August 1, 2022

Chief Counsel's Office
Attention: Comment Processing
Office of the Comptroller of the Currency
400 7th Street SW, Suite 3E-218
Washington, DC 20219

Ann E. Misback
Secretary, Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

James P. Sheesley
Assistant Executive Secretary
Attention: Comments RIN 3064-AF81
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

RE: Community Reinvestment Act, OCC Docket ID OCC-2022-0002

Dear Mr. Gould, Ms. Misback, and Mr. Sheesley:

Giving people equal access today doesn't give them equal standing tomorrow.

The Community Reinvestment Act (CRA) is one of several laws enacted in the 1960s and 1970s to address "fairness and financial inclusion in access to housing and credit." These fair lending laws prohibit discriminatory lending practices based on race and ethnicity. However, they haven't rectified past discrimination of banks that denied racial minority groups access to financial services that build intergenerational wealth. Moreover, these laws haven't prevented banks from continuing practices that increase racial disparities in banking. According to the Brookings Institute, "there are [still] stark contrasts in access to credit for African Americans: Interest rates on business loans, bank branch density, local banking concentration in the residential mortgage market, and the growth of local businesses are markedly different in majority Black neighborhoods." These contrasts can be directly attributed to actions undertaken by the US banking system. For this reason, the final rule must include a framework for addressing past discriminatory practices and current racial disparities in order to fully implement the spirit and intent of the CRA.

The agencies seem to agree with many stakeholders that MDIs, LICUs, WDIs, and CDFIs play a critical role in advancing equity in the financial system. As a Treasury-certified CDFI, the Corporation for Supportive Housing (CSH) is commissioned to address the development needs of small businesses and communities that have been underserved by conventional banks. We have had much success in partnering with banks in this endeavor and hope that the final rule will codify the importance of such partnerships. It is from this perspective that CSH offers the enclosed comments.

Sincerely,

Marguerite Pridgen

Marguerite Pridgen
Director, Federal Policy
CSH

Enclosure

Question 1. Should the agencies consider partial consideration for any other community development activities (for example, financing broadband infrastructure, health care facilities, or other essential infrastructure and community facilities), or should partial consideration be limited to only affordable housing?

Development of affordable housing is critical in certain markets, but there are other community development activities that communities may want. The agencies should give pro-rata consideration for community development activities that will significantly improve health or social factors influencing health of residents in LMI communities and are undertaken in partnership with a Treasury certified Community Development Financial Institution (CDFI). There must be evidence that the community development activities are widely supported by the community and contribute directly to community thriving through creation of good jobs, access to healthy foods, quality health care, environmental justice, etc. The agencies should consider how well banks are able to leverage funding for targeted purposes such as FCC/USDA for broadband and New Market Tax Credits/CDBG for community facilities, etc. in order to maximize the impact of the bank's impact and responsiveness to community needs. Banks should utilize indices of where the greatest disparities exist in determining where there can be a transformative impact with their investments (*see* CSH Data and Census Community Resilience Estimates).

Question 2. If partial consideration is extended to other types of community development activities with a primary purpose of community development, should there be a minimum percentage of the activity that serves low- or moderate-income individuals or geographies or small businesses and small farms, such as 25 percent? If partial consideration is provided for certain types of activities considered to have a primary purpose of community development, should the agencies require a minimum percentage standard greater than 51 percent to receive full consideration, such as a threshold between 60 percent and 90 percent?

Any benefit threshold should be much higher than 25 percent to receive partial consideration. At least 51% of the activity should benefit low- or moderate-income individuals or geographies or small businesses and small farms. To receive full consideration, the threshold should be at least 75 percent.

There are certain types of community development activities that have been shown to improve economic well-being of people in the community: affordable housing, solar energy infrastructure, certified community behavioral health centers, community food hubs, etc. There are other types of community development activities that give the façade of improving lives of people in the community but actually help to sustain poverty and limit economic opportunity: businesses with mostly low-wage shift work, infrastructure projects that cause losses in affordable housing and community amenities, and retail services that are not desired or needed by the community. Rather than community development that "serves low- or moderate-income individuals or geographies" consider community development that is "supported by" or "requested by" low-moderate income families or geographies and advances racial equity. This could help mitigate the risk that the activity won't be beneficial to the community.

Question 3. Is the proposed standard of government programs having a "stated purpose or bona fide intent" of providing affordable housing for low- or moderate-income (or, under the alternative discussed above, for low-, moderate- or middle-income) individuals appropriate, or is a different standard more appropriate for considering government programs that provide affordable housing? Should these activities be required to meet a specific affordability standard, such as rents not exceeding 30 percent of 80 percent of median income? Should these activities be required to include

verification that at least a majority of occupants of affordable units are low- or moderate-income individuals?

The proposed "stated purpose or bona fide intent" standard is acceptable if combined with verification of the affordability of the units. We recommend that affordability standards for low income households align to US Department of Housing and Urban Development (HUD) income limits for HUD assisted housing programs.

Question 4. In qualifying affordable rental housing activities in conjunction with a government program, should the agencies consider activities that provide affordable housing to middle-income individuals in high opportunity areas, in nonmetropolitan counties, or in other geographies?

It depends on the intent. If the intent is solely to help middle income households get into high opportunity areas where there are more amenities and resources, this could create greater competition in those areas for low income residents seeking access to the same amenities and resources. Although middle-income affordability should be considered in high-cost areas by using affordability scores/indices, middle income households may have more housing options and fewer services/assistance needs than low income households. Another alternative would be to consider activities that create more high opportunity areas and affordable markets accessible to middle-income households. Given the recent infusion of federal infrastructure and economic recovery funding, states are in the position of being able to leverage new flexible (but very time limited) resources with existing programs such as LIHTC, NMTC, and CDBG to revitalize the communities that surround where affordable housing exists. The agencies should establish assessment test scoring criteria that place greater emphasis on this type of market expansion and development.

Question 5. Are there alternative ways to ensure that naturally occurring affordable housing activities are targeted to properties where rents remain affordable for low- and moderate-income individuals, including properties where a renovation is occurring?

Focus affordable housing activities on properties with HUD fair market rent limits, rent control, community land trusts, and other affordability provisions. The definition of affordable housing activities should be expanded to include activities that keep housing affordable (eg, energy efficient housing).

Question 6. What approach would appropriately consider activities that support naturally occurring affordable housing that is most beneficial for low- or moderate-income individuals and communities? Should the proposed geographic criterion be expanded to include census tracts in which the median renter is low- or moderate-income, or in distressed and underserved census tracts, in order to encourage affordable housing in a wider range of communities, or would this expanded option risk crediting activities that do not benefit low- or moderate-income renters?

Naturally occurring affordable housing in distressed and underserved census tracts should be included in the proposed geographic criterion only if these tracts have the potential to become high opportunity areas and strategies that prevent the displacement of existing residents and small businesses.

Question 7. Should the proposed approach to considering naturally occurring affordable housing be broadened to include single-family rental housing that meets the eligibility criteria proposed for multifamily rental housing? If so, should consideration of single-family rental housing be limited to

rural geographies, or eligible in all geographies, provided the eligibility criteria to ensure affordability are met?

Families should have options that include homes in single-family and multi-family developments. Consideration of single-family rental housing should not be limited to rural geographies, provided the eligibility criteria to ensure affordability are met. However, in order to receive consideration under CRA, single-family rental housing should be limited to homes that are eligible for purchase (eg, lease to own), are prioritized for low to moderate income families enrolled in first-time homeowner programs through HUD or state programs, and will remain permanently affordable through a community land trust or other vehicle to sustain affordability.

Question 8. How should the agencies consider activities that support affordable low- or moderate-income homeownership in order to ensure that qualifying activities are affordable, sustainable, and beneficial for low- or moderate-income individuals and communities?

Agencies should give full consideration to activities that will increase and preserve affordable homeownership for low- or moderate-income individuals from racial and ethnic groups that were subjected to redlining and other discriminatory practices supported by the US banking industry. To the extent banks can directly identify victims and their descendants, qualifying activities should focus on directly benefitting them. The agencies should require sustainability plans that identify actions that will be taken to help sustain housing affordability in times of inflation, gentrification, and other economic events and make commitments of resources that will be made available to homeowners, such as legal assistance, housing counseling, financial planning, home rehabilitation financing, etc. to sustain homeownership as a means of building intergenerational wealth.

Question 9. Should the proposed approach to considering mortgage-backed securities that finance affordable housing be modified to ensure that the activity is aligned with CRA's purpose of strengthening credit access for low- or moderate-income individuals? For example, should the agencies consider only the value of affordable loans in a qualifying mortgage-backed security, rather than the full value of the security? Should only the initial purchase of a mortgage-backed security be considered for affordable housing?

For affordable housing, the agencies should only consider the value of affordable loans used in financing homes for low- or moderate-income individuals. For affordable supportive housing, the full value of a mortgage-backed security used in financing the development should receive consideration when at least 50 percent of the loans were used in financing supportive housing development. Supportive housing should qualify for additional CRA consideration because it offers affordable housing and supportive services to individuals and families whose income is typically at 0-30 percent of the adjusted median income with the social benefit of reduced institutionalization of people with complex medical needs. Supportive housing is also an evidenced based solution to reducing homelessness. Offering full consideration will make incentivize more investments aimed at scaling development of supportive housing to the national need (*see* CSH needs assessment data).

Regarding timing, only the initial purchase of a qualifying purchase of mortgage-backed securities should receive consideration. Resale of these securities are primarily for investor gain not community impact, and therefore, any residual benefit may not be consistent with CRA's purpose and intent.

Question 10. What changes, if any, should the agencies consider to ensure that the proposed affordable housing definition is clearly and appropriately inclusive of activities that support affordable housing for low- or moderate-income individuals, including activities that involve complex or novel solutions such as community land trusts, shared equity models, and manufactured housing?

As part of the definition, you should refer to an exhibit or list of recognized high impact activities that have proven to support affordable housing for low- or moderate-income individuals such as community land trusts, shared equity models, and supportive housing**.** Within that list, we'd like to see specific mention of supportive housing which includes the benefit of both affordable housing and wrap-around services for people with complex medical needs.

Question 11. Would lending to small businesses and small farms that may also support job creation, retention, and improvement for low- or moderate-income individuals and communities be sufficiently recognized through the analysis of small business and small farm loans and the qualitative review in the Retail Lending Test?

Small business and small farm lending evaluated under the proposed Retail Lending Test should have the accompanying requirement that these loans demonstrate job creation, retention, or improvement for low- or moderate-income areas or individuals, as is currently required for loans considered under the current criterion for economic development. More specifically, consideration should only be given to lending that supports creation of or transition to good jobs and opportunities for economic mobility through vehicles such as apprenticeships and shared equity.

Question 12. During a transition period, should the agencies continue to evaluate bank loans to small businesses and small farms as community development activities until these loans are assessed as reported loans under the proposed Retail Lending Test?

No. This would allow banks to get credit for the same activity multiple times. Unless there is some change or expansion of the activity, such as an increased loan amount or new loan payment deferment option, the agencies should evaluate the loans one time and count them one time.

Question 13. Should the agencies retain a separate component for job creation, retention, and improvement for low- and moderate-income individuals under the economic development definition? If so, should activities conducted with businesses or farms of any size and that create or retain jobs for low- or moderate-income individuals be considered? Are there criteria that can be included to demonstrate that the primary purpose of an activity is job creation, retention, or improvement for low- or moderate-income individuals and that ensure activities are not qualified simply because they offer low wage jobs?

Agencies should retain a separate component for job creation, retention, and improvement for low- and moderate-income individuals under the economic development definition because the criteria for evaluating this component should be more relevant to the activity. Most notably, activities under the new component should give consideration for "good jobs" which need to be fully defined and explained under the definitions.

Question 14. Should any or all place-based definition activities be required to be conducted in conjunction with a government plan, program, or initiative and include an explicit focus of benefitting the targeted census tract(s)? If so, are there appropriate standards for plans, programs, or initiatives?

Are there alternative options for determining whether place-based definition activities meet identified community needs?

Yes, as long as the existence of a government plan, program, or initiative in itself wouldn't be tacit approval of activity eligibility. Also, an activity that benefits the targeted census tract(s) doesn't necessarily mean the activity will meet identified community needs. There could be a scenario where activities delineated in the government plan will add jobs to a targeted community, which may be beneficial to some extent, but not necessarily address the community need for opportunities that improve economic mobility and intergenerational wealth. The government plan, program, or initiative should have buy-in or broad community support and be responsive to community needs in order for the placed-based activities identified in the plan to receive agency consideration.

Question 15. How should the proposals for place-based definitions focus on benefitting residents in targeted census tracts and also ensure that the activities benefit low- or moderate income residents? How should considerations about whether an activity would displace or exclude low- or moderate-income residents be reflected in the proposed definitions?

