfinance.gov/f/documents/201705_cfpb_Key-Dimensions-Small-Business-Lending-Landscape.pdf.

140 The CFPB estimates that 82% of all small businesses have no employees and 90% of women-owned and minority-owned firms have no employees, Table 1 p. 8 of CFPB, *Key dimensions of the small business lending landscape*.

Use size and purpose test for economic development in case of larger businesses

Community development services or financing that support businesses that qualify under the Small Business Administration's (SBA's) Development Company (SBDC) or Small Business Investment Company (SBIC) programs should have both a size test and a purpose test (e.g. job creation). These businesses have higher revenue sizes and are more likely to have employees. According to the SBA's regulations, a small business qualifying for the SBDC program can have annual revenues of up to $3 million, and those qualifying for SBIC can have annual revenues of up to $6.5 million. In addition, businesses under these two programs can have net worth ranging from $8.5 million for the SBDC program and $19.5 for the SBIC program.[141]

Question 58. How could the Board establish clearer standards for economic development activities to "demonstrate LMI job creation, retention, or improvement"?

Board should consult with CDFI Fund regarding documenting job creation and retention

The Board should consult with their counterpart agencies regarding how to document job creation, retention or improvement. The CDFI Fund requires CDFIs that receive grants to document job creation associated with their small business loans. In the CDFI Fund's guidance on data points, it describes how data should be submitted on jobs created and retained and what creation and retention mean.[142]

Workforce development should not have a size test connected to it and higher impact scores awarded to programs that target special needs populations

Question 59. Should the Board consider workforce development that meets the definition of "promoting economic development" without a direct connection to the "size" test?

Workforce development should not have a size test connected to it. Workforce development that prepares LMI workers for jobs in larger as well as smaller businesses is valuable, particularly in localities with jobs with larger manufacturing or non-manufacturing firms. The Board should also consider awarding higher impact scores to workforce development programs that target special needs populations such as people with disabilities.

Codifying range of activities that attract and retain new residents and businesses could end up limiting the amount of activities financing by banks

Question 60. Should the Board codify the types of activities that will be considered to help attract and retain existing and new residents and businesses? How should the Board ensure that these activities benefit LMI individuals and communities, as well as other underserved communities?

If the Board codifies certain activities in the regulation, the Board may unintentionally limit the number of activities that revitalize and stabilize communities by attracting and retaining existing new residents and businesses. A principles-based list of CRA eligible activities could further clarify these activities. For

141 Small Business Administration (SBA), Small business size regulations, 13 CFR 121.301, https://www.sba.gov/federal-contracting/contracting-guide/size-standards.

142 U.S. Department of Treasury, Community Development Financial Institutions Fund, *CDFI Transactional Level Report Data Point Guidance*, August 2019, p. 36.

example, a principles-based list could describe economic development financing that may exceed size limits discussed above but nevertheless is considered to help retain residents because it creates jobs. In conjunction with the existing interagency Q&A, a principles-based list would clarify activities that qualify as community development. The Board must take care, however, that a principles-based list not be interpreted as being exhaustive and closing other additional activities from consideration for CRA credit.

Affordable housing must be more than 50% LMI in gentrifying communities

The agencies should also further clarify when activities do not count for CRA consideration because they do not benefit LMI households in LMI communities. For example, if a community is gentrifying, as indicated by median home values or other data as described in an NCRC white paper,[143] affordable housing must be more than 50% LMI. A lower percentage in gentrifying communities would not count for CRA consideration.

Add any new underserved tract category as eligible for revitalization activities

The revitalization and stabilization definition of community development applies to three geography categories: LMI census tracts, designated disaster areas, and distressed or underserved nonmetropolitan middle-income census tracts. It is possible that the Board may propose additional categories of underserved tracts, including using the definition proposed by NCRC above. The Board should clarify that the same revitalization and stabilization definition applies to any new category of underserved tracts.

Consider a different mix of activities for designated disaster areas

Designated disaster areas may warrant a different subset of activities since these areas include tracts of all income levels and rebuilding needs are most urgent. In addition, NCRC would be supportive of activities that improve climate resiliency or disaster preparedness as suggested by the Board in designated disaster areas as well as other targeted geographical areas.[144]

Defining essential community needs seems unnecessary and restricting

Question 61. What standards should the Board consider to define "essential community needs and "essential community infrastructure," and should these standards be the same across all targeted geographies?

As the Board notes, current guidance describes, "Essential community needs as including financing the construction, expansion, improvement, maintenance, or operation of essential infrastructure or community facilities. Community facilities noted in current guidance include facilities for health services, education, public safety, public services, industrial parks, affordable housing, or communication services."[145]

143 Jason Richardson, Bruce Mitchell, PhD, Juan Franco, *Shifting Neighborhoods: Gentrification and Cultural Displacement in American Cities*, NCRC, March 2019, https://ncrc.org/gentrification/.

144 ANPR, p. 66448.

145 ANPR, p. 66448.

It is not clear why "essential community needs" should be defined since priority needs will vary across metropolitan areas and rural counties. A definition of "essential community needs" would also seem to be redundant since community development is already defined by the CRA regulations. Moreover, a definition such as this would tend to restrict bank activities to the activities listed in the definition. Infrastructure, for example, may be needed in some communities to revitalize or stabilize them but not needed as much in other communities. Instead of defining essential community needs, NCRC suggests that the Board clarifies that infrastructure and community facilities can help revitalize and stabilize communities, the extent to which it depends on performance context that helps identify priority needs.

General support for police must not count as a CD activity

The Board should delete "public safety" from the community facilities definition. Banks have not historically financed police departments' general operating costs as judged by NCRC's experience analyzing CRA exams. It is more appropriate for local jurisdictions to determine their own funding levels and approaches to policing through the democratic process. The exception to this recommendation is an allowance for a grant or other funding to programs that reduce violence in the community. These programs include conflict mediation and improving community-police relations by engaging neighborhood associations and other local stakeholders.[146] These programs can revitalize and stabilize communities by making them safer. In addition, fire prevention is an activity that can be supported by banks, particularly in jurisdictions struggling to support fire departments or forest management.

See the answer to Question 60 regarding establishing the same standards across all geographical categories.

Disaster preparedness and climate resilience should be qualifying activities across all targeted geographies

Question 62. Should the Board include disaster preparedness and climate resilience as qualifying activities in certain targeted geographies?

Disaster preparedness and climate resilience should be activities that qualify across all the targeted geographical areas as stated above. They should score higher on impact scores in areas that are most devastated by climate change and areas that have had a disproportionate amount of their vegetation and tree coverage removed.

Activities associated with a public sector plan could receive higher impact scores

Question 63. What types of activities should require association with a federal, state, local, or tribal government plan to demonstrate eligibility for the revitalization or stabilization of an area? What standards should apply for activities not requiring association with a federal, state, local, or tribal government plan?

Activities should not be required to be associated with a public sector plan, but if they are, then the activities could score higher on impact scores. There will be instances in which an underserved area has been neglected by the public sector but is still in need of private sector financing. Therefore, the bank financing of community revitalization should not hinge on a public sector plan in these areas.

146 See the approach of Cure Violence, https://cvg.org/the-big-idea/.

Motivate investments in Minority Depository Institutions (MDIs), women-owned institutions, low-income credit unions and CDFIs but develop careful procedures for considering outside AA financing

Question 64. Would providing CRA credit at the institution level for investments in MDIs, women-owned financial institutions, and low-income credit unions that are outside of assessment areas or eligible states or regions provide increased incentives to invest in these mission-oriented institutions? Would designating these investments as a factor for an "outstanding" rating provide appropriate incentives?

NCRC is supportive of allowance for investments and other financial support in MDIs, women-owned financial institutions and low-income credit unions outside of a bank's AA or outside of broader statewide or regional areas. According to the FDIC, 143 bank MDIs operate across the United States, ranging in assets from $18 million to $51 billion. Most (108) have below $1 billion in assets.[147] Hopefully, increased CRA consideration for MDIs will increase their asset levels.

According to the National Credit Union Administration (NCUA), 508 credit union MDIs contain about 3.9 million members and have more than $45 billion in assets.[148] The credit unions in the South have the plurality of assets at approximately $21 billion. This provides ample opportunity to help finance MDIs assisting underserved counties that are disproportionately located in the South, according to the NCRC study discussed above.[149]

Considered together, bank and credit union MDIs total more than 650 institutions. This provides a good foundation from which CRA could support significant new levels of reinvestment in underserved communities that these MDIs serve. However, NCRC is wary of a provision in the CRA regulation that elevates a bank's performance from Satisfactory to Outstanding based on an unspecified amount of any activity. This may encourage banks to strive for mediocre Satisfactory performance and then write a few large checks to CDFIs, MDIs, women-owned banks or low-income credit unions.

A better approach is to consider CDFI and MDI support as part of evaluations in AAs if the support occurs in AAs or in supplemental AAs if the support occurs outside of facility-based or lending/deposit-based AAs. Alternatively, bank-level or state-level CD ratios can be used to consider this financing. Figuring out how best to incorporate support for MDIs, women-owned financial institutions and CDFIs as part of the structure of CRA exams and assessment areas would be a more rigorous and objective way to support these institutions and elevate their importance. These two options are discussed in more detail below.

In addition to determining how to consider support for MDIs, CDFIs, women-owned financial institutions and low-income credit unions outside of AAs, the Board should develop an impact score approach to scoring support for these institutions. For example, support for MDIs should score higher on impact scores if more than half of their retail lending is in communities of color. The ultimate objective to financing these institutions is better reaching underserved institutions. Thus, impact scores

147 FDIC, *Minority Depository Institutions Program*, https://www.fdic.gov/regulations/resources/minority/mdi.html.

148 Minority Depository Institutions, National Credit Union Administration, https://www.ncua.gov/support-services/credit-union-resources-expansion/resources/minority-depository-institution-preservation/mdi.

149 Silver and Mitchell, *How To Consider Community Development*.

should recognize support for these institutions that do the best job in extending loans and services in underserved communities.

Option #1: Create supplemental AAs for considering CD outside of traditional AAs

Create an additional AA to consider activities in areas of states without facility-based, lending-based or deposit-based AAs

If support for MDIs and the other institutions addressed by this question occur in states where a bank has AAs, but support for MDIs or other CD activity occurs in areas not covered by the AAs, this activity could be considered in another AA called a "supplemental AA." Examiners could construct a CD-to-deposit ratio for the supplemental AA and could also assess performance against the qualitative factors, that is, impact scores.

The supplemental AA could be given the average weight for an AA in the state in question. Alternatively, the weight of the supplemental AA could be determined by indicators of need such as loans per capita or economic indicators of distress. The performance in the supplemental AA would then be considered with performance in the other AAs in determining the statewide rating on the CD test. This procedure would apply to banks doing a significant amount of activities outside of their AAs and would be more objective than allowing some arbitrary level of support of CDFIs or MDIs to elevate a rating from Satisfactory to Outstanding.

Create an additional AA to consider activities in states without facility-based, lending-based or deposit based AAs

Banks, particularly large banks, will likely support MDIs and engage in other CD activity in states in which they do not have any AAs. This activity can be assessed in a supplemental AA. These supplemental AAs could be treated like multi-state metropolitan area AAs are currently on CRA exams. The supplemental AA could receive a weight that equals the weight for an average AA in an exam.

Option #2: Create CD-to-deposit ratios that consider inside and outside AA activities

Create a bank-level CD-to-deposit ratio

Another alternative for considering CD outside of AAs is to construct a bank-level CD-to-deposit or CD-to-asset ratio (assets would be used for wholesale or limited purpose banks that have incidental levels of deposits). The ratio would have CD financing in AAs and outside of AAs in the numerator. Measures like this occasionally appear on current CRA exams, but it is unclear how these bank-level CD measures are factored into exam ratings.[150]

A bank-level CD ratio could be preferable in situations in which activity outside of AAs are not sizable enough to support a full-scale CD test that would involve quantitative and qualitative factors. A CD ratio would then be used to provide some form of CRA consideration for activities outside of AAs, such as supporting MDIs or financing projects on Native American reservations that stakeholders seek to encourage.

150 An example is a 2013 CRA exam of JP Morgan Chase that describes bank-level CD lending and investment totals as well as totals outside of AAs. Beyond the description in the opening pages of the CRA exam, the reader does not know if a bank level analysis contributed to the rating, see pages 3 and 4 of the exam that can be accessed here: https://www.occ.gov/static/cra/craeval/jul18/8.pdf.

How much weight should this ratio have going forward? If the bank level CD ratio carries too much weight, the CRA exam becomes skewed towards a single measure or ratio, introducing the multitude of problems in the OCC final CRA rule such as incentives for emphasizing large-scale CD deals. The ratio would be part of the CD test, which would have two subtests. Therefore, as one of the components of the CD test, it would appear that the ratio should be no more than 20% to 30% of the CD test score.

Should such a ratio count more if a certain percentage of CD occurred in underserved areas or in MDIs, women-owned financial institutions, CDFIs or low-income credit unions? All of these considerations call for a careful balancing act that the Board needs to consider further.