The four common elements for place-based definitions are on point: geographic focus, standardized eligibility, displacement or exclusion prohibition, and inclusion in government plan/program/initiative. If the agencies want assurance that activities will benefit low- or moderate- income residents in the targeted areas, they should include language that explicitly requires that the majority of the beneficiaries be low- or moderate- income residents in the targeted areas and that qualifying activities will not likely result in displacement or dismantling of the community. Using data on the impact of gentrification and infrastructure development on LMI communities, agencies should be able to create a displacement probability index or score that can help banks assess the probability that a particular activity will displace low-moderate income residents or harm low income residents.

Question 16. Should the agencies include certain housing activities as eligible revitalization activities? If so, should housing activities be considered in all, or only certain, targeted geographies, and should there be additional eligibility requirements for these activities?

Activities that finance supportive housing development, operation, and services should be considered eligible revitalization activities in any geographical area. According to CSH's need assessment, the need for supportive housing outweighs the supply. Supportive housing that is developed in accordance with national quality standards can have a life-changing impact on people exiting or destined for institutionalized care settings due to lack of stable affordable housing with wrap-around services. Supportive housing catalyzes investment in community service centers such as health, education, and recreation centers that benefit the whole community (*see* CSH needs assessment data broken out by state).

Question 17. Should the agencies consider additional requirements for essential community infrastructure projects and essential community facilities to ensure that activities include a benefit to low- or moderate-income residents in the communities served by these projects?

Since essential community activities include "those that finance or provide other support for public amenities in targeted areas," we ask that community food hubs be added to the illustrative examples.

Question 18. Should the agencies consider any additional criteria to ensure that recovery of disaster areas benefits low- or moderate-income individuals and communities?

The agencies should consider criteria used in the Census Bureau's 2019 Community Resilience Estimates (CRE) which focus on various factors that could impact a community's ability to survive and rebound from declared disasters. The agencies should consider encouraging banks to proactively focus some of their "Revitalize and Stabilize" type community development on high-risk communities before disasters occur to improve community resiliency.

Question 19. Does the disaster preparedness and climate resiliency definition appropriately define qualifying activities as those that assist individuals and communities to prepare for, adapt to, and withstand natural disasters, weather-related disasters, or climate-related risks? How should these activities be tailored to directly benefit low- or moderate-income communities and distressed or underserved nonmetropolitan middle-income areas? Are other criteria needed to ensure these activities benefit low- or moderate-income individuals and communities?

The disaster preparedness and climate resiliency activity should be founded on evidence-based solutions AND be conducted in conjunction with a federal, state, local, or tribal government plan focused on disaster preparedness or climate resiliency. The cognizant federal agencies should be consulted to ensure that the language is specific as to what type of activities will have the most impact in mitigating and possibly averting severe damage from natural, weather-related disasters, and climate-related risks. Community-based organizations and faith-based organizations in LMI communities are often the first source of support and assistance in disasters. These organizations are in the best position to advise how to tailor activities to directly reach and benefit low- or moderate-income communities and distressed or underserved nonmetropolitan middle-income areas. Banks should work with them in planning "Revitalize and Stabilize" type community development.

Question 20. Should the agencies include activities that promote energy efficiency as a component of the disaster preparedness and climate resiliency definition? Or should these activities be considered under other definitions, such as affordable housing and community facilities?

Yes to both questions. Energy efficiency should be a component of all climate resiliency, affordable housing, community facilities, community infrastructure, and every place where there is an opportunity to address the global crisis of climate change through conservation. Consult with energy experts on the specific types of activities that would have the most cost efficiencies and environmental impact for each project even though there is ample evidence that solar powered utilities make housing more affordable for residents and make communities more resilient in times when gas and fuel prices skyrocket.

Question 21. Should the agencies include other energy-related activities that are distinct from energy-efficiency improvements in the disaster preparedness and climate resiliency definition? If so, what would this category of activities include and what criteria is needed to ensure a direct benefit to the targeted geographies?

Yes to both questions. Energy efficiency should be a component of all climate resiliency, affordable housing, community facilities, community infrastructure, and every place where there is an opportunity to address the global crisis of climate change and the high cost and limited access to fossil fuels. Consult with energy experts on the specific types of activities that would have the most transformative impact.

Question 22. Should the agencies consider utility-scale projects, such as certain solar projects, that would benefit residents in targeted census tracts as part of a disaster preparedness and climate resiliency definition?

Yes, but it may be difficult to target these projects by census tracts. Utility-scale projects should be considered as long 51 percent or more the residents that will benefit include LMI and small businesses particularly minority owned businesses.

Question 23. Should the agencies include a prong of the disaster preparedness and climate resiliency definition for activities that benefit low- or moderate-income individuals, regardless of whether they reside in one of the targeted geographies? If so, what types of activities should be included under this prong?

Yes, as long as the likely outcome is reduction in energy costs and increased preparedness and resiliency for residents and minority owned businesses.

Question 24. Should the agencies qualify activities related to disaster preparedness and climate resiliency in designated disaster areas? If so, are there additional criteria needed to ensure that these activities benefit communities with the fewest resources to address the impacts of future disasters and climate-related risks?

The agencies should qualify activities related to disaster preparedness and climate resiliency that aim to mitigate impact of future disasters. See response to Question 19. After a disaster occurs, it's less disaster preparedness and more disaster response.

Question 25. Should the agencies also include in the MDI definition insured credit unions considered to be MDIs by the National Credit Union Administration?

Yes. The agencies are seeking ways to strengthen CRA provisions to support MDIs, WDIs, LICUs, and Treasury Department-certified CDFIs. Adding NCUA MDIs to the definition may expand the geographic distribution of MDIs available to partner with banks on CRA activities.

Question 26. Should the agencies consider activities undertaken by an MDI or WDI to promote its own sustainability and profitability? If so, should additional eligibility criteria be considered to ensure investments will more directly benefit low- and moderate-income and other underserved communities?

Agencies should consider activities undertaken by an MDI or WDI to promote their sustainability and profitability whether or not the MDI or WDI can identify the direct benefit for low- and moderate-income and other underserved communities. MDIs and WDIs focus on addressing the economic needs of underserved communities. For this reason, it should be presumed that any activities undertaken to improve MDI or WDI profitability and sustainability will allow them to sustain activities that advance equity for people undeserved by the banking system. Additional consideration should be given to activities undertaken with MDIs and WDIs that directly benefit low- and moderate-income and underserved communities.

Question 27. ***Should consideration of financial literacy activities expand to include activities that benefit individuals and families of all income levels, including low- and moderate-income, or should consideration be limited to activities that have a primary purpose of benefiting low- or moderate-income individuals or families?***

Online and app-based training can be easily and inexpensively made available to a broad customer base. Agencies should consider financial literacy activities that benefit individuals and families of any income level where there is evidence that financial literacy is lacking or financial instability exists. As an example, if there is evidence that loan repayment or consumer debt are issues for everyone, everyone should get training. Make training completion a prerequisite for consumer lending transactions.

Question 28. To what extent is the proposed definition of Native Land Areas inclusive of geographic areas with Native and tribal community development needs?

Native and tribal communities would be in the best position to respond to this question.

Question 29. In addition to the proposed criteria, should the agencies consider additional eligibility requirements for activities in Native Land Areas to ensure a community development activity benefits low- or moderate-income residents who reside in Native Land Areas?

Native and tribal communities would be in the best position to respond to this question.

Question 30. Should the agencies also consider activities in Native Land Areas undertaken in conjunction with tribal association or tribal designee plans, programs, or initiatives, in addition to the proposed criteria to consider activities in conjunction with Federal, state, local, or tribal government plans, programs, or initiatives?

Agencies should consult with Native or tribal communities to determine if the activities would qualify for consideration.

Question 31. Should the agencies also maintain a non-exhaustive list of activities that do not qualify for CRA consideration as a community development activity?

An illustrative list of activities that do not qualify with explanations for why they don't qualify would be helpful. Similarly, if there are broad categories that are ineligible and exceptions within the ineligibility categories, the agencies should explain this in the final rule and any accompanying guidance.

Question 32. What procedures should the agencies develop for accepting submissions and establishing a timeline for review?

Since banks are being evaluated for activities that are supposed to benefit targeted communities, those communities should be made aware of the status of the agencies' eligibility review and the concerns that have arisen during the process. However, there may be other stakeholders that would benefit from greater transparency, namely, online tracking of the submission and approval process. If the process is visible through the internet, small businesses would get equitable access to early information on potential business opportunities related to the CRA activities. Other financial institutions would learn about activities that they may not have considered that would benefit communities they are serving.

Question 33. Various processes and actions under the proposed rule, such as the process for confirming qualifying community development activities in § __.14, the designation of census tracts in § __.12, and, with respect to recovery activities in designated disaster areas, the determination of temporary exception or an extension of the period of eligibility of activities under § __.13(h)(1), would involve joint action by the agencies. The agencies invite comment on these proposed joint processes and actions, as well as alternative processes and actions, such as consultation among the agencies, that would be consistent with the purposes of the Community Reinvestment Act.

Document the process flow for each action and automate the interagency review and approval process.

Question 34. For the proposed impact review factors for activities serving geographic areas with high community development needs, should the agencies include persistent poverty counties, high poverty census tracts, or areas with low levels of community development financing? Should all geographic designations be included or some combination? What considerations should the agencies take in defining these categories and updating a list of geographies for these categories?

Yes to the first two questions. The proposed impact review should also include a factor for activities to address past discriminatory practices and establish a framework for racial equity scoring of each bank. Racial equity scoring in this context refers to using quantitative information to assess the financial impact that a bank's discriminatory practices have had on the residents in the county or state. This may entail researching the past involvement of the bank and predecessor banks in slavery, redlining, racial covenants and deed restrictions, undervaluation of black-owned properties, etc. and identifying how well the bank has addressed the financial harm. A low equity score of the bank could result in a lowered or negative impact review score. To raise their score, banks will need to collaborate with MDIs and CFDIs in making increased community development investment for specific populations in persistent poverty counties, high poverty census tracts, or areas with low levels of community development financing and targeting community investment to these areas. (*See* as an example CSH's Redesigning Access by Centering Equity (RACE) Initiative which partners with banks in investing in supportive housing development led by Black, Indigenous and People of Color (BIPOC).)

Question 35. For the proposed factor focused on activities supporting MDIs, WDIs, LICUs, and Treasury Department-certified CDFIs, should the factor exclude placements of short-term deposits, and should any other activities be excluded? Should the criterion specifically emphasize equity investments, long-term debt financing, donations, and services, and should other activities be emphasized?

Placements of short-term deposits should not be excluded because they may provide immediate financial support to the MDI/WDI/LICU/CDFI. However, such deposits shouldn't be factored as highly as longer-term partnerships and long-term financial engagements such as equity investments, long-term debt financing, donations, and business/legal services. The goal is to foster longer term partnerships and more stable financing arrangements with banks.

Question 36. Which of the thresholds discussed would be appropriate to classify smaller businesses and farms for the impact review factor relating to community development activities that support smaller businesses and farms: The proposed standard of gross annual revenue of $250,000 or less, or an alternative gross annual revenue threshold of $100,000 or less, or $500,000 or less?

An alternative net annual revenue threshold of $100,000 or less would allow the agencies to better target small and very small businesses and farm operations. However, given the history of underinvestment in small farms and small businesses owned and operated by African-Americans, the proposed standard should align to SBA criteria for Small Disadvantaged Business (SDB) concern as defined in section 8(a) of the Small Business Act or section 3(p) of the Small Business Act ("qualified HUBZone small business concern") and the USDA definition for socially disadvantaged farm or farmer.

Question 37. For the proposed factor of activities that support affordable housing in high opportunity areas, is the proposed approach to use the FHFA definition of high opportunity areas appropriate? Are there other options for defining high opportunity areas?

FHFA's definition is intended to help identify highly resourced areas that would be suitable for developing affordable housing. CRA is supposed to help banks address the broader economic needs of their low-moderate income customers regardless of where they reside. Expand the definition to include Empowerment Zone and Enterprise Communities, transit-oriented areas, and census tracts where 40 percent or more of the homes meet the definition of affordable housing could expand the number of high opportunity areas, creating new markets for affordable housing.

Question 38. For the proposed factor to designate activities benefitting or serving Native communities, should the factor be defined to include activities benefitting Native and tribal communities that are not located in Native Land Areas? If so, how should the agencies consider defining activities that benefit Native and tribal communities outside of Native Land Areas?

Native and tribal communities would be in the best position to respond to this question.

Question 39. Should both small and intermediate banks continue to have the option of delineating partial counties, or should they be required to delineate whole counties as facility-based assessment areas to increase consistency across banks?

The example provided of an essential infrastructure project that may serve a broad area where low- and moderate-income census tracts comprise a minority of total census tracts is a bit disturbing but familiar. This is the traditional way that major infrastructure projects were justified. They new interstate highway that serves the region usually decimated low income communities. Small and intermediate banks should be required to use whole counties to increase consistency across banks.

Question 40. Do the proposed definitions of "remote service facility" and "branch" include sufficient specificity for the types of facilities and circumstances under which banks would be required to delineate facility-based assessment areas, or are other changes to the CRA regulations necessary to better clarify when the delineation of facility-based assessment areas would be required?

Yes.

Question 41. How should the agencies treat bank business models where staff assist customers to make deposits on their phone or mobile device while the customer is onsite.

The "remote service facility" and "branch" definitions for different types of facilities seem more like a service activity and fall under the digital and "other" delivery system.

Question 42. **Should the proposed "accepts deposits" language be included in the definition of a branch?**

Yes. The language doesn't seem to add instruction to CRA assessments and is just used to clarify the difference between a branch and other facilities.

Question 43. If a bank's retail lending assessment area is located in the same MSA (or state non-MSA area) where a smaller facility-based assessment area is located, should the bank be required to expand its facility-based assessment area to the whole MSA (or non-MSA area) or should it have the option to designate the portion of the MSA that excludes the facility-based assessment area as a new retail lending assessment area?

The bank should be required to expand its facility-based assessment area to the whole MSA (or non-MSA area) if doing so will increase retail lending to communities that have been unserved by the banks retail lending operations. The bank should have the option to designate the portion of the MSA that excludes the facility-based assessment area as a new retail lending assessment area when doing so will significantly increase underserved communities' access to retail lending products.

Question 44. Should a bank be evaluated for all of its major product lines in each retail lending assessment area? In the alternative, should the agencies evaluate home mortgage product lines only when the number of home mortgage loans exceeds the proposed threshold of 100 loans, and evaluate small business loans only when the number of small business loans exceeds the proposed threshold of 250 loans?

It shouldn't be left to each bank to decide on which product lines will be evaluated. Without fully evaluating the activities of all product lines, the agencies won't be able to fully assess impact and responsiveness of the bank to the totality of customer needs.

Question 45. The agencies' proposals for delineating retail lending assessment areas and evaluating remaining outside lending at the institution level for large banks are intended to meet the objectives of reflecting changes in banking over time while retaining a local focus to CRA evaluations. What alternative methods should the agencies consider for evaluating outside lending that would preserve a bank's obligation to meet the needs of its local communities?

Under the proposed methodology, the amount of lending needed to achieve a given conclusion would differ across assessment areas according to local credit demand and would calibrate across business cycles. Adding an equity score would also help determine whether the amount of lending needs to be increased for specific populations in certain geographies. (*See* response to Question 34.)

Question 46. The proposed approach for delineating retail lending assessment areas would apply to all large banks with the goal of providing an equitable framework for banks with different business models. Should a large bank with a significant majority of its retail loans inside of its facility-based assessment areas be exempted from delineating retail lending assessment areas? If so, how should an exemption be defined for a large bank that lends primarily inside its facility-based assessment area?

It's not clear how the exemption would increase equity. Under this proposal, a large bank would delineate retail lending assessment areas where it has an annual lending volume of at least 100 home mortgage loan originations or at least 250 small business loan originations in an MSA or nonmetropolitan area of a state for two consecutive years. This is the area where there is the biggest market for the banks loan products. The facility-based assessment area may not be the right market. The data driven approach to reaching LMI customers in a retail lending assessment area makes sense.

Question 47. The agencies propose to give CRA consideration for community development financing activities that are outside of facility-based assessment areas. What alternative approaches would encourage banks that choose to do so to conduct effective community development activities outside of their facility-based assessment areas? For example, should banks be required to delineate specific geographies where they will focus their outside facility-based assessment area community development financing activity?

Banks should have this option only if they partner with Treasury certified CDFIs or MDIs on community development financing activities in areas outside of the facility-based assessment areas. The CDFI may have greater familiarity of the needs of the communities outside of the facility-based assessment areas. Partnering with a Treasury certified CFDI or MDI should be a pre-requisite for any CRA activity that involves community development financing.

Question 48. Should all banks have the option to have community development activities outside of facility-based assessment areas considered, including all intermediate banks, small banks, and banks that elect to be evaluated under a strategic plan?

Banks should have this option only if they partner with Treasury certified CDFIs or MDIs on community development financing activities in areas outside of the facility-based assessment areas. The CDFI may have greater familiarity of the needs of the communities outside of the facility-based assessment areas. Partnering with a Treasury certified CFDI or MDI should be a pre-requisite for any CRA activity that involves community development financing.

Question 49. The agencies' proposed approach to tailoring the performance tests that pertain to each bank category aims to appropriately balance the objectives of maintaining strong CRA obligations and recognizing differences in bank capacity. What adjustments to the proposed evaluation framework should be considered to better achieve this balance?

Giving wholesale and limited purpose banks the option to have examiners consider community development service activities will create inequities in evaluations due to the flexibility examiners will have in tailoring the tests. Alternatively, you could use the same tests and just weight them differently and apply different benchmarks to activities that are not applicable. This approach could probably be done uniformly by the agencies in the final rule without leaving to the discretion of the examiners.

Question 50. The proposed asset thresholds consider the associated burden related to new regulatory changes and their larger impact on smaller banks, and it balances this with their obligations to meet community credit needs. Are there other asset thresholds that should be considered that strike the appropriate balance of these objectives?

We don’t know what other asset thresholds should be included. Small banks like intermediate and large banks are responsible for managing large sums of money. There has to be accountability on how those funds are spent and whether they are distributed equitably. The burden on the banks is outweighed by the need for accountability and equity. The burden can be reduced or eliminated with resources. The agencies should get detailed input from the banks on why they cannot comply with the reporting requirements in each assessment area. If the reporting burden is a symptom of duplicative reporting requirements across the federal government, the agencies can address this by working with the cognizant federal agencies to reduce or eliminate the duplicate reporting. The banks should develop a tactical action plan for meeting the reporting requirements by a defined date (eg, 12 months from development of the plan). The agencies should monitor bank progress in implementing the plan.

Question 51. Should the agencies adopt an asset threshold for small banks that differs from the SBA's size standards of $750 million for purposes of CRA regulations? Is the proposed asset threshold of $600 million appropriate?

The agencies should reconsider using either threshold in determining whether banks should be assessed for CRA. The agencies should explore what capacity small banks have to comply with the reporting requirements under all assessment areas and identify where capacity needs to be developed (systems, data, processes, staffing, etc) so that banks of all sizes can comply with CRA reporting requirements in all areas. The agencies should make reporting of quantitative metrics the primary basis for computer generated conclusions with examiners verifying the numbers and using qualitative information that adds performance context needed to adjust the computer-generated conclusions.

Question 52. The agencies propose to require that the activities of a bank's operations and operating subsidiaries be included as part of its CRA evaluation, as banks exercise a high level of ownership, control, and management of their subsidiaries, such that the activities of these subsidiaries could reasonably be attributable directly to the bank. What, if any, other factors should be taken into account with regard to this requirement?

Consider the activities of the bank's predecessor institutions after mergers and takeovers in conducting the racial equity scoring. (See response to Question 34).

Question 53. As discussed above, what factors and criteria should the agencies consider in adopting definitions of "operating subsidiary" for state non-member banks and state savings associations, and "operations subsidiary" for state member banks, for purposes of this proposed requirement?

For purposes of CRA, the proposed definition of an "operations subsidiary" seems reasonable. In general, there should be uniformity in these and other definitions across all federal agencies that receive bank data/reports.

Question 54. When a bank chooses to have the agencies consider retail loans within a retail loan category that are made or purchased by one or more of the bank's affiliates in a particular assessment area, should the agencies consider all of the retail loans within that retail loan category made by all of the bank's affiliates only in that particular assessment area, or should the agencies then consider all of the retail loans made by all of the bank's affiliates within that retail loan category in all of the bank's assessment areas?

The agencies are proposing to add a definition of "operations subsidiary" to identify those bank affiliates whose activities would be required to be attributed to a bank's CRA performance. It would follow that the retail loans made by all of the bank's affiliates within that retail loan category in all of the bank's assessment areas would be relevant in assessing the banks CRA performance. However, loans that were purchased by the bank affiliates may have less relevance to CRA performance and shouldn't be considered.

Question 55. ***The agencies request feedback on the proposed performance context factors in § __.21(e). Are there other ways to bring greater clarity to the use of performance context factors as applied to different performance tests?***

In addition to the factors listed at § __.21(e), the agencies should consider performance context factors that will be used in racial equity scoring unless this scoring will be part of the assessment tests listed at § __.21(a) and § __.21(b). A new provision could be added at § __.21(e):

(7) Data and information about the bank's and its predecessors' participation in activities that contributed to systemic racial inequities including but not limited to:

(i) Financing or other services for the production of sugar cane, tobacco, or cotton prior to December 6, 1865, including through predecessor and affiliated institutions
(ii) Lending for the purpose of purchasing enslaved persons
(iii) Accepting enslaved persons as collateral for loans
(iv) Taking possession of enslaved persons upon termination of loans
(v) Maintaining possession of enslaved persons
(vi) Releasing possession of enslaved persons, through sale, exchange, or liberation
(vii) Financing or otherwise supporting the abolition of slavery or the passage of enslaved people to free territory, e.g., the underground railroad.
(viii) Denying black people retail loans on the basis of race
(ix) Disproportionately denying retail loan applications submitted by black people
(x) Disproportionately steering black people toward subprime loans
(xi) Disproportionately offering black people smaller loans with higher interest rates
(xii) Allowing bank-owned properties in predominately black and Hispanic neighborhoods to go into disrepair
(xiii) Fewer branches in minority neighborhoods when compared to white neighborhoods

Question 56. Should the agencies aggregate closed-end home mortgage loans of all purposes? Or should the agencies evaluate loans with different purposes separately given that the factors driving demand for home purchase, home refinance, and other purpose home mortgage loans vary over time and meet different credit needs?

The type of loan isn't as important for evaluating CRA eligibility as the quality of the loan, namely, affordable with favorable terms. The impact of these loans can have a major impact on homeownership, mobility, and wealth building, especially among LMI families in underserved communities, and therefore, the banks loans need to be reviewed separately to assess impact, equity, and responsiveness.

Question 57. Should the agencies exclude home improvement and other purpose closed-end home mortgage loans from the closed-end home mortgage loan product category to emphasize home purchase and refinance lending? If so, should home improvement and other purpose closed-end home mortgage loans be evaluated under the Retail Lending Test as a distinct product category or qualitatively under the Retail Services and Products Test?

These loans shouldn't be excluded if the bank can indicate that they were made to increase home value, improve livability and accessibility for homeowner and homeowner's family, generate income through accessory dwellings or home office/business space, allow for services in the home such as caregiving and therapy, or make the home more energy efficient.

Question 58. Should the agencies include closed-end non-owner-occupied housing lending in the closed-end home mortgage loan product category?

Yes, when non-owner occupied housing lending is made to increase availability of affordable housing, caregiver housing, rental income, business income, and supportive housing.

Question 59. Should open-end home mortgage loans be evaluated qualitatively under the Retail Services and Products Test rather than with metrics under the Retail Lending Test?

No. The open-end home mortgage loans shouldn't be evaluated qualitatively under the Retail Services and Products Test because it will make the loan evaluation process too subjective. There are common uses for loans such as home equity lines of credit that could be assessed through a quantitative evaluation under the Retail Lending Test. Where the uses are in question relative to CRA eligibility, the metrics in the quantitative evaluation would reflect this and some factor akin to the performance context factors could be used to add more information about the open-end home mortgage loan.

Question 60. Should multifamily lending be evaluated under the Retail Lending Test and the Community Development Financing Test (or the Community Development Test for Wholesale or Limited Purpose Banks)? Or should multifamily lending be instead evaluated only under the Community Development Financing Test?

Multifamily lending should be evaluated under the Retail Lending Test. Multifamily housing development should be evaluated under the Community Development Financing Test.
However, the focus shouldn't be on geographic distribution. The statement in the proposed rule that "the income of the borrower—often a corporate entity—is less meaningful for evaluating the loans' benefit to the community" is not completely accurate or equitable.

There is evidence that BIPOC who are developers and less likely to receive lending from traditional banks—this is regardless of their organizational affiliation. The disparity is so wide in supportive housing development, CSH has launched an initiative to increase access to financial resources from lending institutions.

Question 61. Should banks that are primarily multifamily lenders be designated as limited purpose banks and have their multifamily lending evaluated only under the Community Development Financing Test?

We understand the intent behind this approach which is to relieve multifamily lenders on reporting information on transactions that they don't do and populations they don't reach with their borrowing (namely, LMI borrowers). However, if they do any single-family lending, it should be reported even if it is not weighted as highly in the assessment or they are not subject to the same benchmarks. Also, that evaluating a bank's multifamily lending performance under the Retail Lending Test using loan count rather than the dollar amount would not allow the agencies to assess equity of the lending process particularly for multifamily developers of color. It's our understanding that the agencies are concerned that solely evaluating geographic distributions for multifamily loans for banks that are primarily multifamily lenders might be unfair because these banks would fail the borrower distribution test by not lending directly to low- or moderate-income individuals. These banks should still be scored on the diversity of borrowers and receive a racial equity score for whatever type of lending they do. The historic inequities resulting from underinvestment and discriminatory practices are not specific to a bank size, location or model. These inequities are systemic, and therefore, need to be resolved by making changes to the entire banking system. Every financial institution needs to account for how they are and how they will comply with the CRA. A bank that doesn't have capacity or just doesn't currently collect the data needed to be evaluated under all CRA tests should submit 12-month corrective action plans to the agencies where bank progress in completing those actions can considered in the overall institutional evaluation.