Create statewide CD-to-deposit ratios

The Board raises the concept of statewide CD-to-deposit ratios as a means to consider CD activity that occurs outside of AAs.[151] This would work in states that have AAs since the ratio could then contribute to a statewide rating for the CD test like a bank-level CD ratio would for the overall CD rating. The weight of a statewide CD ratio for the CD test should be about 20% as suggested above in the case of a bank-level ratio.

Consider a temporary procedure, collect data and then propose a final approach

In order to make a choice among various options for considering CD activity outside of AAs, the Board may want to conduct a second rulemaking after it collects CD data for one or two years from the first batch of CRA exams following this rulemaking. The level of CD activity outside of AAs in the years after a new rule would inform the choice of an approach. In the interim, the Board can decide whether to temporarily adopt an alternative presented here or issue guidelines instead of final procedures for considering CD activities outside of AAs.

MDIs and women-owned institutions should receive CRA credit for investing in other MDIs and women-owned institutions

Question 65. Should MDIs and women-owned financial institutions receive CRA credit for investing in other MDIs, women-owned financial institutions, and low-income credit unions? Should they receive CRA credit for investing in their own institutions, and if so, for which activities?

MDIs and women-owned financial institutions should receive CRA credit for investing in other MDIs, women-owned financial institutions and low-income credit unions. Currently, the FDIC's database shows eleven MDIs with assets above $5 billion or more that would have the wherewithal to invest in smaller MDIs. Two of the MDIs have assets of around $50 billion.

The Board has a sensible proposal for MDIs receiving CRA credit for investing in their own institutions. We support the following:

> Under this approach, MDIs and women-owned financial institutions could receive CRA consideration for retained earnings (less the amount of any dividends or stock repurchases)

151 ANPR, p. 66457.

that are reinvested in the bank. Eligibility could be limited to activities that demonstrate meaningful investment in the business, such as staff training, hiring new staff, opening new branches in minority neighborhoods, or expanding products and services.[152]

Question 66. What additional policies should the Board consider to provide incentives for additional investment in and partnership with MDIs?

The Board should highlight and disseminate best practices and innovative examples of support for MDIs, women-owned financial institutions, low-income credit unions and CDFIs. The Board should make publications and other tools available on its website and those of the Federal Reserve Banks.

CRA consideration should extend to CDFIs operating anywhere but Board should work with CDFI Fund in CDFI certification procedures

Question 67. Should banks receive CRA consideration for loans, investments, or services in conjunction with a CDFI operating anywhere in the country?

The Board states, "To provide greater certainty and clarity, the Board proposes to grant automatic CRA community development consideration for community development activities with Treasury Department-certified CDFIs."[153] NCRC understands that the CDFI Fund is in the process of bolstering its certification process. In addition to requiring that CDFIs clearly articulate their mission, the CDFI Fund will increase its scrutiny of fair lending aspects of CDFIs' activities, including loan pricing. In order for CDFIs to remain certified, they will be required to provide loan-level data reporting to the Fund.

In this context, NCRC is supportive of the approach the Board contemplates and asks the Board to coordinate further with the CDFI Fund when developing its CRA approach regarding CDFIs. In particular, the Board and CDFI Fund should coordinate fair lending reviews of bank CDFI's undergoing CRA exams.

Question 68. Will the approach of considering activities in "eligible states and territories" and "eligible regions" provide greater certainty and clarity regarding the consideration of activities outside of assessment areas, while maintaining an emphasis on activities within assessment areas via the community development financing metric?

The Board's approach of "eligible states and territories" and "regions" for consideration of CD activities would create more clarity but how to weigh the CD activities outside of AAs needs to be further developed as discussed in the answer to Question 64.

Regarding eligible regions, the Board should define regions in the United States, perhaps corresponding to Census Bureau regions or some other commonly used regional definitions. Again, the weight for activities in regions has to be carefully developed, as discussed above in the answer to Question 64.

152 ANPR, p. 66449.

153 ANPR, p. 66450.

Define underserved areas based on low levels of retail lending and CD finance

Question 69. Should the Board expand the geographic areas for community development activities to include designated areas of need? Should activities within designated areas of need that are also in a bank's assessment area(s) or eligible states and territories be considered particularly responsive?

As stated above, the agencies should develop measures to identify underserved counties, such as the dollar amount of CD lending and investing on a per capita basis. Counties in the lowest quartile or quintile of CD financing per capita then could be candidates for designation as underserved.

The agencies could also use demographic and economic criteria for designating underserved areas much as they do now for identifying underserved and distressed rural middle-income census tracts. A combination of retail lending, CD financing, demographic and economic criteria could be used to designate underserved counties. The counties receiving an underserved designation could be updated annually as is the case now with rural underserved and distressed tracts.[154]

Using measures of retail lending, a recent NCRC white paper demonstrated it would be feasible and desirable to establish underserved counties.[155] NCRC's paper revealed how its designation of underserved counties would indeed target CRA resources into underserved counties that have low levels of home mortgage and small business loans, higher numbers of African Americans, and higher levels of poverty and unemployment.

NCRC's paper focused on the lowest quintile as possible counties with the underserved designation. Since the paper conducted the analysis on a national level, relatively affluent states or states with higher levels of economic activity ended up with relatively few designated counties, although every state contains counties that are in need of reinvestment.

Options for identifying underserved counties include a national and statewide analysis

A few possible approaches could be adopted to identify underserved counties. The first would be to conduct the analysis presented in the white paper on a statewide level and to identify the lowest quintile of counties for each state that would receive underserved designation (Appendix 3 compares the results of a national and statewide analysis for the state of California in terms of designating underserved counties). The Board could use the statewide method to prioritize counties that are in a bank's statewide or regional area, while the national method could be used to prioritize counties that are outside of a bank's statewide or regional area.

The second method for designating underserved counties would be to consider the two lowest quintiles (or 40% of the counties) as underserved in a national analysis such as that conducted in NCRC's paper. The Board should consider a variety of alternatives that appears to be best able to identify underserved counties with underserved populations.

154 See *Distressed and Underserved Tracts*. https://www.ffiec.gov/cra/distressed.htm.

155 Silver and Mitchell, *How To Consider Community Development Financing*.

Within AAs or eligible states and regions, the Board could award higher impact scores to activities occurring in underserved areas. In addition, they could develop another quantitative measure that would be a ratio of the dollar amount of CD activity in underserved areas divided by the total amount of CD activity. A market benchmark could be created, and banks could be scored against each other on this performance measure.

In addition to eligible states and regions, a bank could receive credit for CD activity in underserved areas anywhere in the country. These activities could be part of a CD-to-deposit ratio at a bank-level, as discussed above in answers to Questions 64 and 68. Moreover, as discussed above, wholesale and limited purpose banks that have a national AA could have two parts of their CD subtests: one that considers activities in underserved areas and one that considers activities in other areas. The part of the test that considers underserved areas would have more weight.

Three other methods could be used to identify additional underserved areas

Question 70. In addition to the potential designated areas of need identified above, are there other areas that should be designated to encourage access to credit for underserved or economically distressed minority communities?

There are other methods for determining underserved counties, which would could used to designate areas of need. Three of these methods are described below. The below includes the CFPB's definition of underserved counties which is used for the implementation of a part of Regulation Z. The Appalachian Regional Commission has developed a definition of economically distressed counties. Lastly, the United States contains 151 counties that are majority people of color, which could also be designated as undeserved counties in order to address racial inequities discussed in the Board's Question 2.

NCRC chose to identify underserved areas based on low levels of retail lending and suggests that CD financing at a county level also be used to designate underserved areas. NCRC adopted this approach because CRA must target areas underserved by financial institutions. The Board can investigate these other definitions and assess the extent to which they overlap with NCRC's measures of underserved.

- Consumer Financial Protection Bureau (CFPB): The CFPB considers a county as underserved when, based on HMDA data, no more than two creditors make loans in a county. The CFPB develops lists of underserved and rural counties.[156]
- Pew Research Center has a list of majority-minority counties and describes the growth of these counties.[157]
- Appalachian Regional Commission's definition of distressed counties considers economic indicators, including unemployment rates, income, and poverty rates.[158]

156 CFPB, *Final Rule: Truth in Lending (Regulation Z); Determining "Underserved" Areas Using Home Mortgage Disclosure Act Data*, https://www.consumerfinance.gov/rules-policy/final-rules/truth-lending-regulation-z-underserved-areas-home-mortgage-disclosure-act-data/.

157 Katherine Schaeffer, *In a rising number of U.S. counties, Hispanic and black Americans are the majority,* Pew Research Center, November 2019, https://www.pewresearch.org/fact-tank/2019/11/20/in-a-rising-number-of-u-s-counties-hispanic-and-black-americans-are-the-majority/.

158 Appalachian Regional Commission, *Distressed Designation and County Economic Status Classification System,* https://www.arc.gov/distressed-designation-and-county-economic-status-classification-system/.

Create a principles-based list that clarifies complicated concepts

Question 71. Would an illustrative, but non-exhaustive, list of CRA eligible activities provide greater clarity on activities that count for CRA purposes? How should such a list be developed and published, and how frequently should it be amended?

NCRC advocates for a principles-based list, which would be shorter than the OCC's list of qualified CRA activities. We are concerned that an extensive list like the OCC's would evolve into an ad hoc listing of numerous CRA activities that would end up deluging readers rather than enlightening them. A principles-based list would explain complex issues and illustrate how the definition of community development (CD) would work in practice. The current definition of CD used by the Board and FDIC includes four components: affordable housing, economic development, community-support facilities (i.e., community services), and revitalization and stabilization activities.

The agencies must develop a non-exhaustive list of qualified activities carefully and explain the list in order to avoid banks not engaging in activities that are not included in the list. The banks could develop a tendency to refrain from activities that are not on the list for fear of not receiving credit on CRA exams. This would reinforce an undesirable outcome that some allege occurs today due to uncertainty as to what activities count.

A principles-based list would tackle the most complicated questions regarding what counts and would provide more certainty for banks and community-based organizations.

For example, the current Interagency Q&A talks about how to provide CRA points for mixed-income housing. The Q&A discusses this because the current regulatory definition of affordable housing focuses on such housing for LMI people. Mixed-income housing includes non-LMI households. So how does CRA award credit for that? A principle needs to be established: is it partial credit or pro-rata credit or does it carry more weight if it helps integrate a community as discussed above.

Highly technical matters can also be discussed by the CRA qualified list. For example, refined guidance regarding investments in municipal bonds could be discussed in a list of this nature. The Center for American Progress states that:

> Municipal bonds would have to be certified as serving low- and moderate-income communities and communities of color, meet green guidelines modeled after either the Green Bond Principles established by the International Capital Market Association or the Climate Bonds Standard established by the Climate Bonds Initiative90 and meet the Principles of Environmental Justice.[159]

Other examples of green investments could also be discussed, such as financing for organic farms that use renewable energy.[160] Similarly, examples of community development financing that support affordable and sustainable manufactured home production (as opposed to predatory financing) should be illustrated. This list would not be an ad hoc or miscellaneous discussion of examples but would establish principles for establishing what counts for CRA, particularly instances that involve complexity or careful distinctions between what is useful as opposed to destructive for communities.

159 Zonta and Willingham, *A CRA to Meet the Challenge of Climate Change.*

160 Zonta and Willingham, *A CRA to Meet the Challenge of Climate Change.*

List of eligible activities should further explain the application of impact scores

Another important use of the list of CRA eligible activities could be to explain further impact scores and which activities would receive higher impact scores. This comment letter contains recommendations for activities that would be responsive and innovative and therefore receive higher impact scores. Examples of this include affordable housing that helps integrate neighborhoods, or green investments discussed immediately above. A guide describing how banks can score well in the impact score section of the exam would help clarify how the qualitative criteria work and would encourage banks to engage in responsive and innovative activities.

Create an interactive database to supplement list of eligible activities

A principles-based list can be supplemented by an interactive database that is updated frequently and could include hundreds or thousands of examples of CD financing and services that counted on CRA exams. This could be creative and even include pictures, visuals, descriptions of client reactions (e.g., how the financial literacy class helped me), and have data on impacts such as the number of units created or jobs created. The database could be updated regularly. This would hopefully inspire and motivate the replication of these activities.

Create a regular public process for updating the list

The most transparent and fair method for updating a list of CRA qualified activities would be through regular requests for public comment on proposed revisions and additions to the list. The agencies, especially in the early years after a new CRA regulation, should request comments twice a year (eventually, the process could move to an annual one). Before each comment period, the agencies could solicit suggestions from both banks and community organizations regarding proposed activities. The agencies then would decide which activities they would propose adding to the list. They would request comment on the new additions as well as modifications to exiting activities on the list. This process provides all stakeholders with the same opportunities for influencing an important list of this nature. It could also foster collaboration where banks and community groups are suggesting proposals together.