Question 62. Should the agencies adopt a size standard for small business loans and small farm loans that differs from the SBA's size standards for purposes of the CRA? Is the proposed size standard of gross annual revenues of $5 million or less, which is consistent with the size standard proposed by the CFPB in its Section 1071 Rulemaking, appropriate? Should the CRA compliance date for updated "small business," "small business loan," "small farm," and "small farm loan" definitions be directly aligned with a future compliance date in the CFPB's Section 1071 Rulemaking, or should the agencies provide an additional year after the proposed updated CRA definitions become effective?

The CRA is supposed to encourage banks to help meet the needs of low- and moderate-income communities and address inequities in credit access. It would follow that race equity must be an outcome of any implementing rule. To lay the foundation for achieving this outcome, race equity must be interwoven into every provision of rule. As an example, the definition of a retail loan should be examined from a racial equity lens. The proposed definition for retail loan includes home mortgage loans, small loans to businesses, small loans to farms, and consumer loans provided to an LMI individual, small business, or a small farm. However, small businesses and small farms are not always in LMI census tracts, and there is a history of underinvestment in small farms and small businesses owned and operated by black Americans. Using the "small business" definition from section 8(d) of the Small Business Act or section 3(p) of the Small Business Act ("qualified HUBZone small business concern") and defining "small farm" as a "USDA socially disadvantaged farm or farmer" will give banks a more pointed way to redress long-standing systemic inequities.

Question 63. Should the agencies' current small business loan and small farm loan definitions sunset on the compliance date of the definitions proposed by the agencies?

Yes, and the compliance date should be no later than 12 months after the publication date of the final rule.

Question 64. Should retail loan purchases be treated as equivalent to loan originations? If so, should consideration be limited to certain purchases—such as from a CDFI or directly from the originator? What, if any, other restrictions should be placed on the consideration of purchased loans?

It's not clear why retail loan purchases would be considered at all if the original loan had been part of a retail assessment. If the purchasing bank wants to receive credit for a loan already deemed CRA eligible, it needs to offer more favorable loan terms or forgive part of the loan that would result in a new benefit for the consumer. Otherwise, this is double counting the same CRA activity since transferring the loan from one entity to the next doesn't seem to add value to the LMI consumer.

Question 65. Would it be appropriate to consider information indicating that retail loan purchases were made for the sole or primary purpose of inappropriately influencing the bank's retail lending performance evaluation as an additional factor in considering the bank's performance under the metrics or should such purchased loans be removed from the bank's metrics?

Purchased loans should be removed from the bank's metrics unless the purchasing bank will offer more favorable terms to the consumer immediately (within 30 days) after the purchase.

Question 66. Do the benefits of evaluating automobile lending under the metrics-based Retail Lending Test outweigh the potential downsides, particularly related to data collection and reporting burden? In the alternative, should the agencies adopt a qualitative approach to evaluate automobile lending for all banks under the proposed Retail Lending Test?

Evaluating automobile lending under the Retail Lending Test seems burdensome, but if the assessment is more targeted to climate resiliency and social determinants of health, the benefits of assessment will outweigh the potential downside. Automobiles enable people to reliably connect with resources, services, and employment opportunities outside of their neighborhoods. Regular automobiles can be expansive to maintain with gas, insurance, and maintenance costs increasing in times of inflation and trade sanctions. Given the national and global emphasis on climate resiliency, the agencies should include specific metrics for activities that reduce reliance on fossil fuels (lending for purchase of electric cars, electric bicycles, car sharing vehicles, retrofitting existing gas-powered vehicles with energy efficient features, etc) and meet the consumer’s mobility needs. A corresponding bank evaluation under the community development financing test may include financing the development and maintenance of electric vehicle charging stations in LMI neighborhoods and business districts.

Question 67. Should credit cards be included in CRA evaluations? If so, when credit card loans constitute a major project line, should they be evaluated quantitatively under the proposed Retail Lending Test or qualitatively under the proposed Retail Services and Products Test?

Credit cards and credit card loans are an easy way to build credit history and ruin it. A bad credit history could have negative rippling effects on an individual’s ability to access employment and wealth-building opportunities. For small businesses, credit card loans can be a doorway into improving or expanding their businesses when other credit products are unavailable or less affordable. All credit card loans should be evaluated quantitatively and qualitatively under the proposed Retail Lending Test and Retail Services and Products Test, respectively. Metrics should at a minimum include rates of successful repayment under the original credit terms, affordability of the loan based on interest rates, fees, payment terms, and penalties, and safeguards or perks that minimize adverse credit outcomes. The qualitative evaluation should include assessment of community development services offered in conjunction with credit card loan opportunities, for example, financial training related to successful credit card loan management and building a good credit history with credit card loans.

Question 68. What data collection and reporting challenges, if any, for credit card loans could adversely affect the accuracy of metrics?

Data collection challenges will include identification of characteristics that could help determine how responsive the product is to the consumers credit needs:

- How and why a consumer is using a credit card loan in lieu of other loan products
- Whether the loan is more responsive to the consumer's needs
- How equitable the terms are for the consumer when compared to other consumers, particularly those who are not low to moderate income or those who are not BIPOC

Question 69. Should the agencies adopt a qualitative approach to evaluate consumer loans? Should qualitative evaluation be limited to certain consumer loan categories or types?

A quantitative approach should be adopted to improve comparative analyses from year to year and among banks within the same year. However, soon after publishing the new regulation, the agencies should also conduct a qualitative evaluation that can explain or offer performance context needed to reach a fair conclusion under the relevant assessment.

Question 70. Should the agencies use a different standard for determining when to evaluate closed-end home mortgage, open-end home mortgage, multifamily, small business, and small farm lending? If so, what methodology should the agencies use and why? Should the agencies use a different standard for determining when to evaluate automobile loans?

It's our understanding that the agencies propose to analyze all closed-end home mortgage loans secured by a one-to-four unit dwelling as a single major product line under the Retail Lending Test to simplify the evaluation process. As mentioned in earlier responses, we'd like to see how the banking system is responded to community development needs which would require an evaluation of all banking products that are or should be available to support LMI families and communities.

For multifamily lending, for example, it matter's less that multifamily lending is the "predominant" bank activity but matters more that the bank has had high impact on the community by responding to needs for affordable housing through multifamily lending. The standard for all lending areas should be where the bank has made community impact in its lending and how responsive have they been to a community's needs.

Also, using dollar value of volume to determine whether a retail loan product line is "less significant, incidental home mortgage, small business, and small farm product lines" seems counter to the retail CRA focus which is impact. Small loans can have a significant impact on certain LMI consumers and small businesses. Large numbers of these loans when affordable and issued with favorable terms can also be the difference between small businesses closing or individuals averting foreclosure.

Question 71. Should the agencies use a different standard for determining when to evaluate multifamily loans under the Retail Lending Test? If so, should the standard be dependent on whether the lender is a monoline multifamily lender or is predominantly a multifamily lender within the geographic area? Relatedly, what should a "predominantly" standard be for determining whether multifamily loans constitute a major product line entail?

In determining whether a lender is predominantly a multifamily lender within the geographic area, the agencies should determine if multifamily loans are allocable to 51 percent or more of the bank's operating expense. This would include the total cost of making the loans. Regardless of the standards used to determine lending predominance, multifamily loans should be evaluated under the Retail Lending Test regardless of predominance in the bank's portfolio. (See response to Question 70.)

Question 72. For calculating the bank volume metric, what alternatives should the agencies consider to the proposed approach of using collected deposits data for large banks with assets of over $10 billion and for other banks that elect to collect this data, and using the FDIC's Summary of Deposits data for other banks that do not collect this data? For calculating the market volume benchmark, what alternatives should the agencies consider to the proposed approach of using reported deposits data for large banks with assets of over $10 billion, and using the FDIC's Summary of Deposits data for large banks with assets of $10 billion or less?

This proposed approach to calculating the bank volume metric seems reasonable except that banks that use the FDIC summary in lieu of providing actuals can avoid certain assessment of their deposits under retail tests. Rather than using an alternative, find out from the banks that are not collecting this data what data on bank volume gets reported to IRS and determine if this would be a better standard than deposits data for all banks.

Question 73. Should large banks receive a recommended Retail Lending Test conclusion of "Substantial Noncompliance" for performance below a threshold lower than 30 percent (e.g., 15 percent of the market volume benchmark) on the retail lending volume screen?

Yes.

Question 74. Should the geographic distribution evaluations of banks with few or no low- and moderate-income census tracts in their assessment areas include the distribution of lending to distressed and underserved census tracts? Alternatively, should the distribution of lending in distressed and underserved census tracts be considered qualitatively?

Quantitative evaluations of banks with few or no low- and moderate-income census tracts in their assessment areas should include the distribution of lending to distressed and underserved census tracts. Distribution of lending in distressed and underserved census tracts should be considered qualitatively since banks that lend through online platforms could still try to expand their lending to people in low- and moderate-income census tracts through online marketing.

Question 75. Is the choice of $250,000 gross annual revenue an appropriate threshold to distinguish whether a business or farm may be particularly likely to have unmet credit needs, or should the threshold be lower (e.g., $100,000) or higher (e.g., $500,000)?

It's not clear how the agencies determined that a specific revenue threshold would make a business or farm more likely to have unmet credit needs. Banks market loans to individuals and businesses that meet certain criteria identified through credit scores, financial analysis, and other factors to be prime candidates for their loan products. The agencies should determine how those same criteria/algorithms could be used in identifying "unmet credit need."

Question 76. Should the community benchmarks be set using the most recent data available at the time of the examination? Would an alternative method that establishes benchmarks earlier be preferable?

Community benchmarks set using the most recent data may could contribute to clustering CRA qualifying activities around the exam timeframe rather than during the entire assessment period. Benchmarks should use data throughout the exam period.

Question 77. Should the bank volume metric and distribution bank metrics use all data from the bank's evaluation period, while the market volume benchmark and distribution market benchmarks use only reported data available at the time of the exam? Would an alternative in which the bank volume metrics and distribution bank metrics were calculated from bank data covering only the same years for which that reported data was available be preferable?

The bank volume metric and distribution bank metrics should use all data from the bank's evaluation period. The market volume benchmark and distribution market benchmarks should use only reported data available at the time of the exam.

Question 78. Are the proposed community benchmarks appropriate, including the use of low-income and moderate-income family counts for the borrower distribution of home mortgage lending? Would alternative benchmarks be preferable? If so, which ones?

A racial equity benchmark should be established for each area to include the following:

Table 4 to Section __.22—Benchmarks for Closed-End Home Mortgage and Open-End Home Mortgage Loans

Distribution metric	Racial Equity Benchmark
Closed-End Home Mortgage, Open-End Home Mortgage	
Geographic Distribution Metric: Data Point	Percentage of home mortgages in low- or moderate- income census tract to individuals from racial/ethnic groups historically denied full benefits of homeownership due to redlining, racial covenants, deed restrictions, and undervaluation of real property.
Data Source	Banks, register of deeds, HUD
Borrower Distribution Metric:	
Data Point	Percentage of home mortgages to low- and moderate- income borrowers in the banks retail assessment area who are from racial/ethnic groups historically denied full benefits of homeownership due to redlining, racial covenants, deed restrictions, and undervaluation of real property.
Data Source	Banks

Table 5 to Section __.22—Benchmarks for Multifamily Loans

Distribution metric	Racial Equity Benchmark
Multifamily Loans	
Geographic Distribution Metric: Data Point	Percentage of multifamily mortgages in banks retail assessment area operates made to BIPOC led organizations.
Data Source	Banks

Table 6 to Section __.22—Benchmarks for Small Business and Small Farm Loans

Distribution metric	Racial Equity Benchmark
Small Business	
Geographic Distribution Metric: Data Point	Percentage of small business loans in banks retail assessment area and community development assessment area made to individuals from racial/ethnic groups.
Data Source	Banks
Borrower Distribution Metric:	
Data Point	Percentage of small business loans to businesses in all assessment areas that meet definition of small business in the new rule. [This assumes the agencies adopt definition proposed under Response 36.]
Data Source	

Distribution metric	Racial Equity Benchmark
Small Farm	
Geographic Distribution Metric: Data Point	Percentage of small farms loans in all assessment areas that meet definition of small farm in the new rule. [This assumes the agencies adopt definition proposed under Response 36.]
Data Source	
Borrower Distribution Metric:	
Data Point	Percentage of small farms loans in all assessment areas that meet definition of small farm in the new rule. [This assumes the agencies adopt definition proposed under Response 36.]
Data Source	

Table 7 to Section __.22—Benchmarks for Automobile Loans

Distribution metric	Racial Equity Benchmark
Automobile Loans	
Geographic Distribution Metric: Data Point	Percentage of automobile loans in low-income or moderate-income census tracts in assessment area, as applicable, by all lender-reporters.
Data Source	
Borrower Distribution Metric:	

Data Point	Percentage of automobile loans to low-income, or moderate-income BIPOC borrowers, in assessment area as applicable, by all lender-reporters.
Data Source	

Table 18 to Section __.23—Community Benchmarks for Retail Services—Remote Service Facility Availability

Distribution metric	Racial Equity Benchmark
Remote Service Facility Availability	
Geographic Distribution Metric: Data Point	Percentage of predominately BIPOC census tracts in a facility-based assessment area by census tract income level Percentage of BIPOC households in a facility-based assessment area by census tract income level Percentage of BIPOC businesses and farms in a facility-based assessment area by census tract income level
Data Source	Census, Banks

Question 79. Should automobile lending for all banks be evaluated using benchmarks developed only from the lending of banks with assets of over $10 billion?