After a public comment period and agency revisions, a revised list could be published in a manner similar to the Interagency Question and Answer (Q&A) document, which is currently published in the Federal Register. It would seem that the model of the Interagency Q&A publication would be more appropriate than an appendix to the regulation since the list would be a non-exhaustive list of examples of qualified CRA activities just like the Q&As are a non-exhaustive list of guidelines for CRA. The agencies should not discard the Interagency Q&A document since it not only discusses what counts but also involves a number of additional issues such as data reporting. Ultimately, the agencies would need to determine how the list of qualified activities relate to the Interagency Q&A document.

A pre-approval process should be available to all stakeholders, not just banks

Question 72. Should a pre-approval process for community development activities focus on specific proposed transactions, or on more general categories of eligible activities? If more specific, what information should be provided about the transactions?

A pre-approval process should be open for community-based organizations as well as banks. Community-based organizations would be able to present their proposals for activities to banks with more confidence if they had assurances that particularly new or novel approaches would be CRA eligible. Likewise, banks would have more confidence in collaborating with community organizations if an activity had received pre-approval.

A pre-approval process should be flexible and be able to accommodate questions about specific transactions as well as more general questions about CRA eligible activities. The receptiveness to specific proposals would facilitate new forms of financing or other innovations. Likewise, the willingness to answer general questions would increase efficiency for local stakeholders that are not steeped in knowledge of CRA regulations and accompanying guidance. If the agencies are overwhelmed by the volume of inquiries, particularly at the inception of a pre-approval process, they will need to develop triage mechanisms such as grouping similar issues together in a response or accommodating some questions via forums and webinars.

A transparent and rigorous strategic plan process must encourage public participation and must not contain exemptions from standard AA requirements

Question 73. In fulfilling the requirement to share CRA strategic plans with the public to ensure transparency, should banks be required to publish them on the regulatory agency's website, their own website, or both? Would it be helpful to clarify the type of consultation banks could engage in with the Board for a strategic plan?

The Board should require banks to share CRA strategic plans by publishing them on their websites as well as providing them to the Board so the Board can publish them on its website. In some cases, members of the community will not be familiar with the Board's website and would be more likely to find an announcement of a draft plan and public comment period on the bank's website. In other cases, members of the public might be more familiar with the Board's website. The Board's website is also an important archive for strategic plans that are in the public comment process as well as for plans that have been approved. Currently, members of the public only have access to CRA exams that evaluate strategic plans. While important, this is an incomplete record of the strategic plan and does not include the bank's own rationale for its goals.

A public explanation of the Board's pre-submission involvement with banks is imperative. A Board's guidance or statement must clarify that the Board is not pre-judging the plan or indicating that it would be approved. Instead, the Board should clarify that it is merely answering a bank's technical questions about the strategic plan requirements. Board officials should make themselves similarly available to the public. A record of discussions, emails, and documents shared between the Board and all other parties before strategic plan submission for public comment must be made available to the public without any unreasonable delays in the Freedom of Information Act (FOIA) process.

Finally, the public comment period on a draft strategic plan must be longer than 30 days. Several stakeholders across AAs would need to respond thoughtfully to the plan, which is a time-intensive process. Moreover, stakeholders may want to meet with the bank before submitting a comment. The comment period should be at least 60 days to accommodate thoughtful input and the best possible strategic plan informed by a variety of insights.

Question 74. How should banks demonstrate that they have had meaningful engagement with their community in developing their plan, and once the plan is completed?

The Board must require banks to certify that they posted their strategic plan to their websites and provided a copy to the Board in the required time period. The Board should also require banks to describe additional outreach steps such as media announcements in their AAs and communications with local stakeholders. The Board should require banks to summarize community comments on their draft strategic plans and how they responded to the comments.

Award higher impact scores to strategic plans that have higher levels of public participation

The Board should provide higher impact scores on a bank's strategic plan, the more formal and informal mechanisms a bank has for soliciting input on its draft plan as well as during the implementation period. This could include advisory committees composed of community group stakeholders in the bank's AAs. The mere establishment of the advisory committees, however, would not be enough. The bank should describe any significant changes to its products or practices adopted in response to advisory committee suggestions.

Clarify that community benefit agreements can be an option for strategic plan development

The ANPR discusses that some industry stakeholders wanted the Board to indicate that community benefit agreements (CBAs) are not required as strategic plans.[161] Since 2016, NCRC has negotiated 13 community benefits agreements that total $192.2 billion in mortgage lending to underserved borrowers and neighborhoods, small business lending, community development loans and investments, and CRA-related philanthropy, as well as 59 new branches in LMI census tracts and census tracts that are majority people of color. NCRC has negotiated the CBAs, usually in the context of the merger application process and not during any strategic plan process. However, NCRC believes that CBAs improve banks' CRA performance in part because they facilitate partnerships with community-based organizations. Thus, CBAs would be useful to banks as they form strategic plans. Accordingly, the Board can state that CBAs are not required as part of the strategic planning process but that they are encouraged as they have assisted banks to improve their CRA performance.

Banks should not have additional flexibilities for defining AAs as part of strategic plans

Question 75. In providing greater flexibility for banks to delineate additional assessment areas through CRA strategic plans, are there new criteria that should be required to prevent redlining?

Banks should not have additional flexibilities in defining AAs through the strategic planning process. Assuming the Board has developed fair and reasonable procedures for developing AAs, these procedures should apply to all banks, regardless of the type of CRA exam or strategic plan that applies to them. AAs are one of the most important aspects of CRA evaluations in that they ensure that a bank is serving all of the communities in which it does business. A carefully developed and fair procedure

161 ANPR, p. 66453.

for designating AAs is therefore critical to prevent redlining. Above, this comment letter describes suggestions for delineating AAs for traditional and non-traditional banks and discusses additional protections against redlining, particularly for smaller banks that could be allowed to designate areas smaller than a county for their AAs.

The application of uniform AA procedures does not appear to be the major impediment to strategic plans. These procedures are too important to carve out exceptions that could be abused in a strategic planning process purporting to promote flexibility. AAs must cover the vast majority of retail and CD activity and must rigorously evaluate performance in larger urban areas as well as smaller cities and rural areas. There must not be any exceptions to these requirements.

Question 76. Would guidelines regarding what constitutes a material change provide more clarity as to when a bank should amend their strategic plan?

Guidelines would provide more clarity. A change in one or more goals would constitute a material change. Banks would likely seek these changes when their institutional capacity or economic conditions, including recessions, change dramatically. When banks amend their plan, the amended plan should be subject to a public comment process.

Question 77. Would a template with illustrative instructions be helpful in streamlining the strategic plan approval process?

A template would be helpful. A template should remind banks that while the goals in a strategic plan are flexible, the goals should cover the banks' major product lines and should incorporate their capacities to engage in retail lending, retail product delivery, mobile product delivery and CD finance. For example, if a bank offers substantial volumes of home loans and does not include home lending in its plan, the template should inform banks that the Board would reject this proposed plan. Procedures and thresholds for determining when CRA exams assess retail products described above should be used in the strategic planning process.

Assessment area weights for CRA ratings should eliminate limited scope areas and elevate the importance of smaller metropolitan areas and rural counties

Question 78. Would eliminating limited-scope assessment area examinations and using the assessment area weighted average approach provide greater transparency and give a more complete evaluation of a bank's CRA performance?

As stated above, NCRC is strongly supportive of eliminating the distinction between full-scope and limited-scope AAs. Full-scope areas receive more comprehensive and rigorous CRA exams than limited scope AAs. As NCRC found in an assessment area white paper, rural communities are much more likely to receive limited-scope AA status than metropolitan areas. Of the top 100 banks by asset size, rural full-scope areas were small in number: 57 banks had no full-scope rural areas, and 24 banks had just one rural area that was full scope. For nine banks in the sample, at least ten more rural areas were limited scope than full scope. For eight banks, between five and ten more rural areas were limited scope than full scope.[162]

162 Josh Silver, *The Community Reinvestment Act and Geography: How Well do CRA Exams Cover the Geographical Areas Banks Serve*, NCRC, May 2017, pp. 16-17, https://ncrc.org/wp-content/uploads/2017/05/cra_geography_paper_050517.pdf.

Smaller metropolitan areas are also usually more likely to be considered limited-scope AAs than their larger counterparts since full-scope AAs are selected based on deposit or loan volumes. This means that rural counties and smaller metropolitan areas receive less emphasis on CRA exams, which ultimately means that they probably receive fewer CRA-related loans, investments and services than if they were full-scope areas.

Consider loans per capita and market share analysis for determining AA weight

The Board proposes to weigh AAs based on their loan and deposit volumes. This procedure has the potential to reproduce the emphasis on larger MSAs over smaller MSAs and rural counties, particularly for the larger banks. Above, NCRC discusses a procedure for non-traditional banks that would involve weighing AAs based on loans per capita, which appears likely to provide more weight for smaller MSAs. The Board should further investigate this metric for rural counties and whether it elevates the importance of rural counties for non-traditional lenders. The Board should also investigate whether market share analysis could also elevate the importance of smaller MSAs and rural counties. The overall objective is not to invert the usual order of importance, which now emphasizes the larger areas. Instead, it is to promote more diversity in the size of urban areas and rural counties as AAs that receive more weight.

Limitations should be placed on how high a rating should be if a threshold of AAs have lower ratings

Question 79. For a bank with multiple assessment areas in a state or multistate MSA, should the Board 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?

The Board should most definitely limit how high a rating can be for a state or multistate MSA if there is a pattern of weaker performance in multiple AAs. If a bank has several AAs in a state (ten or more) and if one-third of the AAs have weaker performance, the rating cannot be Outstanding or High Satisfactory for the state as a whole if a weighted scoring system had indicated either Outstanding or High Satisfactory. The same would apply for any other statewide rating if one-third of the AAs had a lower rating.

If a bank has fewer than ten AAs in a state or multistate MSA, the threshold would be 40%. The reason for the higher threshold is that a lower percentage would produce a number of AAs that would be unreasonably low. For example, if a bank had five AAs in a state, a threshold of 40% would indicate that two of the AAs could not have a lower rating, whereas a threshold of one third could result in one AA with a lower rating driving the overall statewide rating. However, if the one AA had a performance that was two ratings lower, the Board may want to downgrade the statewide AA. Thus, the Board should also consider the extent to which performance is weaker in a threshold number or percentage of AAs.

Question 80. Barring legitimate performance context reasons, should a "needs to improve" conclusion for an assessment area be downgraded to "substantial non-compliance" if there is no appreciable improvement at the next examination?

NCRC appreciates that the Board would lower the rating to substantial noncompliance if a bank shows no appreciable improvement from a needs-to-improve performance in an AA on the next CRA exam. CRA requires continual and affirmative responsiveness to meeting credit needs. Two needs to improve ratings in a row do not demonstrate meeting this statutory requirement.

CRA reform must not eliminate the five ratings on the current subtests and should include more distinctions for the final rating, including numerical scores

Question 81. Should large bank ratings be simplified by eliminating the distinction between "high" and "low" satisfactory ratings in favor of a single "satisfactory" rating for all banks?

This comment letter discusses above in the performance ranges, and the presumption of satisfactory section why eliminating "high" and "low" satisfactory ratings would be a serious mistake. This could endanger the whole purpose of CRA reform, which is to improve the objectivity and rigor of CRA exams so that banks would be motivated to increase their lending, investing and services in LMI and underserved communities. Four ratings categories is incompatible with a performance ranges approach; the ranges would be too wide and would fail to indicate meaningful distinctions in performance. As discussed above, about 90% of banks currently receive a Satisfactory rating when it is improbable that this large a portion of banks performs in a similar manner. Five ratings are needed in order to more realistically capture differences in performance on the subtests as well as the overall ratings.

Moreover, as discussed above, five ratings could more comfortably accommodate qualitative performance measures or impact scores. While qualitative measures are important, they will remain subjective to some extent. If an examiner awards higher impact scores than are justified, a system with five ratings would be less likely to elevate a bank an entire rating category, for example, from Satisfactory to Outstanding. In that case, the bank would be elevated from Low to High Satisfactory but would still be within an overall Satisfactory rating.

A point system can supplement the final ratings and enhance distinctions among performance

Under NCRC's proposal, the state and multistate ratings would be one of five ratings, with Outstanding =5, High Satisfactory = 4, Low Satisfactory =3, Needs-to-Improve = 2 and Substantial Noncompliance = 1. After conducting an average or weighted average for state and multistate MSAs, the Board can report the final rating as one of four ratings if it decides not to adopt the five ratings as possible overall ratings. It can also report the numerical score. By doing so, members of the public would discern more nuance in the final ratings. For example, a final score of 3.3 would be closer to Low Satisfactory than High Satisfactory on a bank-level subtest or final rating.

More gradations in ratings are important for two main reasons. Firstly, they would provide more powerful motivations for banks to increase their lending, investments and services since more banks would likely score in the Low Satisfactory range in a final rating than currently. Secondly, five ratings would increase opportunities for partnerships and collaborations among banks and community-based organizations by highlighting AAs, states and overall ratings that are Low Satisfactory and hence areas in which banks need assistance to improve.

Retail lending and CD financing subtests should count more

Question 82. Does the use of a standardized approach, such as the weighted average approach and matrices presented above, increase transparency in developing the Retail and Community Development Test assessment area conclusions? Should examiners have discretion to adjust the weighting of the Retail and Community Development subtests in deriving assessment area conclusions?

The matrices help increase standardization while providing some, but not too much, discretion to examiners. In the retail subtest matrix, the lending test is considered more important as it should be since a lack of lending is the predominant form of disinvestment or redlining. For example, the matrix indicates that a bank is to receive an Outstanding for its retail test if it has an Outstanding on its lending subtest and a Satisfactory on the services subtest. This scheme indicates that the lending test has more weight. In contrast, discretion comes into play when the bank has received a score of Satisfactory on the lending subtest and an Outstanding on the services subtest. In this case, an examiner can award either an Outstanding or Satisfactory on the retail test. Some discretion could be warranted if the bank is excelling on the services subtest; it may merit an Outstanding on the retail test.

The Board proposes a matrix for CD subtests that is similar to retail subtests. Under this matrix, the CD financing subtest assumes a higher weight in most cases. For example, an Outstanding performance on the CD financing subtest and a Satisfactory performance on the CD services would result in an Outstanding rating. This is appropriate since CD financing is easier to quantify than CD services and generally drives neighborhood revitalization efforts. At the same time, the examiner has some discretion, such as a situation where CD financing is Satisfactory and CD services subtest is Outstanding. In this case, the examiner can award either an Outstanding or Satisfactory for the CD test overall. This is appropriate because there could be instances in which a bank is excelling at CD services.

Since NCRC recommends the retention of five ratings for the subtests, NCRC asks that the Board re-calculates its matrix using five ratings. Five ratings would likely increase rigor in ratings as well as offering examiners some discretion.

Question 83. For large banks, is the proposed approach sufficiently transparent for combining and weighting the Retail Test and Community Development Test scores to derive the overall rating at the state and institution levels?

The Board is proposing to weight the retail test at 60% and the CD test at 40% given the traditional emphasis on retail activities on CRA exams.[163] NCRC agrees with this approach because it is sufficiently transparent and reasonable.

Question 84. Should the adjusted score approach be used to incorporate out-of-assessment area community development activities into state and institution ratings? What other options should the Board consider?

Statewide ratings averaging performance in AAs might be the best way to consider outside AA activities

163 ANPR, p. 66458.

The Board contemplates either averaging state and multi-state ratings into a final rating or averaging all AAs ratings into an average rating. The Board suggests that averaging all AA ratings may encourage banks to pay attention to all AAs rather than focusing on the largest AAs within each state. This is an appealing approach. However, activities in Indian country and CD activities outside of AAs could have a harder time influencing overall ratings if all AAs were averaged instead of state and multistate AAs being averaged to form an overall rating.

Above, NCRC suggests making an additional AA for each state that would consider activities in Indian country and CD activities outside of AAs. This AA could have average or higher than average weight for the typical AA at a state level. In contrast, it could be harder to figure out an appropriate weight for activities in Indian country and CD activities outside of AAs if all AAs are averaged, particularly for the largest banks with several AAs. Would they receive a 20% weight or a 33% weight – this weighing could be more subjective on a bank level than a state level. Alternatively, on a state level, the square mileage of Native American reservations, when they are a substantial share of a state's square mileage, could be a factor in deciding weights.

Supplemental AAs or CD ratios should be used to consider CD outside of AAs: impact scores alone would be insufficient

Question 85. Would the use of either the statewide community development financing metric or an impact score provide more transparency in the evaluation of activities outside of assessment areas? What options should the Board consider to consistently weight outside assessment area activities when deriving overall state or institution ratings for the Community Development Test?

NCRC is not supportive of only using impact scores to possibly adjust the CD test at a state level for out of AA activities. This application of impact scores could be too subjective. Instead, it is possible to consider a statewide CD ratio to deposits that could then be adjusted by impact scores. The Board would need to figure out how much weight to accord the statewide ratio. Too much weight would devalue AA performance, while too little weight might discourage out of AA activities that could be in great need in various instances.

An alternative approach NCRC has been advocating in this comment letter would be to create a supplemental AA that would be an AA that is a non-facility, non-lending or deposit-based AA for each state. CD activities outside of facility- or lending- or deposit-based AAs would be evaluated and rated using this supplemental AA. The weight of the supplemental AA could be the average weight of an AA in the state or determined by indicators of need such as loans per capita or economic indicators of distress.

CD and retail services should only augment Satisfactory performance in case of small banks

Question 86. For small banks, should community development and retail services activities augment only "satisfactory" performance, or should they augment performance at any level, and if at any level, should enhancement be limited to small institutions that serve primarily rural areas, or small banks with a few assessment areas or below a certain asset threshold?

CD and retail services should only augment Satisfactory performance. Any other treatment could encourage small banks to relax on their retail lending, which the Board has determined is their most important contribution towards reinvestment. This treatment can apply to all small banks, and not only those serving a rural area or below a certain asset threshold. Above, NCRC advocates for retaining the small bank threshold at current levels that distinguish small banks from ISB banks.

Fair Lending Reviews Must be Comprehensive and More Detailed

Question 87. Should the Board specify in Regulation BB that violations of the Military Lending Act, the Servicemembers Civil Relief Act, and UDAAP are considered when reviewing discriminatory or other illegal credit practices to determine CRA ratings? Are there other laws or practices that the Board should take into account in assessing evidence of discriminatory or other illegal credit practices?

Compliance with ADA must be an explicit part of fair lending test

NCRC agrees with the Board that violations of the Military Lending Act, the Servicemembers Civil Relief Act and UDAAP be added as considerations when the Board is conducting fair lending reviews and weighing the results of those reviews when determining CRA ratings. A bank is not serving credit needs in a responsible manner when it violates these laws. In addition, NCRC urges the Board to add violations of the Americans with Disabilities Act (ADA) to the list of statutes influencing fair lending reviews. Customers with disabilities need to be fully protected and have unfettered access to banking. This includes not only physical access to branches but also ease of use regarding websites and mobile banking.

Discrimination or abuses in the provision of bank accounts must also be considered

NCRC also reiterates our support above regarding the Board's explicit statement that discrimination and consumer violations in bank deposit accounts and services in addition to loans will be considered in fair lending reviews. Abuses regarding overdraft and other fees are very costly for consumers and counter to CRA's mandate to responsibly and soundly serve communities' needs.

The Board also discusses that it will be updating the criteria on fair lending reviews to consider the root cause of discrimination, the severity, the duration, and the pervasiveness. It will also consider a bank's compliance management system's ability to identify and correct fair lending issues.[164] Regarding the criteria of severity and pervasiveness, NCRC asks the Board to explicitly discuss in any new rule that these refer to how many customers have been victimized and the degree of harm experienced by the customers. The Board should indicate that fair lending review narrative on exams include detailed discussions and specifics regarding the extent of and degree of harm. The public has a right to know these facts, and discussion of these facts on exams would serve as a deterrent.

The Board should clarify that the effectiveness of management systems should not be used to compensate for serious violations. In these instances, the management systems failed to stop the abuses, so they cannot be used to excuse the violations. In addition, promises to self-correct violations are not enough. If serious violations occurred, they should be penalized through ratings downgrades.

164 ANPR, p. 66459.

Lastly, NCRC has pointed out in several comment letters over the years that before the 1995 reforms to CRA, fair lending reviews were more detailed in their discussions of which products the examiners reviewed, why those products were reviewed and the methodology (econometrics, mystery shopping or other techniques) employed to conduct anti-discrimination reviews.[165] These descriptions must be revived by this CRA reform effort. They provide the public with a level of confidence regarding the rigor of fair lending reviews that have been absent for several years. They would also provide an opportunity for public comment regarding the appropriateness of the fair lending testing and whether the agencies overlooked any products or whether the methodology may not be the most effective for the particular product or bank.

Incorporating support for MDIs, Women-Owned Institutions and Low Income Credit Unions in the subtests instead of bonus points is a more rigorous approach

Question 88. Should consideration for an outstanding rating prompted by an investment or other activity in MDIs, women-owned financial institutions, and low-income credit unions be contingent upon the bank at least falling within the "satisfactory" range of performance?

Above in the answer to Question #64, NCRC outlines an alternative approach because we are concerned that considering any specific activity or range of activities as a means to elevate a rating may result in ratings inflation. It would be difficult for the Board to develop an objective means of designating how a certain level of CD financing or services could elevate a rating. Instead, we ask the Board to consider adding an AA at a statewide level that would consider activity outside of deposit- or lending-based AAs. In addition, for activities outside of states that have AAs, the Board could likewise designate another supplemental AA that considers such activity. Weights for these additional AAs would need to be considered carefully in such a manner that they do not contribute to inflation but encourage desirable CD activities.

Another consideration is whether this type of treatment would create an unlevel playing field. The largest banks have several AAs, making it less likely that a certain amount of CD financing in or services provided to specific institutions would elevate a rating. Would the largest banks then forego offering financing to MDIs? In contrast, it might be easier for a bank with five or fewer AAs to elevate a rating under this approach. Would this dynamic create perverse incentives for the smaller banks with fewer AAs to neglect their overall performance in their AAs relative to the larger banks? In addition, are there enough MDIs, women-owned banks and low-income credit unions so that a meaningful number of banks could benefit in terms of their ratings from engaging with them?

Above, NCRC outlines a series of methods including adding performance measures that would evaluate lending, investment and services in underserved areas and communities of color. A more comprehensive approach in addition to promoting financing in MDIs and women-owned institutions is needed to combat decades of disinvestment in communities of color.

165 NCRC Comments Regarding Advance Notice Of Proposed Rulemaking (Docket ID OCC–2018-0008) Reforming The Community Reinvestment Act Regulatory Framework, November 2018. See the section entitled Stronger Fair Lending Reviews And Specific Standards For Community Development Consideration Should Better Account For Race, https://ncrc.org/ncrc-comments-regarding-advance-notice-of-proposed-rulemaking-docket-id-occ-2018-0008-reforming-the-community-reinvestment-act-regulatory-framework/.

Question 89. Would it be helpful to provide greater detail on the types and level of activities with MDIs, women owned financial institutions, and low-income credit unions necessary to elevate a "satisfactory" rating to "outstanding"?

If the Board proceeds in this direction, it is incumbent upon the Board to clearly describe a fair, transparent and rigorous methods for this consideration and how it would result in meaningful investments and not CRA ratings inflation. NCRC does not favor this approach as described in detail throughout this comment letter.

Data collection must be comprehensive and publicly accessible so that it can be used by stakeholders and examiners to identify underserved areas and improve bank performance

Question 90. Is it appropriate to rely on SOD data for all banks, a subset of large banks with multiple assessment areas based on business model or the share of deposits taking place outside of assessment areas, or only for small banks and large banks with one assessment area? What standards would be appropriate to set for business models or the appropriate share of deposits taking place outside of assessment areas, if such an approach is chosen?

The agencies and banks should move to a deposit collection system that is more accurate than the current SOD data collected by the FDIC. The agencies acknowledge that this data is not accurate when banks engage in significant deposit collection outside of areas with branches. The address of the deposit holder should be geocoded to the county and census tract level (the geocoding should be updated annually to take into account customer moves and other changes). HMDA and CRA small business data has had this type of geocoding for decades. It can be done, notwithstanding initial costs with implementation. Perhaps the Board should provide technical assistance, including an open architecture, for data collection that can assist banks in reducing costs.

During a transition period, SOD data can be used for small banks that have a retail lending test only and large banks with one AA. However, after a period of time, all banks should migrate to deposit collection based on the geographical location of the customer. Smaller banks have less costs regarding integrating various data collection systems[166] so the costs should be manageable, especially after learning from the experiences of larger banks and the agencies. More precise deposit data would allow banks to more easily comply with anti-money laundering and other laws as well. It ultimately would assist in improving banks' safety and soundness, which is a benefit that must be considered.

Question 91. Is the certainty of accurate community development financing measures using bank collected retail deposits data a worthwhile tradeoff for the burden associated with collecting and reporting this data for all large banks with two or more assessment areas?

Yes, based on NCRC's answer above, we believe it is feasible for large banks to move to a new and more accurate deposit collection system, which has overall benefits regarding compliance with a variety of bank laws as well as improving overall safety and soundness.

166 CFPB, *Small Business Advisory Review Panel for Consumer Financial Protection Bureau, Small Business Lending Data Collection Rulemaking, Outline of Proposals Under Consideration and Alternatives Considered*, p. 48 and 57, 2020. https://files.consumerfinance.gov/f/documents/cfpb_1071-sbrefa_outline-of-proposals-under-consideration_2020-09.pdf.

Question 92. Which approach for retail lending data collection would provide the best balance between data collection burden and the transparency and predictability of CRA examinations for small banks that opt in to the metrics-based approach—using a sample of bank data drawn from each assessment area to generate the retail lending metrics, or the use of information maintained by a bank in a format consistent with its own internal operating systems?

NCRC supports the option of allowing small banks to use the data formats they use for their current internal systems but to require the collection of standard retail lending data so that these banks can compare their performance against the Board provided dashboards. This will ultimately be more efficient for the bank and provides the most transparent and useful data for CRA examiners and the public.