No. All banks should be evaluated for automobile lending.

Question 80. Are the proposed market and community multipliers for each conclusion category set at appropriate levels? If not, what other set of multipliers would be preferable? In general, are the resulting thresholds set at an appropriate level for each conclusion category?

Yes with the addition of an equity benchmark.

Question 81. How should the agencies use the calibrated market benchmark and calibrated community benchmark to set performance thresholds? Should the agencies set thresholds based on the lower of the calibrated market benchmark or calibrated community benchmark?

The agencies should add all calibrated benchmarks for a total CRA score or use a weighted average. The agencies should pick one calibrated benchmark but consider all calibrated benchmarks to get a better view of how banks are serving all needs of low to moderate income customers.

Question 82. How should the agencies address the potential concern that the proposed approach may set performance expectations too low in places where all lenders, or a significant share of lenders, are underserving the market and failing to meet community credit needs? Should the agencies consider an

alternative approach to setting the performance thresholds that would use a weighted average of the calibrated market benchmark and calibrated community benchmark?

To address this concern, the agencies should consider use of a weighted average of all benchmarks. The benchmarks for the performance tests need to emphasize those areas that would help inform and tailor CRA evaluations to the local communities being served by banks. The agencies should weight scores in favor of those activities that will improve equitable access and have the most impact on equity wealth-building and economic stability of low and moderate income communities.

Question 83. Should the agencies weight the two distribution results equally? Should the borrower distribution conclusion be weighted more heavily than the geographic distribution conclusion to provide an additional incentive for lending to low- and moderate-income borrowers in certain areas? Are there circumstances under which the geographic distribution conclusion should be weighed less heavily, such as in rural areas with few low- and moderate-income census tracts or where the number of investor loans is increasing rapidly?

The borrower distribution conclusion should be weighted more heavily than the geographic distribution if the intended outcome is increased access to lending opportunities for low- and moderate-income borrowers regardless of geographic boundaries. Lenders that do not have an assessment area with low- or moderate-income census tracts or experiencing other difficulties with reaching potential low- and moderate-income borrowers in their assessment area could partner with a CDFI or MDI that could facilitate this process for them, giving them greater access to low- or moderate-income census tracts.

Question 84. Should the agencies use loan count in conjunction with, or in place of, dollar volume in weighting product line conclusions to determine the overall Retail Lending Test conclusion in an assessment area?

The agencies should use loan count in conjunction with dollar volume in weighting product line conclusions to determine the overall Retail Lending Test conclusion in an assessment area. There should be some analysis used to determine how equitable the CRA lending is.

Question 85. ***Would identifying underperforming markets appropriately counter the possibility that the market benchmarks might be set too low in some assessment areas? If so, what data points should be used to set expectations for the market benchmark? How far below this expectation should an observed market benchmark be allowed to fall before the market is designated as underperforming?***

Based on the explanation provided, it seems reasonable to assess underperforming markets using a relative standard as described in example (ie, assessment areas in which the difference between the market benchmark and its expected value was two standard deviations below average). However, clarification is needed on how identifying underperforming markets appropriately could counter the possibility that the market benchmarks might be set too low in some assessment areas.

Question 86. ***Should the agencies consider other factors, such as oral or written comments about a bank's retail lending performance, as well as the bank's responses to those comments, in developing Retail Lending Test conclusions?***

Yes, and the agencies should consider assessments and information in other federal repositories that could house comments/complaints on banks. An online bank profile with report card should be published and updated after each assessment that summarizes in lay terms the information the agencies considered in their assessment and the reason for their ratings.

Question 87. ***Should all large banks have their retail lending in their outside retail lending areas evaluated? Should the agencies exempt banks that make more than a certain percentage, such as 80 percent, of their retail loans within facility-based assessment areas and retail lending assessment areas? At what percentage should this exemption threshold be set?***

All large banks should have their retail lending in their outside retail lending areas evaluated. The agencies may not capture large dollar transactions made outside of the facility-based assessment areas and retail lending assessment areas if the agencies exempt banks that make more than a certain percentage of their retail loans within the facility-based assessment areas and retail lending assessment areas. This could be a data loophole for a racial equity assessment.

Question 88. Does the tailored benchmark method proposed above for setting performance ranges for outside retail lending areas achieve a balance between matching expectations to a bank's lending opportunities, limiting complexity, and setting appropriate performance standards? Should the agencies instead use less tailored benchmarks by setting a uniform outside retail lending areas benchmarks for every bank? Or should the agencies use a more tailored benchmarks by setting weights on geographies by individual product line?

Agencies should use a uniform outside retail lending areas benchmark for every bank but allow for a qualitative review of other relevant performance context information.

Question 89. ***Should assessment area and outside retail lending area conclusions be weighted by the average of a bank's percentage of loans and deposits there? Is the proposed approach for using FDIC's Summary of Deposits data for banks that do not collect and maintain deposits data appropriate? Should the agencies use another method for choosing weights?***

Since the proposed approach for using FDIC's Summary of Deposits data for banks that do not collect and maintain deposits data lowers the bank's volume metric, the agencies should explore why banks don't collect this data. FDIC's Summary of Deposits data doesn't identify the amount or percentage of deposits sourced from outside of a bank's facility-based assessment areas. For this reason, a bank with $10 billion or less would have a lower bank volume metric by just not collecting data on the bank's deposits. If a bank is not collecting the data due to limited capacity, the agencies should consider assisting these banks with building this capacity before offering the option to use the FDIC alternative. If the lack of data collection is due to some other reason, the agencies should determine if the issue could be resolved with the agencies' assistance.

Question 90. Should the agencies use the percentage of families and total population in an assessment area by census tract income level in addition to the other comparators listed (i.e., census tracts, households, and businesses) for the assessment of branches and remote service facilities?

In assessing branches and remote service facilities, the agencies should use most granular data available.

Question 91. Are there other alternative approaches or definitions the agencies should consider in designating places with limited branch access for communities, such as branch distance thresholds determined by census tract population densities, commuting patterns or some other metric? For

example, should the agencies not divide geographies and use the more flexible, second alternative approach?

The objective is to ensure communities underserved by the banking system have no barriers to accessing banking products in their communities. If there is a CRA standard for how near a community should be to a physical location of a full-service bank, then a branch distance threshold may be appropriate. However, physical banking is become less of a resource than mobile banking in many communities. Ample funding has been made available through the American Rescue Plan, Bipartisan Infrastructure Law, and other federal resources to assist LMI communities and small businesses with getting broadband infrastructure and computer equipment. The agencies should request support from the cognizant agencies, likely FCC and USDA RUS, on identifying broadband infrastructure and computer needs in LMI census tracts that are within bank assessment areas. This information could be conveyed to banks that could in turn could work with state and local governments as part of their community development service commitments in bringing these digital resources to communities that need them for online banking and other activities.

Question 92. How should geographies be divided to appropriately identify different distance thresholds? Should they be divided according to those in the proposed approach of urban, suburban, and rural areas; those in the alternative approach of central counties, outlying counties, and nonmetropolitan counties; or some other delineation?

Distance thresholds for measuring branch access should account for variation in spatial density, population density, and transit modes across different geographies to a certain extent. It's unclear if coastal areas would be in one of these categories or have their own category. USDA ERS has rural-urban codes to classify how commutable certain rural and urban census tracts are based on urbanization, population density, and daily commuting. This information combined with any FFIEC guidance on census tracts should inform the agencies on how to delineate/divide geographies for each distance threshold.

Question 93. How narrowly should designations of low branch access and very low branch access be tailored so that banks may target additional retail services appropriately?

Proximity to a physical bank is a baseline for assessing the need for a bank, but banks should be using data on consumer financial needs gather from interactions with consumers in assessment areas to determine how to tailor banking services.

Question 94. Is a fixed distance standard that allows the concentration of low and very low branch access areas to vary across regions, such as that in the proposed approach, or a locally-determined distance threshold that identifies a similar concentration of low and very low branch access areas within each local area, such as that in the alternative approach, most appropriate when identifying areas with limited branch access?

A fixed distance standard for each geography type (urban, suburban, or rural) makes it easier to evaluate branch access and concentration of banks.

Question 95. Should the agencies take into consideration credit union locations in any of the proposed approaches, or should the analysis be based solely on the distribution of bank branches? For example, in the proposed or local approach, having a credit union within the relevant distance of a census tract

population center would mean that the census tract would not be a very low branch access census tract (if there were no bank branch present).

This depends on the extent to which credit unions are offering competitive banking products that are responsive to LMI consumer and small business needs in the assessment areas. If the retail and business services being evaluated through the CRA assessment are offered by credit unions in the assessment areas, the agencies should take into consideration credit union locations.

Question 96. If the local approach were adopted, how frequently should the local distances be updated?

Many geomapping apps offer near real-time locational data on new businesses such as bank branches. Banks should be able to retrieve and update current data on local distances.

Question 97. What other branch-based services could be considered as responsive to low- and moderate-income needs?

Banks use various methods to figure out where and when to market certain products to their customers. This should be no different for customers who are low- and moderate- income. Banks should use surveys, promotional gifts/offers, predictive models, and other tactics to identify what other branch-based services could be considered as responsive to low- and moderate-income needs.

Question 98. Should branches in distressed or underserved middle-income nonmetropolitan census tracts receive qualitative consideration, without documenting that the branch provides services to low- or moderate-income individuals?

No. There is no assurance that a branch location in distressed or underserved middle-income nonmetropolitan census tracts is meeting or exceeding the different benchmarks without documentation—either from the bank or their consumers. Require documentation (including data) that indicates how and where the branch provides services to low or moderate income individuals and has moderate to high usage by individuals in distressed or underserved middle-income nonmetropolitan census tracts.

Question 99. Should the agencies provide favorable qualitative consideration for retail branching in middle-income and upper-income census tracts if a bank can demonstrate that branch locations in these geographies deliver services to low- or moderate-income individuals? What information should banks provide to demonstrate such service to low- or moderate-income individuals?

If a bank can demonstrate they serve low- or moderate-income individuals in middle-income and upper-income census tracts, it may not necessarily mean they should get qualitative consideration. Even though CRA gives consideration for serving LMI individuals, the broader goal is to advance equity for communities' through banking investment. It can be presumed that a middle-income and upper-income census tract may not need this type of investment. That LMI individuals utilize services in these wealthier neighborhoods seems to be ancillary to the program goals. The banks should get favorable consideration for activities and services that are more impactful for the LMI communities in the assessment areas.

Question 100. How could the agencies further define ways to evaluate the digital activity by individuals in low-, moderate-, middle-, and upper-income census tracts, as part of a bank's digital and other delivery systems evaluation?

Identify underserved and distressed LMI census tracts where banks don't have physical branches and ensure those tracts are included in a bank's assessment area for digital activity.

Question 101. Should affordability be one of the factors in evaluating digital and other delivery systems? If so, what data should the agencies consider?

Yes, and data from the Federal Communications Commission on internet access could help the agencies determine which census tracts are least likely to be able to use digital delivery of banking products. Bank fees are also a deterrent or barrier for low- to moderate-income individuals to securing and maintaining banking products.

Question 102. Are there comparators that the agencies should consider to assess the degree to which a bank is reaching individuals in low- or moderate-income census tracts through digital and other delivery systems?

When people do banking in physical branches, the bank can identify where they live from the address associated with their account. If these customers apply for products, the bank could ask where they learned about the bank or bank products (ie, through digital or other delivery systems). Banks probably monitor click rates on their promotional emails and use cookies to determine who is accessing their site. This same monitoring could help them determine if they're reaching low- or moderate- income census tracts through digital and other delivery systems.