Question 93. Are there other approaches to data collection that would benefit small banks and should be considered?

The Board should facilitate data collection by updating data collection guidance and making it easier for banks of all sizes to submit CRA-related data through secure virtual portals to the Board.

Banks should be required to collect data in a Board-prescribed format

Question 94. What are the benefits and drawbacks of relying on examiners to sample home mortgage data for non- HMDA reporters and consumer loan data for all large banks, requiring banks to collect data in their own format, or requiring banks to collect data in a common Board prescribed format?

The Board should require banks to collect data in a common Board prescribed format. This would standardize data collection and make the data consistent and able to support the development of publicly available databases. As the Board states, "The data necessary to analyze CRA performance for both home mortgage and consumer loans are loan amount at origination, loan location (state, county, census tract), and borrower income."[167]

Home mortgage data would be collected for non-HMDA reporters, and consumer loan data would be collected in cases in which consumer lending is a major product line, as discussed above. The data points – location, dollar amount, and borrower income – are relatively few. Therefore it should not be unduly burdensome to collect the data in a Board prescribed format. The public would gain in terms of holding banks accountable for CRA performance and for being able to answer additional questions with more publicly available data such as the presence of CRA deserts and hotspots.

Community development data should be reported separately for major activity categories

Question 95. Are the community development financing data points proposed for collection and reporting appropriate? Should others be considered?

Similar to HMDA and small business data, the community development lending and investment data must be submitted annually and publicly by banks on a census tract level, a county level, and

167 ANPR, p. 66462.

for the assessment areas. The community development data should also be reported separately for the major categories of community development, including affordable housing, community services, economic development, and activities that revitalize and stabilize LMI census tracts. CRA exams often contain tables breaking out community development financing into the major categories. Community development loans, investments, and grants should be reported separately since each of these types of financing respond to different needs and contain different levels of explicit or implicit subsidies.

Precedents for this data collection demonstrates that banks can readily report this data. Under the OCC public welfare rule, OCC-chartered banks report CD data by location, purpose, and dollar amount. These reports are available to the public in PDF or Excel table formats.[168]

With annual data broken out by geographical area and purpose, examiners, community groups, and banks can track bank performance on a more timely basis and correct areas of weakness considerably before CRA exams. In addition, annual submission of these data would enable the regulatory agencies to create a database that could show which counties are well served and underserved based on the dollar amount of community development financing per capita. This would help establish a list of underserved counties across the country that banks would be encouraged to serve, as discussed above. Finally, deposits and asset levels (for wholesale and limited purpose banks) should be reported annually so that the dollar amount of community development financing can be compared to bank capacity in a timely manner.

As any community development financing data reporting is implemented, the agencies must carefully oversee data collection and community development activities to ensure that the financing is not displacing or harming LMI people. For example, in high-cost areas of the country, abusive multifamily lending in LMI tracts has facilitated the displacement and eviction of LMI tenants. In response to concerns raised by NCRC members and others, banks have implemented reforms to their multifamily lending practices, and state agencies have issued guidelines to ensure responsible multifamily lending.[169] For example, New York state advises banks to conduct due diligence of landlords and property owners, assess if appraisals are accurate, and analyze loan terms and conditions to make sure that current rents would not have to increase substantially in order for property owners to repay loans.[170] CRA examiners must monitor banks and penalize them on CRA exams if they are financing abusive activities in LMI census tracts and also disallow community development data being reported that include predatory financing.

CD data should be collected at loan or investment level and at census tract, county, and MSA level

Question 96. Is collecting community development data at the loan or investment level and reporting that data at the county level or MSA level an appropriate way to gather and make information available to the public?

168 OCC, Public Welfare Investments Resource Directory, https://www.occ.gov/topics/consumers-and-communities/community-affairs/resource-directories/public-welfare-investments/index-public-welfare-investments-resource-directory.html.

169 See Blog Posts of the Association of Housing and Neighborhood Development, https://anhd.org/blog/bad-boy-carveoutand https://anhd.org/blog/new-york-state-lenders-you-are-accountable-multifamily-displacement-lending. Also see Kevin Stein, *Banks Should do More to Prevent Renters from Being Displaced*, American Banker, August 14, 2018.

170 New York State Department of Financial Services, *DFS Advises State Chartered Banks of Their Responsibilities in Lending to Landlords of Rent-Stabilized or Rent-Regulated Multifamily Residential Buildings*, September 25, 2018, https://www.dfs.ny.gov/reports_and_publications/press_releases/pr1809251.

Loan or investment level is the appropriate way to report this data. It is the best method to help stakeholders understand the level of financing for affordable housing, economic development, community facilities and revitalization activities in their locality. It should be collected at the county, MSA and census tract level.

Ideally, the CD data would be reported at the census tract level so stakeholders can use the data to determine which tracts are underserved and devise means to encourage more CD financing in the underserved tracts. This data on a census tract level is also valuable in terms of addressing racial inequities by identifying a dearth of CD financing in communities of color.

At the very least, the data must be reported at a county level so that stakeholders can identify counties that are CRA deserts and encourage more CD financing in those counties. MSA level reporting only would be at too high a level of aggregation since MSAs often contain several counties that can differ significantly in terms of access to CD financing. MSA level reporting would therefore thwart the ability of the public to identify county-level deserts within MSAs. In addition, MSA level reporting only would not include reporting for rural counties, which would impede efforts to identify and direct CD financing to rural counties with pressing needs.

The benefits of additional data collection outweighs the costs for banks of all sizes

Question 97. Is the burden associated with data collection and reporting justified to gain consistency in evaluations and provide greater certainty for banks in how their community development financing activity will be evaluated?

NCRC does not believe this reporting would be burdensome considering that OCC-chartered banks already report this data for public welfare investments on a loan or investment level. Moreover, other large banks currently have to report aggregate dollars of CD lending, meaning it is not too difficult to break out the reporting on a loan or investment level.

NCRC has heard some stakeholders articulate a privacy argument against location-specific or loan or investment level reporting. NCRC does not agree that privacy issues are at stake. CD financing is typically for larger projects in contrast to loans for individual homeowners or small businesses. The CD loans or investments are also typically for non-profit developers or corporate entities for which privacy considerations are not as salient as they are for individuals. Moreover, banks and their partners usually proudly display large signs and other advertisements in their neighborhood CD projects. Public knowledge of these projects does not infringe on the privacy of the private sector partners but instead enhances their reputations.

A Board-provided standardized template is an effective method for collecting consistent information for the retail services subtest

Question 98. Would collecting information in a Board-provided standardized template under the Retail Services Subtest be an effective way of gathering consistent information, or is there a better alternative?

A Board-provided standardized template is an effective method for collecting consistent information for the retail services subtest. For the branch distribution analysis, the Board is considering collecting:[171]

171 ANPR, p. 66462.

- The number and location of branches
- ATMs
- Hours of operation by branch location
- Record of opening and closing of branch offices and ATMs

This list contains the necessary data for conducting the retail services subtest. The Board should create a public use database by combining the information that all banks subject to the retail services subtest must submit. In addition, the Board should develop CRA exam templates in which data in tables on CRA exams can be downloaded into Excel or other software.

For non-branch delivery channels, the Board is considering developing a template that would include information regarding:[172]

- customer usage
- number of transactions (rate of adoption)
- cost of using non-branch delivery channels
- data to determine whether delivery channels are reaching LMI areas and individuals

The answer above to Question 29 provides suggestions for exam tables that capture the number and percent of accounts for LMI customers. The data should be presented separately for accounts originating via branches and via mobile/online methods.

For branch related services, the Board is considering collecting a standardized list of services offered that are responsive to LMI needs, including:[173]

- bilingual/translation services
- accommodation for people with disabilities
- free or low-cost government, payroll, or other check cashing services
- reasonably priced international remittance services

The Board should take steps to create a rigorous and comprehensive database. For example, in addition to a data field, which is a categorical variable indicating whether a branch or branches in an AA has bilingual services, the Board should ask for the number of employees that are able to provide bilingual services. Likewise, for physical accommodations, the Board should ask the number of ATMs with accessibility features and the number of branches with ADA adaptions to the entrance and exit. Similarly, the number of low-cost services, including the number and percent of LMI customers using remittances and lower cost government, payroll or other services, should be collected.

A Board template would be valuable for collecting information on community development services

Question 99. Possible data points for community development services may include the number and hours of community development services, the community development purpose, and the counties impacted by the activity. Are there other data points that should be included? Would a Board-provided template improve the consistency of the data collection or are there other options for data collection that should be considered?

172 ANPR, p. 66462.

173 ANPR, p. 66462.

The Board has appropriately identified the data points for community development services that build upon how current exams report this information. A Board template would be valuable for collecting this information because CRA exams are currently inconsistent regarding which of these data points are included on exam tables. The community development purpose is critical because it would help an examiner use impact scores to evaluate the quality and responsiveness of the services. For example, in an AA with high levels of foreclosures, foreclosure mediation and prevention would score highly on the impact scores. Likewise, in an AA with high unemployment rates, CD services related to economic development would be valuable, and banks would score higher, the more of these services they offer.

In addition to hours, the number of employees on an AA level is needed so standardized measures of CD hours per employee can be developed and used in peer comparisons. The Board should also develop templates for impact data as much as possible. For example, it could create data fields capturing the number of clients of financial education or homebuyer counseling classes and data fields that measure impact, such as the median increase in credit scores. The Board should encourage banks to collaborate with nonprofit and public sector partners in collecting impact data.

As much as possible, this data should contribute to public use databases. In addition, tables on CRA exams should be amenable to download to Excel and other software products.

Conclusion

NCRC appreciates that the Board has embarked on a comprehensive approach to revising the CRA regulations. We urge the OCC and FDIC to join the Board in establishing a uniformly rigorous interagency CRA rule.

While the Board's ANPR is a solid foundation for reform, it also needs to be improved significantly in certain areas. In particular, a final CRA rule must not end up reproducing the skewed distribution of final ratings in which about 98% of banks pass, and 90% of banks receive the same rating, Satisfactory. The current ratings system does not provide sufficient incentives for banks to continually increase reinvestment activity in underserved areas because distinctions in performance are blurred instead of revealed in sharp focus. The Board would compound this flaw by proposing to use four ratings for the subtests as well as for the final ratings. Instead, the five ratings must be preserved for the subtests, and the final rating must be complemented by a point scale in order to reveal more distinctions in performance.

The Board is also tentative on the issue of CRA and race, although it recognizes the vital importance of addressing societal inequities. NCRC offers a range of suggestions above for more explicit consideration of race on CRA exams. While we agree with the proposal to increase support for MDIs, this alone will not narrow racial inequities sufficiently absent a more comprehensive approach to considering communities of color and other underserved communities on CRA exams.

Finally, CRA reform will not realize its full potential unless assessment area reform covers the great majority of lending and deposit-taking for all types of banks and data enhancements for community development activities and deposits are sufficiently detailed.

NCRC appreciates this opportunity to comment on this critical opportunity to update the CRA regulations. If you have any questions, please contact us or Josh Silver, Senior Advisor, on 202-628-8866.

Sincerely,

Jesse Van Tol
CEO, NCRC

John Taylor
President and Founder, NCRC

The following organizations support the views in this letter:

NAACP

National Association of Real Estate Brokers

National CAPACD

National NeighborWorks Association

National Urban League

Appendix 1 – Banking Deserts

This study illustrates a method for identifying banking deserts discussed in the answer to Question 25 above.

Urban Branch Need and Accessibility Measurement

Jad Edlebi – GIS Specialist, NCRC Research

Purpose

The purpose of this analysis is to locate areas of reduced branch access in urban environments based on a select number of socioeconomic and geographic variables. These variables include distance from currently open bank branches, the classification of a Census tract as low-to-moderate income (LMI), population density in an LMI tract, population density in all other tracts, and density of open businesses by Census tract.

Methodology and Analysis

Need and accessibility are complimentary as both hold socioeconomic and geospatial variables. These variables, previously mentioned in the Purpose section, include the:

1. distance away from currently open bank branches (BR_d),
2. the classification of a Census tract as LMI (LMI_c),
3. population density in an LMI tract (LMI_{popden}),
4. population density in all other tracts ($OTHER_{popden}$), and
5. density of open businesses within each Census tract (BUS_{den}).

VARIABLE	SCALE	YEAR	DATA TYPE	UNIT
BRd	Branch Level	2019	Discrete	Miles
LMIc	Tract Level	2010	Discrete	Binary
LMIpopden	Block Group Level	2017	Continuous	Population per sq. mile
OTHERpopden	Block Group Level	2017	Continuous	Population per sq. mile
BUSden	Tract Level	2017	Continuous	Open Businesses per sq. mile

Variables used in the analysis along with their respective properties.

The measure of need includes all of the density variables plus the LMI tract classification variable while accessibility includes distances from open bank branches. For more information on each variable's respective properties, please refer to Table 1.

The scale of this analysis is at the Census block group level. To clarify why the scale is not at the Census tract level, since we sampled a small area of the US and narrowed it down to Washington, DC and immediately-surrounding counties, we intended to increase the accuracy and precision of the results so population density would be calculated at the block group level rather than at the tract level. For a national scope, we would aggregate back to the tract level. The area of interest (AOI) encompassed the District of Columbia (DC), as well as neighboring Arlington, Fairfax, Falls Church, Alexandria, Montgomery, and Prince George's (PG) counties, and Fairfax City. Each of the counties was selected due to their close proximity to DC. This analysis was carried out entirely on ArcMap 10.7.1 with the Network Analyst and Spatial Analyst extensions enabled.

Using population derived from the Federal Financial Institutions Examination Council (FFIEC) Census 2017 data, density was calculated by dividing population by land area in each Census block group for both LMI and all other block groups. Designations of Census tracts as LMI were derived from the 2010 Decennial Census. The density of open businesses per tract was calculated using total business counts and vacant business counts done by the United States Postal Service (USPS) and aggregated by the US Department of Housing and Urban Development (HUD) to the tract level. Each of the three density calculations as well as the LMI designated binary classification are the variables used to determine need. Each of the four variables was rasterized at a 250m-resolution with each of their values having a direct relationship with the values in the raster dataset.

The Network Analyst extension was used to calculate service areas around branches to indicate distance in miles away from their locations. A total of 2,463 bank branches were included in the analysis in and surrounding the AOI. By utilizing a network dataset comprised of every street in the US, each service area encompasses all accessible streets within a specified impedance. This factors in towards the branch distance index, which is the variable used to determine accessibility. The resulting polygon service areas were then rasterized at a 250m-resolution with the value of the dataset being based on branch distance. The farther the distance away from a currently open bank branch, the higher the value in the raster dataset.

After each of the five variables went through the rasterization process, the Spatial Analyst extension was used to overlay each of the raster datasets to calculate a final index that incorporates both need and accessibility. Using the Fuzzy Membership tool, the three population- and business density-based raster datasets were reclassified and transformed to show raster values at a 0-to-1 scale while accepting relative values versus absolute values using the 'MSLarge' membership type. The LMI designated binary classification and the branch distance raster datasets were both excluded from this membership type since the LMI classification set was a pass-fail variable and the branch distance set was based on stacked ranges that are discrete. They were instead assigned a 'Linear' or direct membership type. The formula for the 'MSLarge' model is as follows:

$$F_{MSLarge} = 1 - \frac{bs}{(x-am+bs)}$$

where: m = the mean, s = the standard deviation,
a = the multiplier of the mean, and b = the multiplier of the standard deviation

Using the Raster Calculator tool, all five fuzzy raster datasets were added together into a final raster dataset that includes index values that incorporate need and accessibility. The equation used to calculate the final raster dataset is as follows:

$$A = BR_d + LMI_c + LMI_{popden} + OTHER_{popden} + BUS_{den}$$

Results and Discussion

The need and accessibility index is shown in Maps 1-3 below with LMI tracts and currently open bank branches overlaid in separate maps. Potentially suitable locations for new bank branches were spatially indicated by where the index shows higher values, or warmer colors. In DC, areas of higher values include much of Southeast, Anacostia, Trinidad, Brookland, Fort Totten, 16th Street Heights, and Brightwood. In Maryland, areas of higher values include the inner ring of suburbs in PG County as well as parts of the I-270 corridor heading north to Gaithersburg and Germantown. In Virginia, areas with higher values include Bailey's Crossroads and the outer parts of Alexandria.

The index shows the highest concentration of need for and less accessibility to bank branches in PG County, where historically underserved communities reside. Areas where LMI communities reside are highly correlated with where need is higher, and accessibility is low. Much of these LMI communities exist in portions of Southeast DC and the inner ring of PG County. Bank branches are less concentrated in PG County and parts of Montgomery County. In DC, Northeast and Southeast show much less of a concentration of bank branches as opposed to Northwest DC, where mostly middle- and upper-income (MUI) communities are located.

Conclusion

Overall, much of the higher concentration of need was found in the inner ring of PG County and Southeast DC. These areas are mostly LMI communities and have less access to currently open bank branches. We recommend investing in areas where there is a higher concentration of need for and lower access to bank branches as access to wealth is widely more important for those who are disadvantaged in such cases.

Best Practices

As the next part of the analysis will be done on a national scale, we recommend using 250m-resolution raster datasets at the very minimum to boost performance for ad-hoc requests and data emergencies. We also recommend conducting this analysis at the tract-level to also prevent slow-downs in the procedure.

References

Federal Financial Institutions Examination Council, August 26, 2019. FFIEC Census Windows Application. Retrieved from https://www.ffiec.gov/censusapp.htm.

FuzzyMSLarge — ArcGIS Desktop, May 29, 2019. Retrieved from http://desktop.arcgis.com/en/arcmap/latest/analyze/arcpy-spatial-analyst/fuzzymslarge-class.htm.

How Fuzzy Membership works — ArcGIS for Desktop, January 26, 2016. Retrieved from http://desktop.arcgis.com/en/arcmap/10.3/tools/spatial-analyst-toolbox/how-fuzzy-membership-works.htm.

Liu, T. (n.d.). Combining GIS and the Huff Model to Analyze Suitable Locations for a New Asian Supermarket in the Minneapolis and St. Paul, Minnesota USA. Retrieved from Department of Resource Analysis, Saint Mary's University of Minnesota website: http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.451.830&rep=rep1&type=pdf.

Service area analysis — ArcGIS Desktop, June 11, 2019. Retrieved from https://desktop.arcgis.com/en/arcmap/latest/extensions/network-analyst/service-area.htm.

U.S. Department of Housing and Urban Development. (2017). HUD USPS ZIP Code Crosswalk Files | HUD USER. Retrieved from https://www.huduser.gov/portal/datasets/usps_crosswalk.html.

Map 1: Need and Accessibility Index in the Immediate DMV Area

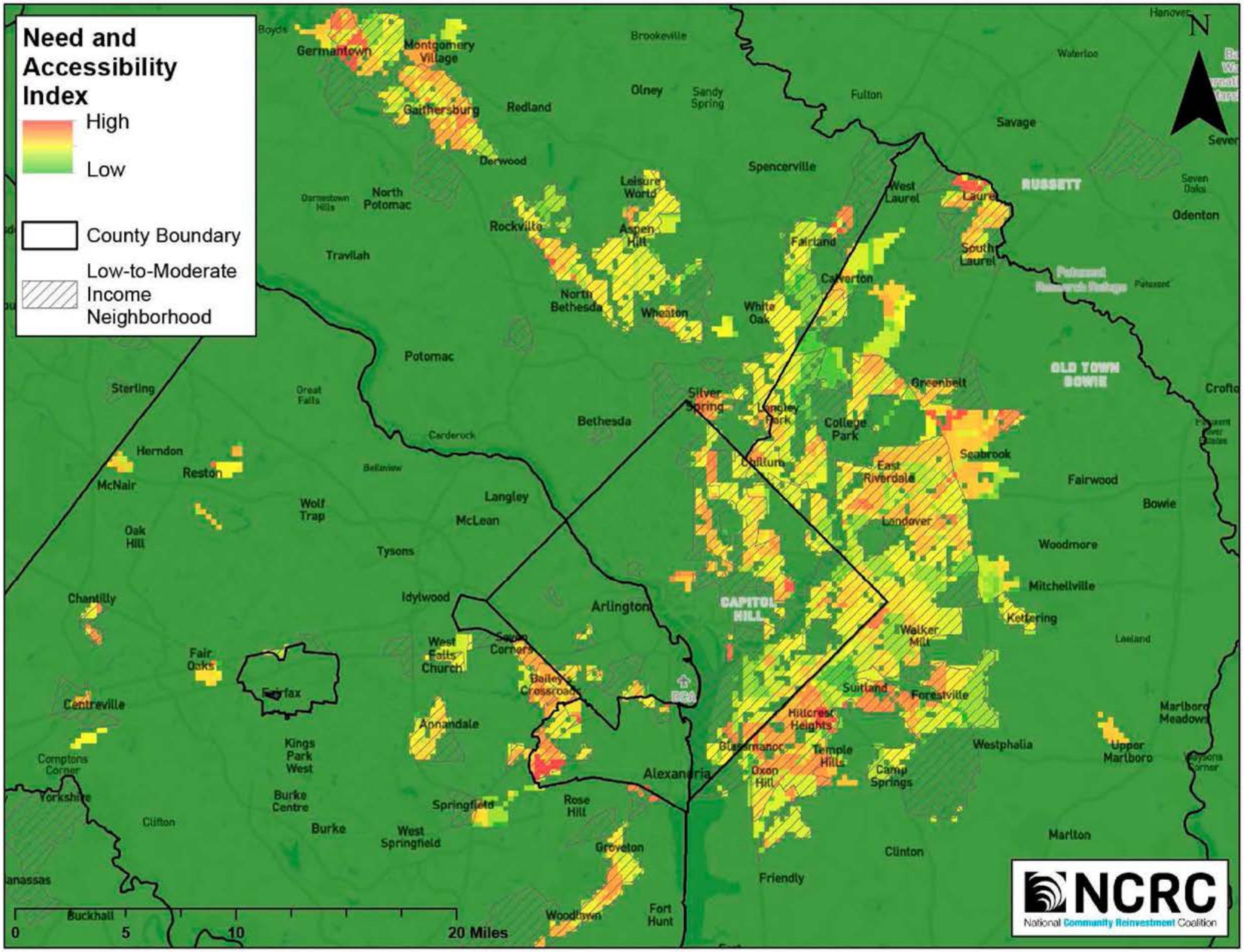


Figure 1

Map 2: Currently Open Bank Branch Locations Overlaid Above the Need and Accessibility Index