Question 103. Should the evaluation of digital and other delivery systems be optional for banks with assets of $10 billion or less as proposed, or should this component be required for these banks? Alternatively, should the agencies maintain current evaluation standards for alternative delivery systems for banks within this tier?

Digital and other delivery systems may be the best means to reach communities for CRA activities where physical branches are unavailable. Digital and other delivery systems should be a required component of the evaluation.

Question 104. Are there additional categories of responsive credit products and programs that should be included in the regulation for qualitative consideration?

Responsiveness should be determined by the community seeking banking services. The agencies should require that banks, if they're not already doing so, identify the unmet credit needs and programs for low- or middle- income households in their assessment areas.

***Question 105*. Should the agencies provide more specific guidance regarding what credit products and programs may be considered especially responsive, or is it preferable to provide general criteria so as not to discourage a bank from pursuing impactful and responsive activities that may deviate from the specific examples?**

The agencies should recommend impactful credit products if they have research or studies that support their recommendations.

Question 106. Should special purpose credit programs meeting the credit needs of a bank's assessment areas be included in the regulation as an example of loan product or program that facilitates home mortgage and consumer lending for low- and moderate-income individuals?

Yes.

Question 107. Are the features of cost, functionality, and inclusion of access appropriate for establishing whether a deposit product is responsive to the needs of low- and moderate-income individuals? What other features or characteristics should be considered? Should a minimum number of features be met in order to be considered `responsive'?

Customer needs assessments are better as sources of information on which products are responsive to their needs. Generally speaking, the cost, functionality, and inclusion of access are likely the best indicators of responsiveness and seem appropriate for establishing whether a deposit product is responsive to the needs of low- and moderate- income individuals. People without banking or credit histories, or with adverse banking histories, may be interested in and benefit from products that offer greater potential for asset-building opportunities. The agencies should consider adding a fourth feature: wealth enabling opportunities. These are products such as financial wellness coaching, wealth building advice, credit repair, money management assistance, and banking career training opportunities.

Question 108. The agencies wish to encourage retail banking activities that may increase access to credit. Aside from deposit accounts, are there other products or services that may increase credit access?

Increasing access to credit is good but increasing opportunities for wealth-building and economic mobility is better. If a main goal is to meet a communities' overall banking needs, the focus needs to be on expanding access to all banking services. The agencies should encourage and provide license to banks to provide affordable products such as special purpose grants or small dollar loans for small business startups, small business incubation, and other services.

Question 109. Are the proposed usage factors appropriate for an evaluation of responsive deposit products? Should the agencies consider the total number of active responsive deposit products relative to all active consumer deposit accounts offered by the bank?

The proposed usage factors seem to be appropriate for an evaluation of responsive deposit products. It's not clear if the total number of active responsive deposit products relative to all active consumer deposit accounts offered by the bank will be an indicator of responsiveness or other things. If the bank offers an account opening reward there could be a surge in account openings and a drop off after the reward is no longer being offered. This may not be an indicator that the account is not a responsive product but instead may be evidence that the reward rather than the account was the incentive for the account opening. It would seem that number of account closings should be scrutinized in the same way to determine if the issue is the product being unresponsive or if there are other factors such as servicing issues, negative press coverage, or demographic shifts resulting in the account closings.

Question 110. Should the agencies take other information into consideration when evaluating the responsiveness of a bank's deposit products, such as the location where the responsive deposit products are made available?

Inability to access a location can be a barrier to using banking services even when transportation is available. Perceived safety near a location could impact whether people bank at a particular location and how and when people make bank deposits or conduct.

Question 111. Should large banks with assets of $10 billion or less have the option of a responsive deposit products evaluation, as proposed, or should this component be required, as it is for large banks with assets of over $10 billion?

From a consumer perspective, it wouldn't matter if their primary bank is a large bank with assets of $10 billion or less. The bank should be responsive to the deposit needs of the people in the assessment area in order to get CRA consideration for their activities. The goal should be to ensure low- and moderate-income families have easy access to the banking products they need. Deposit products evaluation shouldn't be an option. There's already an alternative proposed for banks that don't collect deposit information.

Question 112. For all large banks, the agencies propose to evaluate the bank's delivery systems (branches and remote service facilities) at the assessment area level, and the digital and other delivery systems at the institution level. Is this appropriate, or should both subcomponents be evaluated at the same level, and if so, which level?

It makes sense to evaluate the bank's delivery systems (branches and remote service facilities) at the assessment area level, and the digital and other delivery systems at the institution level.

Question 113. The agencies propose weighting the digital and other delivery systems component relative to the physical delivery systems according to the bank's business model, as demonstrated by the share of consumer accounts opened digitally. Is this an appropriate approach, or is there an alternative that could be implemented consistently? Or, should the weighting be determined based on performance context?

The share of consumer accounts opened digitally should be the metric. It is not clear why physical delivery systems are relevant and how much a bank's business model should be factored unless the banks offer no digital banking services. Physical banks are becoming less relevant for average consumer transactions as digital platforms continue to offer a more robust suite of services. In addition to increasing the share of consumer accounts opened digitally, a bank should be evaluated by how well it protects consumer data and makes it easy for consumers to decide how their data is used. Banks should assess barriers to increasing the number of digital consumers and work directly and with its partners to remove those barriers. As an example, if consumers do not have adequate equipment or broadband for secure digital banking, the bank can partner with public and private sector organizations in promoting programs that provide free or heavily subsidized equipment and broadband service. Banks could support or facilitate efforts to build broadband infrastructure.

Question 114. How should the agencies weight the two subcomponents of the credit and deposit products evaluation? Should the two subcomponents receive equal weighting, or should examiner judgment and performance context determine the relative weighting?

The agencies evaluate whether a bank's credit products are responsive to the needs of low- or moderate- income individuals. Relatedly, the weighting should also depend on the importance of each product to the communities in the assessment area.

Question 115. Should the credit and deposit products evaluation receive its own conclusion that is combined with the delivery systems evaluation for an overall institution conclusion? Or should favorable performance on the credit and deposit products evaluation be used solely to upgrade the delivery systems conclusion? For large banks with assets of $10 billion or less that elect to be evaluated on their digital delivery systems and deposit products, how should their performance in these areas be considered when determining the bank's overall Retail Services and Products Test conclusion?

There should be an overall institution conclusion with the appropriate weighting of each composite evaluation. You could value the delivery systems conclusion less than the other systems conclusions if it is deemed to be less critical.

Question 116. Should each part of the Retail Services and Products Test receive equal weighting to derive the institution conclusion, or should the weighting vary by a bank's business model and other performance context?

The agencies mention in Question 105 that they are considering providing specific guidance on "**impactful and responsive activities.**" If the agencies provide this guidance, then each part of the Retail Services and Products Test should be weighted according to how impactful and responsive activities could potentially be to consumers in accordance with the specific guidance.

Question 117. Should activities that cannot be allocated to a specific county or state be considered at the highest level (at the state or institution level, as appropriate) instead of allocated to multiple counties or states based upon the distribution of all low- and moderate-income families across the counties or states?

Activities that cannot be allocated to a specific county or state should be considered at the highest level (at the state or institution level, as appropriate) instead of allocated to multiple counties or states based upon the distribution of all low- and moderate-income families across the counties or states. However, if the activities are that broad reaching, the state or county or regional planning commission may have accompanying metrics to be used in assessing their impact on the state/county.

Question 118. What methodology should be used to allocate the dollar value of activities to specific counties for activities that serve multiple counties? For example, should the agencies use the distribution of all low- and moderate-income families across the applicable counties? Or, should the agencies use an alternative approach, such as the distribution of the total population across the applicable counties? Should the agencies consider other measures that would reflect economic development activities that benefit small businesses and small farms or use a standardized approach to allocate activities?

A standardized approach should be used to allocate activities. The approach could be to simply identify LMI families in each county and allocate the dollar value according to the proportion of LMI each county. If the focus of the activities is small businesses and small farms, the same approach could be used.

Neither approach will accurately reflect how/if the activities impacted either LMI families or small businesses/farms which is why it would be better to actually do a more targeted impact assessment using surveys and other research tools that gauge how much and which residents/businesses benefitted the most in each assessment area.

Question 119. The agencies are seeking feedback on alternatives to determining the denominator of the bank assessment area community development financing metric. What are the benefits and drawbacks, including data challenges, of implementing an alternative approach that bases the denominator of the metric on the share of bank depositors residing in the assessment area (described above) in contrast to the proposed approach of relying on dollar amounts of deposits?

The proposed ratio of a bank's community development financing dollars (the numerator) relative to the dollar value of the deposits (the denominator) within a facility-based assessment area seems reasonable. In the example where a bank has maintained an average of $1 million in deposits from an assessment area and has conducted an average of $20,000 annually in qualifying community development financing activities in that assessment area (ie, 2.0 percent metric) the bank would know it needs to increase deposits in the assessment area for a higher metric. The downside is that the bank may focus on increasing the volume of deposits by focusing more on areas with high population density such as metropolitan areas rather than low income rural or remote areas where they may be less likely to meet their target metric. Also, the agencies need to consider the community's needs in determining how relevant each metric is to the bank's performance.

Question 120. For large banks with assets of $10 billion or less, under the proposed Community Development Financing Test, is it appropriate to use the FDIC's Summary of Deposits data instead of deposits data that is required to be collected and maintained by the bank to tailor new data requirements, or would it be preferable to require collected deposits data for all large banks?

It's more appropriate to use deposits data which more accurately reflect the banks performance under the test.

Question 121. What is the appropriate method to using the local and nationwide benchmarks to assess performance? Should the agencies rely on examiner judgment on how to weigh the comparison of the two benchmarks, or should there be additional structure, such as calculating an average of the two benchmarks, or taking the minimum, or the maximum, of the two benchmarks?

The agencies should be more prescriptive by providing specific quantitative methods and benchmarks to assess performance. The proposal to aggregate a bank's performance scores for each applicable test, with specific weights assigned to the performance score of each test seems reasonable. This standard quantitative approach will improve consistency across all performance evaluations and make the process less prone to subjectivity and results skewing.

Question 122. What other considerations should the agencies take to ensure greater clarity and consistency regarding the calculation of benchmarks? Should the benchmarks be calculated from data that is available prior to the end of the evaluation period, or is it preferable to align the benchmark data with the beginning and end of the evaluation period?

During the initial year of implementing the new CRA regulation, it may be preferable to align the benchmark data with the beginning and end of the evaluation period to get a sense of changes in service/performance levels. In subsequent periods, this may not be necessary because you will have data from the previous evaluation period un as a point of comparison

Question 123. When calculating the weighted average of facility-based assessment area conclusions and assessment area community development financing benchmarks, is it appropriate to weight assessment area metrics and benchmarks by the average share of loans and deposits, as proposed?

It's appropriate to weight assessment area metrics and benchmarks by the average share of loans and deposits.

Question 124. Is the proposed use of the FDIC's Summary of Deposits data for banks that do not collect and maintain deposits data appropriate, or should all large banks be required to collect and maintain deposits data, which would enable the metrics and benchmarks to be based on collected deposits data for all large banks?

Large banks should be required to collect and maintain deposits data. This data collection would allow for the metrics and benchmarks to be based on collected deposits data for all large banks. The summary of deposits should only be used to determine whether a bank has a responsibility to reinvest into a certain community.

Question 125. Considering current data limitations, what approaches would further enhance the clarity and consistency of the proposed approach for assigning community development financing conclusions, such as assigning separate conclusions for the metric and benchmarks component and the impact review component? To calculate an average of the conclusions on the two components, what would be the appropriate weighting for the metric and benchmarks component, and for the impact review component? For instance, should both components be weighted equally, or should the metric and benchmarks be weighted more than impact review component?

Rather than assigning separate conclusions for the metric and benchmarks component and the impact review component, consider using them to assess performance trends or patterns across banks. If separate conclusions are derived, the agencies could weight each component and then reduce or increase the overall performance bank performance score based on the outcome. The impact review should receive the highest weight since it relates to the outcome of the bank's performance.

Question 126. How can the agencies encourage greater consistency and clarity for the impact review of bank activities? Should the agencies consider publishing standard metrics in performance evaluations, such as the percentage of a bank's activities that meet one or more impact criteria?

Agencies should consider how impact reviews are conducted by CDFI Fund and CDFIs and determine if these impact reviews should be replicated for CRA assessments. There should also be some sort of review of examiners to determine how equitably and consistently they are reviewing for community development impact.

Question 127. Should volunteer activities unrelated to the provision of financial services be considered in all areas or just in nonmetropolitan areas?

Yes, but only when the volunteer activities are provided in concert with an activity that provides a longer-term financial benefit to the community. The hours of a bank employee who volunteers for should be count only if the bank is concurrently making a financial donation, a commitment of future resources, an offer of free ‘corporate’ services or resources (eg, allowing a charity to use bank owned space for its administrative offices.)

Question 128. For large banks with average assets of over $10 billion, does the benefit of using a metric of community development service hours per full time employee outweigh the burden of collecting and reporting additional data points? Should the agencies consider other quantitative measures? Should the agencies consider using this metric for all large banks, including those with average assets of $10 billion or less, which would require that all large banks collect and report these data?

In response to the first question, it depends on the impact the service hours have on actual community development investment. Board room meetings for discussing a project may or may not lead to anything that actually furthers community development investment or that could be the precursor to meaningful community development. The agencies should just credit banks with a certain number of service hours when the service hours relate to a documented financial donation, commitment of future resources, free ‘corporate’ services or resources (eg, allowing a charity to use bank owned space for its administrative offices.) The banks would just provide documentation of the donation, commitment, etc. with the valuation of the donation to get the credit for the hours. The agencies could credit hours in a tiered approach where higher impact financial donations would get the most service hour credits.

Question 129. How should the agencies define a full-time equivalent employee? Should this include bank executives and staff? For banks with average assets of over $10 billion, should the agencies consider an additional metric of community development service hours per executive to provide greater clarity in the evaluation of community development services?

Use the same definition from CDFI Fund’s Bank Enterprise Award Program (BEAP) unless there is a legal requirement to use a different definition.

Question 130. Once community development services data is available, should benchmarks and thresholds for the bank assessment area community development services hours metric be developed? Under such an approach, how should the metric and qualitative components be combined to derive Community Development Services Test conclusions?

The community development services hours metric should be consistent with metric used in evaluating similar services by the CDFI Fund, if applicable, and the agencies should only consider bank volunteer services that make a significant and identifiable impact on community development needs of the communities in the assessment areas with corresponding high-impact financial or financial-related services.

Question 131. How could the agencies provide more certainty in the evaluation of community development financing at the facility-based assessment area level? Should a bank assessment area community development financing metric be used to measure the amount of community development financing activities relative to a bank's capacity? If so, what is the appropriate denominator?

The agencies should require that the community development financing metric be used to measure the value of community development financing activities relative to a bank's capacity. Community reinvestment and community development are the core purpose of the CRA. The agencies must use a metric to quantitatively assess each bank's capacity to make impactful and responsive community development investments. The agencies should factor that even banks with limited investment capacity could partner with and leverage the resources of CDFIs (eg, tax credits) and larger banks to effect transformative community development financing models. Depository institutions receiving awards under the CDFI Fund's Bank Enterprise Award Program (BEAP) are required to report detailed data on past community development activities in distressed communities. There are extensive instructions on what types of supportive documentation must be provided for each transaction type. The agencies should consider whether elements of the BEAP approach could be replicated for the data collection needed for the community development financing assessment. Also, the agencies should review the IT system used to collect the BEAP data and discuss with CDFI Fund any opportunities for automatically loading BEAP data in the bank's community development financing profile.

Question 132. Should a benchmark be established to evaluate community development financing performance for wholesale and limited purpose banks at the institution level? If so, should the nationwide community development financing benchmark for all large banks be used, or should the benchmark be tailored specifically to wholesale and limited purpose banks?

A benchmark should be established to evaluate community development financing performance for wholesale and limited purpose banks at the institution level using the nationwide community development financing benchmark.

Question 133. For wholesale and limited purpose banks that wish to receive consideration for community development services, should these banks be required to opt into the proposed Community Development Services Test, or should they have the option to submit services to be reviewed on a qualitative basis at the institution level, without having to opt into the Community Development Services Test?

For consistency, all banks should be evaluated under each assessment area where they have conducted activities even if they can only provide summary information or information in their own format.

Question 134. Should the strategic plan option continue to be available to all banks, or do changes in the proposed regulation's assessment area provisions and the metrics approach reduce the need for the strategic plan option for banks with specialized business strategies?

Banks approved to be evaluated under a CRA strategic plan option would have the same assessment area requirements as other banks and would submit plans that include the same performance tests and standards that would otherwise apply unless the bank is substantially engaged in activities outside the scope of these tests. For this reason, it is unclear why the strategic plan alternative option is has been made available. Banks collect a lot of customer and consumer data and have a framework under the proposed rule that gives a lot of flexibility in complying with CRA reporting without the strategic plan option. The strategic plan option adds a level of complexity to the process because it relies heavily on nonstandard measures that make bank to bank comparisons more difficult: "In seeking approval for a plan that does not adhere to requirements and standards that are applied to other banks, the plan would be required to include an explanation of why the bank's view is that different standards would be more appropriate in meeting the credit needs of its communities." This just adds more time and effort for bank evaluations on the part of the agencies and doesn't seems to be necessary given the flexibility included within the regular requirements.

Question 135. Large banks electing to be evaluated under a strategic plan would have activities outside of facility-based assessment areas considered through retail lending assessment areas and then outside retail lending assessment areas. Should small and intermediate banks electing to be evaluated under a strategic plan be allowed to delineate the same types of assessment areas? What criteria should there be for choosing additional assessment areas? Could such banks have the ability to incorporate goals for facility-based assessment areas and goals for outside of assessment areas?

It is unclear why the strategic plan alternative option has been made available. Banks collect a lot of customer and consumer data and have a framework under the proposed rule that gives a lot of flexibility in complying with CRA reporting. The strategic plan option adds a level of complexity to the process because it relies heavily on nonstandard qualitative measures that make bank to bank comparisons more difficult. Increasing the number of banks that can choose the strategic plan option will aggravate the ability to measure performance in a standard way. Rather than giving the same flexibility to small and intermediate banks, consider phasing out the strategic plan alternative and asking banks using the alternative what would be needed in terms of systems, capacity, etc. to comply with the regular evaluation requirements.

Question 136. In assessing performance under a strategic plan, the agencies determine whether a bank has "substantially met" its plan goals. Should the agencies continue to maintain the substantially met criteria? If so, should it be defined and how? For example, as a percentage (e.g., 95 percent) of each measurable goal included in the plan, the percentage of goals met, or a combination of how many goals were not met and by how much?

It is unclear why the strategic plan alternative option has been made available. Banks collect a lot of customer and consumer data and have a framework under the proposed rule that gives a lot of flexibility in complying with CRA reporting. The strategic plan option adds a level of complexity to the process because it relies heavily on nonstandard qualitative measures that make bank to bank comparisons more difficult.

Question 137. The agencies are considering announcing pending strategic plans using the same means used to announce upcoming examination schedules or completed CRA examinations and CRA ratings. What are the potential advantages or disadvantages to making the draft plans available on the regulators' websites?

It is unclear why the strategic plan alternative option has been made available. Banks collect a lot of customer and consumer data and have a framework under the proposed rule that gives a lot of flexibility in complying with standard CRA reporting. The strategic plan option adds a level of complexity to the process because it relies heavily on nonstandard qualitative measures that make bank to bank comparisons more difficult. If the agencies decide to keep the strategic plan option, more transparency would lend more public scrutiny to this special process and maybe allow for improvements.

Question 138. In addition to posting draft plans on a bank's website and the appropriate Federal banking agency's website, should approved strategic plans also be posted on a bank's website and the appropriate Federal banking agency's website?

It is unclear why the strategic plan alternative option has been made available. If you keep the strategic plan option, more transparency would lend more public scrutiny to this special process and maybe allow for improvements. Banks collect a lot of customer and consumer data and have a framework under the proposed rule that gives a lot of flexibility in complying with CRA reporting. The strategic plan option adds a level of complexity to the process because it relies heavily on nonstandard qualitative measures that make bank to bank comparisons more difficult. If the agencies decide to keep the strategic plan option, more transparency through online engagement of customers and the public (eg, customer comment portal) would lend more public scrutiny to this special process and maybe allow for improvements.

Question 139. The agencies request feedback on whether it would be more appropriate to weight retail lending activity 60 percent and community development activity 40 percent in deriving the overall rating at the state, multistate MSA or institution level for an intermediate bank in order to maintain the CRA's focus on meeting community credit needs through small business loans, small farm loans, and home mortgage loans.

As we witnessed during the COVID-19 pandemic, community-based service providers facilitate access to food, healthcare, housing assistance, cash, and other critical services through in many urban, rural, and coastal communities. Many of these providers are under-resourced to addressed the many social factors impacting individual and community resilience. For this reason, the agencies should give greater emphasis in the community development financing assessment to activities that strengthen continuity of community-based services particularly for residents with complex medical needs. We further recommend that the definition of “community development investment” be expanded to include funding that will sustain community-based services in distressed or underserved communities such as funding to establish and replenish flexible services funds, funding for capital reserves for services in supportive housing developments, and funding to build capacity of community-based service providers to improve and sustain their service offerings. We also weight community development more heavily because it is more relevant to the broader the purpose for CRA which is community reinvestment.

Following is an example where all banks regardless of size must account for activities under each assessment area. A bank that does not engage in any activities in a test area could verify this in the performance context information and have their overall score adjusted to reflect this so they won’t be penalized:

	Retail Lending Test	Retail Services and Products Test	Community Development Financing Test	Community Development Services Test
	Weight (Percentage)			
Large	30	10	50	10
Intermediate	30	10	50	10
Small	40	25	10	25

Question 140. What are the advantages and disadvantages of the proposal to limit the state, multistate MSA, and institution-level ratings to at most a “Needs to Improve” for large banks with ten or more assessment areas unless 60 percent or more of the bank's assessment areas at that level have an overall performance of at least “Low Satisfactory”? Should this limitation apply to all assessment

areas, or only facility-based assessment areas? Is ten assessment areas the right threshold number to prompt this limitation, and is 60 percent the right threshold number to pass it? If not, what should that number be? Importantly, what impact would this proposal have on branch closures?

The issue isn't as much about the rating as its is about what action the agencies will take because of the rating. A "Needs to Improve" should require specific action and direction from the agencies with a statement of how the rating will impact other actions, ratings, or approvals within the agency's purview. Requiring that a large bank's overall performance in a facility-based assessment area is based on the conclusions received on each test in that assessment area will assure that the bank will devote some effort to passing each test. Also, the weight for the Community Development Services Test should be raised so that it will be as relevant to the overall performance as other tests.

Question 141. The agencies propose to continue to evaluate small banks under the current framework in order to tailor the evaluation approach according to a bank's size and business model. What are other ways of tailoring the performance evaluation for small banks?

If a bank, such as a wholesale or limited purpose bank, does not engage in lending of a particular type, it makes sense that the agencies would not require reporting such data. However, if these banks do engage in a particular lending activity, they should report on it. There needs to be a balance between easing the administrative burden on banks and collecting the data necessary to evaluate the bank's full impact on underserved households and neighborhoods. The agencies are proposing that intermediate banks be given the option to be evaluated under the proposed Community Development Financing Test in § __.24 in lieu of the intermediate bank community development performance standards. The rationale provided is that it will give these banks more flexibility to determine how their community development activities are evaluated given their limited capacity. Community needs not bank capacity shouldn't be the driver of which evaluations are relevant. Banks can provide performance context information to explain how business model impacts performance under a test.

Question 142. Should additional consideration be provided to small banks that conduct activities that would be considered under the Retail Services and Products Test, Community Development Financing Test, or Community Development Services Test when determining the bank's overall institution rating?

Since examiners would use data that small and intermediate banks maintain in their own format or reported under other regulations, *e.g.,* HMDA, they should also collect any data on activities conducted that fall under the any of the relevant tests, ie, Retail Services and Products Test, Community Development Financing Test, or Community Development Services Test. This would also give the agencies data that could be used to assess what systems and procedures would be needed to allow small banks to report data in accordance with the large bank guidelines and in the interim, devise workarounds for getting the data in its native format without imposing additional burden.

Question 143. The agencies' proposal to require intermediate banks to be evaluated under the proposed Retail Lending Test is intended to provide intermediate banks with increased clarity and transparency of supervisory expectations and standards for evaluating their retail lending products. The agencies propose tailoring the application of this test by limiting data reporting requirements for intermediate banks. Are there other ways of tailoring the Retail Lending Test for intermediate banks that should be considered?

Tailoring the application of the Retail Lending Test by limiting data reporting requirements for intermediate banks will lead to data gaps and inconsistencies in assessing activities and difficulties in comparing data across agencies. An alternative way is to require the bank to send the data they already collect on activities across all assessment areas and conduct qualitative assessment in accordance with each relevant assessment test. This would also give the agencies data that could be used to assess what systems and procedures would be needed to allow intermediate banks to report data in accordance with the large bank guidelines.

Question 144. The agencies propose to provide continued flexibility for the consideration of community development activities conducted by intermediate banks both under the status-quo community development test and the proposed Community Development Financing Test. Specifically, intermediate banks' retail loans such as small business, small farm, and home mortgage loans may be considered as community development loans, provided those loans have a primary purpose of community development and the bank is not required to report those loans. Should the agencies provide consideration for those loans under the Community Development Financing Test?

The agencies should provide Intermediate banks with criteria for identifying whether a small business or small farm loan should be considered under the Retail Lending Test or, if it has a primary purpose of community development, under the applicable community development evaluation, regardless of the reporting status of these loans.