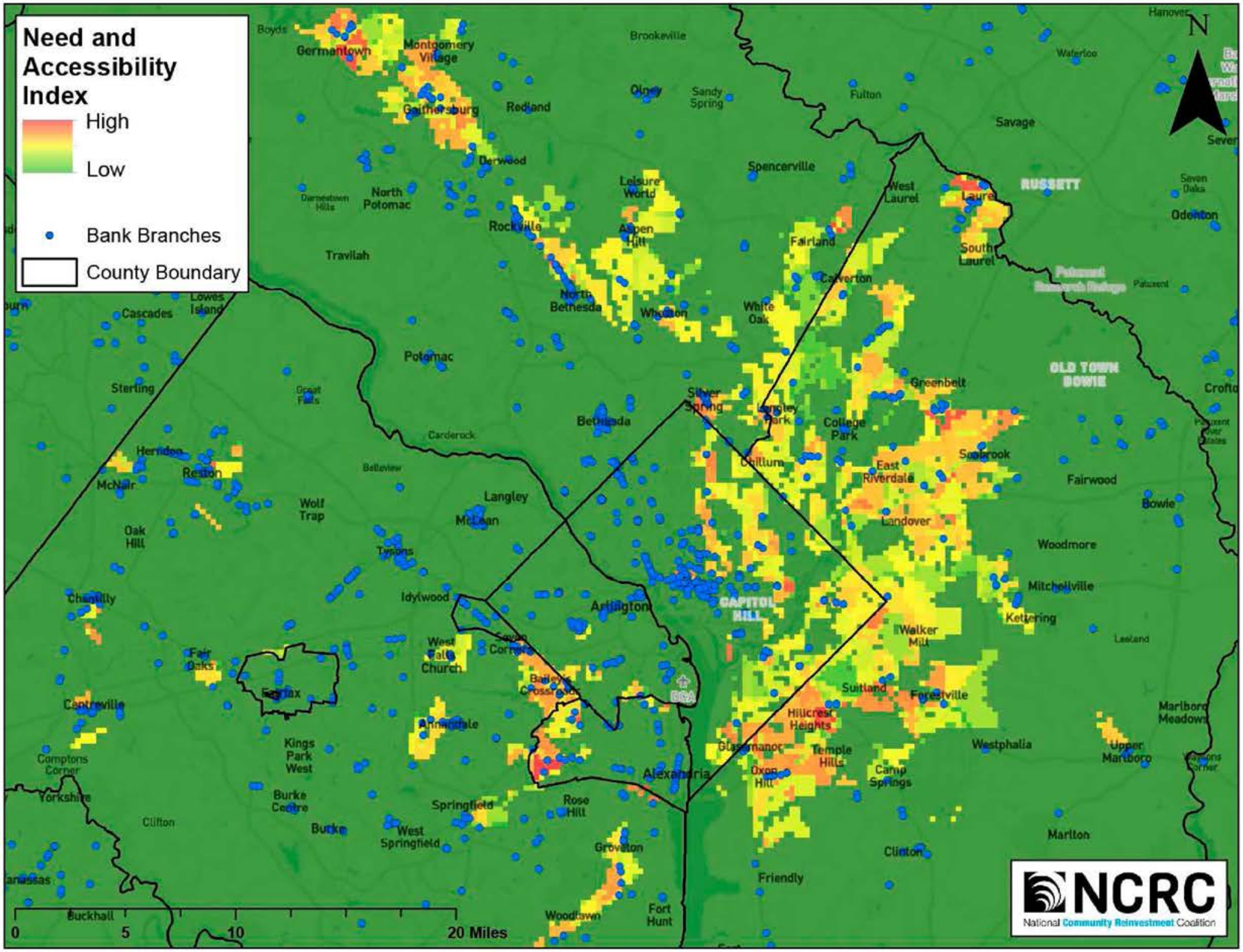


Figure 2

Map 3: LMI Communities Overlaid Above the Need and Accessibility Index

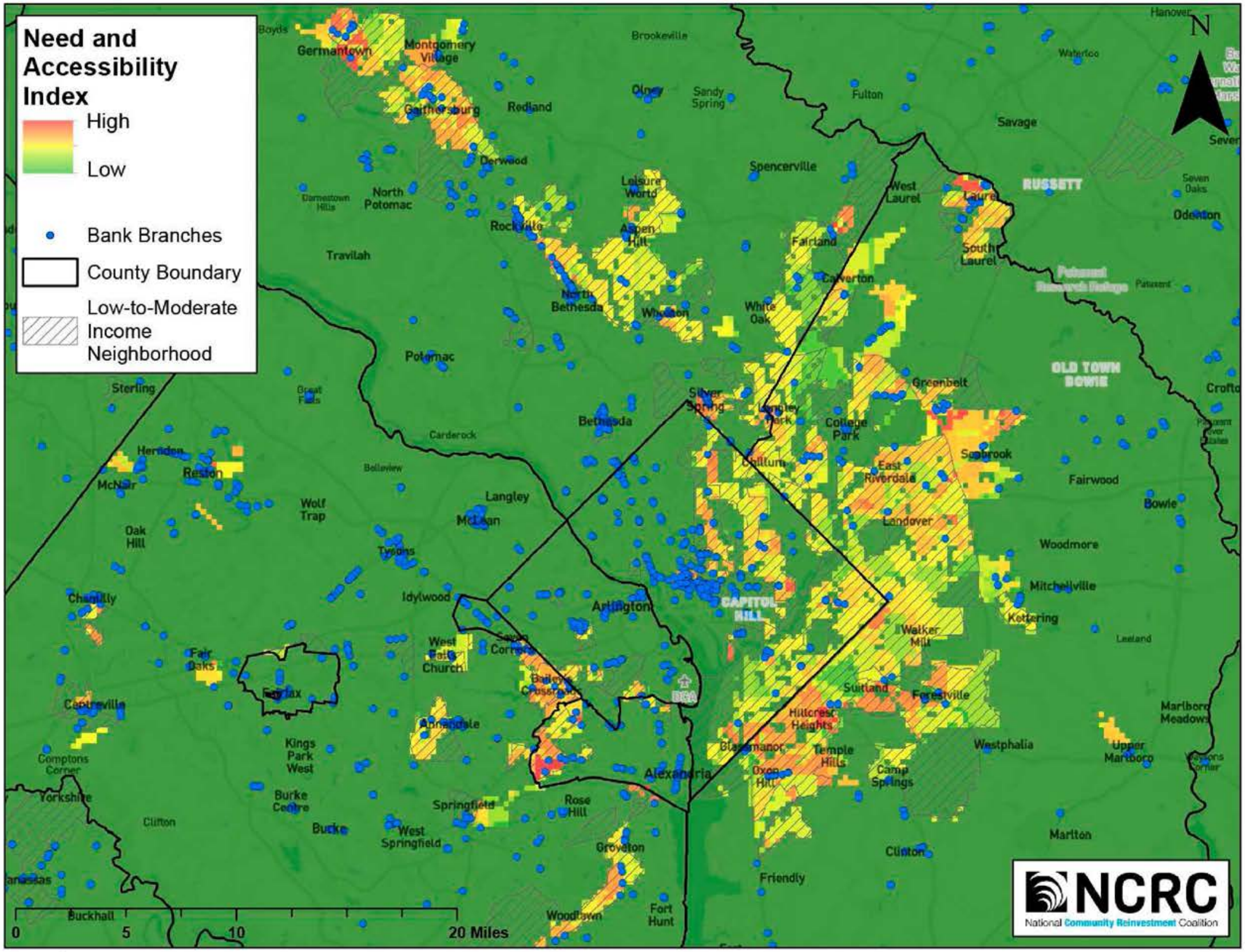


Figure 3

Appendix 2 – Underserved Counties and Tracts in Indian Reservations

Underserved counties and Native American reservations

These tables consider counties that are 50% or more tribal areas and those that are 100% or more tribal areas. Separate tables include and exclude counties in Oklahoma because of the distinct nature of these counties as areas with higher incomes than other counties with Native American reservations. The tables sort the counties in quintiles based on retail lending levels. Quintile 1 is the lowest quintile and these counties are considered underserved.

COUNTIES 50% OR OVER TRIBAL AREA		
QUINTILES	COUNTIES	PCT
1	21	22.58%
2	19	20.43%
3	10	10.75%
4	20	21.51%
5	23	24.73%
Grand Total	93	100.00%

COUNTIES 100% TRIBAL AREA		
QUINTILES	COUNTIES	PCT
1	16	30.77%
2	10	19.23%
3	5	9.62%
4	10	19.23%
5	11	21.15%
Grand Total	52	100.00%

COUNTIES 50% OR OVER TRIBAL AREA (OK EXCLUDED)		
QUINTILES	COUNTIES	PCT
1	10	31.25%
2	5	15.63%
3	2	6.25%
4	6	18.75%
5	9	28.13%
Grand Total	32	100.00%

COUNTIES 100% TRIBAL AREA (OK EXCLUDED)		
QUINTILES	COUNTIES	PCT
1	7	58.33%
2	0	0.00%
3	1	8.33%
4	2	16.67%
5	2	16.67%
Grand Total	12	100.00%

Appendix 2, Table 1

Underserved tracts and Native American reservations

Below, NCRC has divided census tracts in Indian reservations into quintiles based on home and small business lending levels per 100 homes or small businesses, respectively. The tracts in Indian reservations were compared against all tracts in the country to generate the quintiles. Quintile 1 is the lowest quintile in terms of retail lending levels and Quintile 5 is the highest quintile. Below the charts are maps for a few states showing tracts by quintiles.

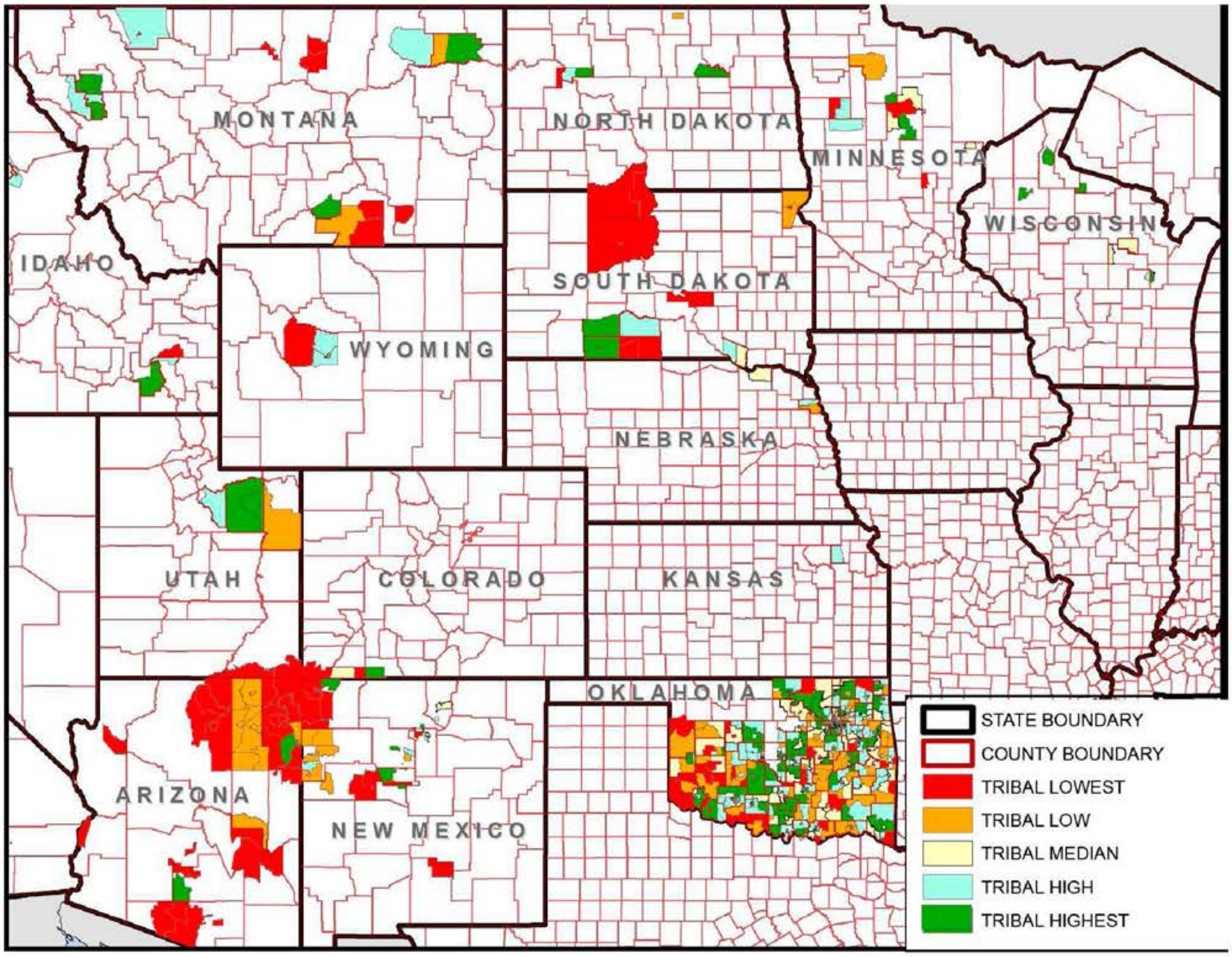
A couple of observations are noteworthy. First, the high number of middle- and upper-income (MUI) tracts in Quintile 1: 212 MUI tracts compared to 173 LMI tracts. MUI tracts in these areas probably have low absolute income levels since many of these areas are likely to be non-metropolitan with lower incomes (CRA defines MUI in reference to median level incomes). In addition, average poverty rates are much higher in Quintile 1 than Quintile 5. Second, a large disparity occurs in loans per 100 homes or loans per 100 businesses across the quintiles. For example, Quintile 1 has an average of 2.17 loans per 100 homes compared to 9.85 for Quintile 5.

Tracts in Tribal Areas - Quintiles and Social Economic Status

LENDING LEVEL	AVG POP 2017	AVG HOME VALUE 2017	AVG INCOME 2017	AVG COLLEGE DEGREE %	AVG POVERTY %	AVG UNEMPLOYMENT %	AVG MINORITY %	AVG BLACK %	AVG HISPANIC %	AVG ASIAN %	AVG NATIVE AMERICAN %
QUINTILE 1	2,951	$86,776	$36,234	16.1%	28.9%	12.4%	60.0%	12.9%	11.3%	1.1%	30.4%
QUINTILE 2	3,381	$107,037	$42,601	17.7%	22.1%	9.1%	44.7%	10.1%	8.2%	1.2%	19.7%
QUINTILE 3	3,853	$131,859	$49,386	20.6%	17.4%	7.2%	36.4%	8.7%	8.5%	1.8%	10.7%
QUINTILE 4	4,522	$146,393	$53,601	22.2%	15.3%	6.6%	34.2%	7.2%	7.4%	1.5%	12.3%
QUINTILE 5	4,962	$170,579	$57,788	22.9%	15.1%	6.8%	32.7%	5.2%	6.5%	1.6%	14.1%
TOT AVG	3,916	$127,746	$47,672	19.8%	20.0%	8.5%	42.1%	8.9%	8.4%	1.4%	17.8%

LENDING LEVEL	MUI TRACTS #	MUI %	LMI TRACTS #	LMI %	MORTGAGES/100 HOMES	BUSINESS LOANS/100 BUSINESSES
QUINTILE 1	212	17.7%	173	14.4%	2.17	33.46
QUINTILE 2	187	15.6%	98	8.2%	4.09	64.86
QUINTILE 3	171	14.3%	49	4.1%	6.09	84.06
QUINTILE 4	143	11.9%	38	3.2%	7.84	131.19
QUINTILE 5	90	7.5%	37	3.1%	9.85	459.19
OVERALL AVG	803	67.0%	395	33.0%	4.40	93.21

Appendix 2, Table 2



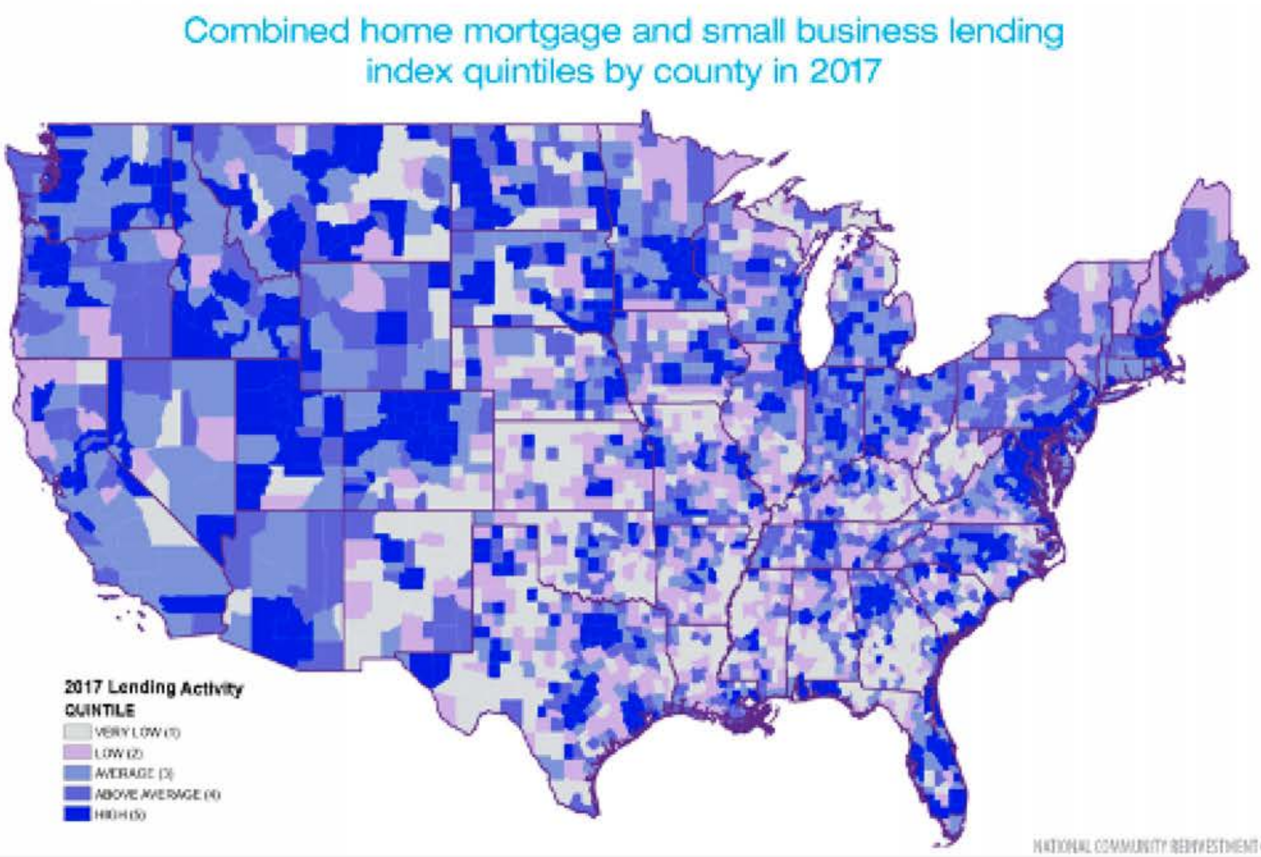
Appendix 2, Map 1

Overlay of U.S. Census American Indian Tribal Areas boundary file with census tracts. The lending index score divided by quantiles is used with the areas of lowest lending (quantile 1) in red and highest lending (quantile 5) in green.

Appendix 3 – Underserved Counties

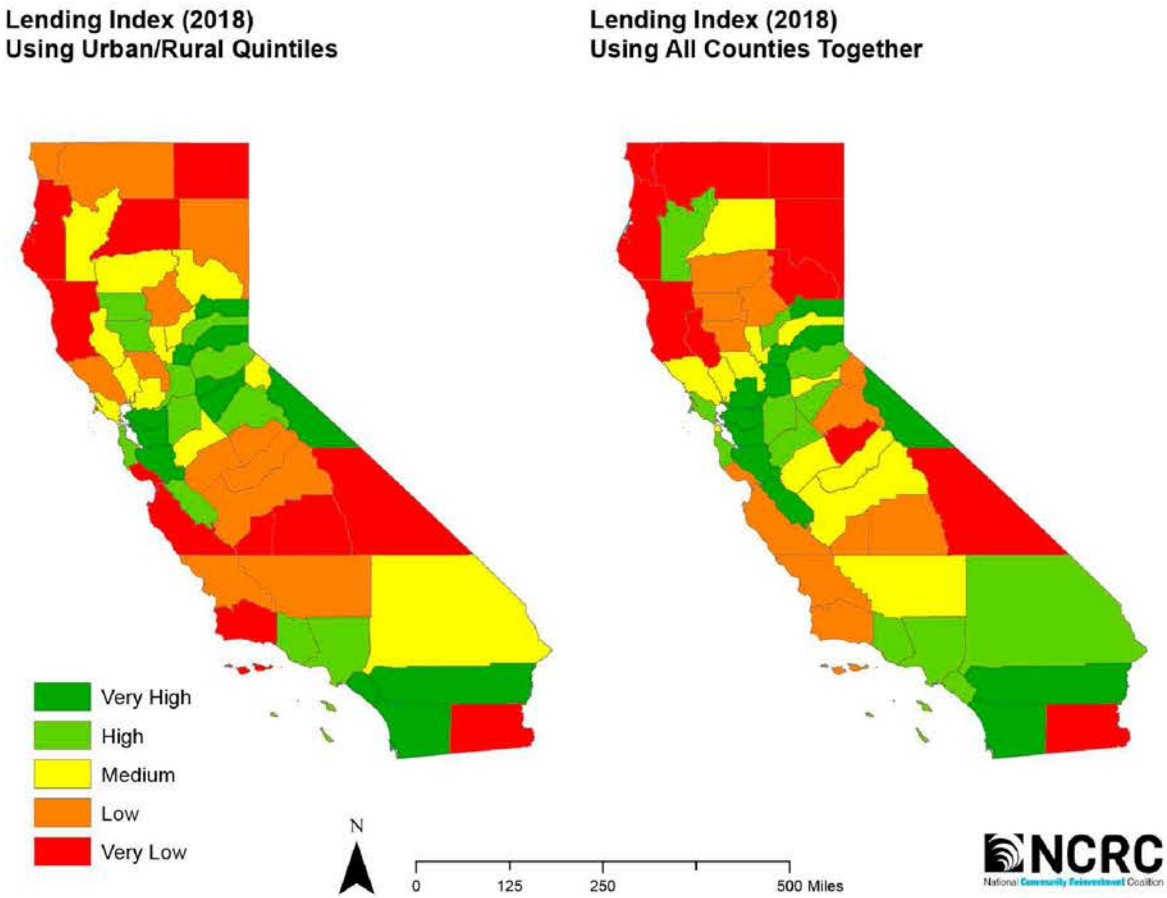
As discussed above in the answer to Question 69, NCRC asks the Board to consider identifying underserved counties using either a nationwide or a statewide analysis to divide counties into quintiles based on retail lending levels. For relatively affluent states, a statewide analysis will identify about 20% of the counties as underserved, whereas a national analysis will generate fewer underserved counties. The Board could either adopt one method or use the statewide method to prioritize counties that are in a bank's statewide or regional area while the national method could be used to prioritize counties that outside of a bank's statewide or regional area.

Immediately below is a map reproduced from NCRC's white paper that shows underserved counties using a national analysis to divide counties into quintiles. A concentration of underserved counties is located in the South and in Appalachia. The map also shows two counties in California that are in the lowest quintile. Immediately below this map are another two maps that show California counties by quintile when comparing retail lending levels in the counties in the state. There are two approaches: 1) comparing all counties in the state against each other and 2) comparing urban and rural counties against each other separately. Both approaches produce 11 counties in the lowest quintile that are classified as underserved. Summary tables are beneath the California maps showing the lending levels and demographic and economic characteristics of the counties.



Appendix 3, Map 1

Underserved Counties in California



Appendix 3, Map 2

California Counties Sorted by Levels of Lending, Using Different State and National Comparisons

QUINTILE	NATIONAL	CA ONLY	CA URBAN/RURAL
1	2	11	11
2	7	13	11
3	12	11	13
4	26	12	12
5	11	11	11
Grand Total	58	58	58

Appendix 3, Table 1

Counties sorted into quintiles comparing California counties against all counties in the country

NATIONAL

LENDING LEVEL	AVG POP 2017	AVG HOME VALUE 2017	AVG INCOME 2017	AVG COLLEGE DEGREE %	AVG POVERTY %	AVG UNEMPLOYMENT %	AVG MINORITY %	AVG BLACK %	AVG HISPANIC %	AVG ASIAN %	AVG NATIVE AMERICAN %
QUINTILE 1	14,116	$193,100	$47,249	20.95	15.50	6.25	29.23	0.83	18.00	1.27	7.38
QUINTILE 2	56,985	$236,671	$47,218	21.94	18.29	6.11	26.14	1.31	15.04	1.72	3.61
QUINTILE 3	188,460	$342,508	$59,929	24.35	14.65	6.82	42.20	2.03	33.29	2.94	0.97
QUINTILE 4	1,088,543	$428,946	$71,478	28.70	13.98	6.02	52.63	2.98	35.90	9.92	0.53
QUINTILE 5	569,381	$325,927	$65,596	25.57	12.40	5.43	45.37	4.63	27.91	7.77	0.96
OVERALL AVG	642,310	$360,186	$64,209	26.11	14.39	6.08	45.01	2.83	30.57	6.79	1.33

LENDING LEVEL	MORTGAGES/100 HOMES	BUSINESS LOANS/100 BUSINESSES
QUINTILE 1	2.76	34.79
QUINTILE 2	3.94	39.61
QUINTILE 3	5.71	44.04
QUINTILE 4	7.33	62.19
QUINTILE 5	8.24	143.42
OVERALL AVG	6.60	70.17

Appendix 3, Table 2

Counties sorted into quintiles comparing all California counties against each other

CALIFORNIA - ALL												
LENDING LEVEL	AVG POP 2017	AVG HOME VALUE 2017	AVG INCOME 2017	AVG COLLEGE DEGREE %	AVG POVERTY %	AVG UNEMPLOYMENT %	AVG MINORITY %	AVG BLACK %	AVG HISPANIC %	AVG ASIAN %	AVG NATIVE AMERICAN %
QUINTILE 1	208,995	$307,936	$54,975	23.24	16.89	7.56	48.14	1.72	38.00	3.03	2.50
QUINTILE 2	267,610	$276,400	$54,983	22.92	18.09	6.48	43.47	2.87	29.66	4.34	3.09
QUINTILE 3	334,610	$333,273	$61,792	23.63	14.37	6.10	41.12	3.44	26.33	6.05	1.26
QUINTILE 4	1,225,808	$449,942	$73,307	29.48	11.45	5.67	49.89	3.21	32.18	10.45	0.58
QUINTILE 5	1,189,606	$440,455	$76,840	33.20	10.64	4.35	43.46	3.48	24.09	11.64	0.62
OVERALL AVG	642,310	$360,186	$64,209	26.42	14.37	6.04	45.24	2.95	30.07	7.06	1.64

LENDING LEVEL	MORTGAGES/100 HOMES	BUSINESS LOANS/100 BUSINESSES
QUINTILE 1	3.86	37.11
QUINTILE 2	5.74	47.53
QUINTILE 3	6.92	53.81
QUINTILE 4	7.60	86.40
QUINTILE 5	8.84	128.08
OVERALL AVG	6.60	70.17

Appendix 3, Table 3

Counties sorted into quintiles comparing urban counties and rural counties separately

CALIFORNIA - URBAN/RURAL

LENDING LEVEL	AVG POP 2017	AVG HOME VALUE 2017	AVG INCOME 2017	AVG COLLEGE DEGREE %	AVG POVERTY %	AVG UNEMPLOYMENT %	AVG MINORITY %	AVG BLACK %	AVG HISPANIC %	AVG ASIAN %	AVG NATIVE AMERICAN %
QUINTILE 1	57,868	$217,100	$47,928	20.20	17.82	7.30	33.09	1.97	22.11	1.57	3.96
QUINTILE 2	214,046	$328,836	$58,406	22.55	15.49	7.24	47.50	1.76	38.79	3.33	0.81
QUINTILE 3	324,090	$359,231	$63,432	26.98	15.42	6.15	46.78	2.59	30.66	8.01	2.18
QUINTILE 4	1,514,213	$453,450	$72,805	29.33	12.73	5.04	47.40	3.17	30.20	9.44	0.72
QUINTILE 5	1,079,924	$434,009	$77,834	32.67	10.36	4.55	50.95	5.28	28.50	12.59	0.54
OVERALL AVG	642,310	$360,186	$64,209	26.42	14.37	6.04	45.24	2.95	30.07	7.06	1.64

LENDING LEVEL	MORTGAGES/100 HOMES	BUSINESS LOANS/100 BUSINESSES
QUINTILE 1	4.92	38.47
QUINTILE 2	5.75	45.31
QUINTILE 3	6.56	71.09
QUINTILE 4	7.63	62.74
QUINTILE 5	8.14	136.08
OVERALL AVG	6.60	70.17

Appendix 3, Table 4