Question 145. Should intermediate banks be able to choose whether a small business or small farm loan is considered under the Retail Lending Test or, if it has a primary purpose of community development, under the applicable community development evaluation, regardless of the reporting status of these loans? Should the same approach be applied for the intermediate bank community development performance standards in § __.29(b) and for intermediate banks that decide to opt into the Community Development Financing Test in § __.24?

The agencies should provide Intermediate banks with criteria for identifying whether a small business or small farm loan should be considered under the Retail Lending Test or, if it has a primary purpose of community development, under the applicable community development evaluation, regardless of the reporting status of these loans. For example, a nonprofit farm that sells food through a community supported agriculture program but donates more than half of its food to pantries and food hubs may have more of a primary purpose of community development services than retail. Intermediate banks should be required to report small business and small farm loans and any other activities that could be assessed under any of the assessment areas. The purpose of the loan is equally as important as the recipient beneficiary of the loan. Tailoring the application of the Retail Lending Test by limiting data reporting requirements for intermediate banks will lead to data gaps and inconsistencies in assessing activities and difficulties in comparing data across banks. If intermediate banks continue to be assessed under retail lending and community development performance alone, the maximum rating should be “Needs Improvement.” Intermediate banks that want to achieve a “Satisfactory” rating should be assessed under all performance tests.

Question 146. Are the agencies' current policies for considering CRA performance on applications sufficient? If not, what changes would make the process more effective?

The agencies should continue to consider CRA performance on applications such as those for mergers and acquisitions, deposit insurance, and branch openings and relocations. Outstanding banks should be reviewed more closely for purchases of non-outstanding banks on future mergers or acquisitions.

Question 147. What are the potential benefits and downsides of the proposed approach to require deposits data collection, maintenance, and reporting only for large banks with assets of over $10 billion? Does the proposed approach create an appropriate balance between tailoring data requirements and ensuring accuracy of the proposed metrics? Should the agencies consider an alternative approach of requiring, rather than allowing the option for, large banks with assets of $10 billion or less to collect and maintain deposits data? If so, would a longer transition period for large banks with assets of $10 billion or less to begin to collect and maintain deposits data (such as an additional 12 or 24 months beyond the transition period for large banks with assets of over $10 billion) make this alternative more feasible?

Banks of all sizes may have the capacity or could build the capacity within a 12-month period for deposits data collection, maintenance, and reporting needed for CRA consideration.
The historic inequities resulting from underinvestment and discriminatory practices are not specific to a bank size, location or model. These inequities are systemic, and therefore, need to be resolved by making changes to the entire banking system. Every financial institution needs to account for how they are and how they will comply with the CRA. A bank that doesn't have capacity or just doesn't currently collect the data needed for evaluation under all tests should submit 12 month corrective action plans to the agencies. Bank progress in completing those actions can considered in the overall institutional evaluation.

Question 148. Should large banks with assets of $10 billion or less that elect to collect and maintain deposits data also be required to report deposits data? Under an alternative approach in which all large banks with assets of $10 billion or less are required to collect and maintain deposits data, should these banks also be required to report the data, or would it be appropriate to limit new data burden for these banks by not requiring them to report the data?

The historic inequities resulting from underinvestment and discriminatory practices are not specific to a bank size, location or model. These inequities are systemic, and therefore, need to be resolved by making changes to the entire banking system. Every financial institution needs to account for how they are and how they will comply with the CRA. A bank that doesn't have capacity or just doesn't currently collect the data needed to be evaluated under all CRA tests should submit 12-month corrective action plans to the agencies where bank progress in completing those actions can considered in the overall institutional evaluation.

Question 149. What are alternative approaches to deposits data collection and maintenance that would achieve a balance between supporting the proposed metrics and minimizing additional data burden? Would it be preferable to require deposits data collected as a year- or quarterly-end total, rather than an average annual deposit balance calculated based on average daily balances from monthly or quarterly statements?

As an alternative, banks could upload summary records they keep for qualitative analysis in the interim while they work toward building capacity to collect, maintain, and report deposits data at the appropriate interval (quarterly, semi-annually or annually).

Question 150. Should deposits sourced from commercial banks or other depository institutions be excluded from the deposits data that is reported or optionally maintained by banks? Should other categories of deposits be included in this deposits data?

Deposits sourced from commercial banks should not be considered CRA activity unless the commercial banks are designated as small disadvantaged business enterprises or the like. Deposits sourced from MDIs should be reported.

Question 151. For what types of deposit accounts, such as pre-paid debit card accounts, and Health Savings Accounts, might depositor location be unavailable to the bank? For these account types, is it appropriate to require the data to be reported at the institution level? Should brokered deposits be reported at the institution level as well?

We'll defer to banks on the first question. It is appropriate to require the data to be reported at the institution level. Brokered deposits should be reported at the institution level.

Question 152. What is the appropriate treatment of non-brokered reciprocal deposits? Should a non-brokered reciprocal deposit be considered as a deposit for the bank sending the non-brokered reciprocal deposit, but not be considered as a deposit for the bank receiving the reciprocal deposit?

A non-brokered reciprocal deposit should be considered a deposit for the bank sending the non-brokered reciprocal deposit, but not be considered as a deposit for the bank receiving the reciprocal deposit to prevent over inflation of deposits in transit.

Question 153. Do bank operational systems permit the collection of deposit information at the county-level, based on a depositor's address, or would systems need to be modified to capture this information? If systems need to be modified or upgraded, what would the associated costs be?

This may vary by bank but it is important for the agencies to get available data that can be used for branch level assessments.

Question 154. In order to reduce burden associated with the reporting of deposits data, what other steps can the agencies take or what guidance or reporting tools can the agencies develop to reduce burden while still ensuring adequate data to inform the metrics approach?

The agencies could work with other agencies in consolidating reporting systems and bank information reported to federal agencies to reduce the burden. Automate reporting with integration of current software or develop a certain file type so that the data can be parsed by the agencies systems uniformly.

Question 155. Should the agencies consider an alternative approach of publishing a data set containing county-level deposits data in order to provide greater insight into bank performance?

No. The more granular the data, the more the data can help with identifying performance gaps of a specific branch. If an alternative approach can help with this effort, then it should be considered. Since this data would be used to support agency analysis of deposits data in devising alternative approaches, the agencies should determine if the data collection is still needed after the analysis has been completed.

Question 156. Should banks collect and report an indicator for whether the loan was made to a business or farm with gross annual revenues of $250,000 or less or another gross annual revenue threshold that better represents lending to the smallest businesses or farms during the interim period before the CFPB Section 1071 Rulemaking is in effect?

Banks should collect and report an indicator for the loan made to a business or farm that identifies the size of the farm using the "small business" definition from section 8(d) of the Small Business Act or section 3(p) of the Small Business Act ("qualified HUBZone small business concern") rather than gross annual revenues of $250,000.

Question 157. Would the benefits of requiring home mortgage data collection by non-HMDA reporter large banks that engage in a minimum volume of mortgage lending outweigh the burden associated with such data collection? Does the further benefit of requiring this data to be reported outweigh the additional burden of reporting?

If banks engage in limited mortgage lending then it shouldn't be onerous to provide the data. Even with limited volume mortgage lending there could be high denial rates and disparities in loan terms that the agencies need to review.

Question 158. Should large banks with assets of $10 billion or less be required to collect, maintain, and report automobile lending data? If so, would a longer transition period for large banks with assets of $10 billion or less to begin to collect, maintain, and report automobile lending data (such as an additional 12 or 24 months beyond the transition period for large banks with assets of over $10 billion) make this alternative more feasible? Does the added value from being able to use these data in the construction of metrics and benchmarks outweigh the burden involved in requiring data collection and reporting by these banks?

The agencies have stated in the NPRM that it is important to collect data for automobile loans. Evaluating automobile lending under the Retail Lending Test may seem burdensome, but in certain markets, automobiles may the only means to reach good jobs, services, and other resources. Given global emphasis on climate resiliency activities, the agencies should consider if there is a need to include specific metrics for activities that reduce reliance on fossil fuels such as lending for purchase of electric cars, electric car charging stations, scooter and bicycle stations, car sharing vehicles, etc.

Question 159. Should the agencies streamline any of the proposed data fields for collecting and reporting automobile data? If so, would it still allow for constructing comprehensive automobile lending metrics?

The agencies have determined that automobile data collection is needed because "other market sources lack the comprehensiveness required to construct the necessary metrics and because automobile loans are an important credit need in some markets." The agencies should investigate further whether there is a regulatory avenue to requiring automobile lending data from the other market sources. Alternatively, the agencies should determine if there are incentives that could be used to encourage these market sources to make this data more transparent. The proposed data collection should also include the full cost of the automobile loan to the consumer.

Question 160. Should the agencies consider publishing county-level automobile lending data in the form of a data set?

County-level data may be published as a data set in addition to, not in lieu of individual branch data.

Question 161. How might the format and level of data required to be reported affect the burden on those banks required to report community development financing activity data, as well as the usefulness of the data? For example, would it be appropriate to require reporting community development financing data aggregated at the county-level as opposed to the individual activity-level?

Community Development Financial Institutions report certain bank transactions to a Treasury CDFI Funds system called AMIS. The format and level of data required should be the same or similar to the extent possible so that at some point to capture the full profile of a bank's community development activities in one system. The agencies should review the format and level of data in AMIS to determine if there are opportunities to either replicate certain data sets or crosswalk to those data sets to facilitate future data standardization, exchange, and consolidation.

Question 162. What other steps can the agencies take, or what procedures can the agencies develop, to reduce the burden of the collection of additional community development financing data fields while still ensuring adequate data to inform the evaluation of performance? How could a data template be designed to promote consistency and reduce burden.

The focus needs to be on collecting data that is needed for the assessments. Standardizing and automating the test analysis will make it easier for the agencies and the public to understand quantitative indicators of bank performance. Identifying and consolidating duplicate data collections could also reduce and simplify reporting burden.

Question 163. Should the agencies require the collection and maintenance of branch and remote service availability data as proposed, or alternatively, should the agencies continue with the current practice of reviewing this data from the bank's public file?

The agencies should determine if they could populate any template with data from the bank's public file and other reliable data sources. Otherwise, the agencies should require data collection for branches and remote service facilities as stated in the proposal.

Question 164. Should the agencies determine which data points a bank should collect and maintain to demonstrate responsiveness to low- and moderate-income individuals via the bank's digital and other delivery systems such as usage? Alternatively, should the agencies grant banks the flexibility to determine which data points to collect and maintain for evaluation?

Yes, the agencies determine which data points a bank should collect and maintain to demonstrate responsiveness to low- or moderate- income individuals via the bank's digital and other delivery systems such as usage. For consistency, the agencies shouldn't grant banks the flexibility to determine which data points to collect and maintain for evaluation.

Question 165. Are the proposed data collection elements for responsive deposit products appropriate, or are there alternatives to the proposed approach that more efficiently facilitate the evaluation of responsive deposit products? Should the agencies require collection and maintenance of specific data

elements for the evaluation of responsive deposit products? Alternatively, should the agencies grant banks the flexibility to determine which data points to collect and maintain for evaluation?

Deposits should be grouped by account terms and direct deposit requirements. Direct Deposit affordability should be determined using the FFIEC census income data that corresponds to the assessment area (MSA/MD, county, and census tract) and the favorability of the account terms. Namely, if the monthly direct deposit threshold for the accounts with the most favorable terms is more than 80% of the average median household income, then the deposit account is not affordable.

Question 166. Does the proposed retail services data exist in a format that is feasibly transferrable to data collection, or would a required template provided by the agencies be sufficient in the collection of retail services and products information?

It would seem that this response would vary by bank which is why a template should be made available if it's not feasible to transfer the data collection.

Question 167. What steps can the agencies take to reduce burden of the proposed information collection requirements while still ensuring adequate information to inform the evaluation of *services?*

Standardize and automate the data reporting process and populate as much data as possible from authoritative sources of bank profiles and community development data.

Question 168. Should large banks with assets of $10 billion or less be required to collect and maintain data on deposit product responsiveness and/or digital and other delivery systems? If so, would a longer transition period to begin to collect and report such data (such as an additional 12 or 24 months beyond the transition period for large banks with assets of over $10 billion) make this alternative more feasible? Does the added value from being able to use this data outweigh the burden involved in requiring data collection by these banks?

Since banks are being evaluated for activities that are supposed to benefit targeted communities, there should be a review of deposit product responsiveness. Communities should be involved with product responsive reviews by being invited to provide ratings to the agencies of product responsiveness. There may be other stakeholders that would benefit from greater transparency of the data reported by the bank and of the ratings provided by consumers. A bank that cannot collect and maintain deposit product responsiveness data within the 12-month plan period should describe in its capacity building plan how it will comply with this requirement within the 24-month period.

Question 169. Should large banks with assets of $10 billion or less be required to collect community development services data in a machine readable form, as prescribed by the agencies, equivalent to the data required to be collected and maintained by large banks with assets of over $10 billion? Under this alternative, should large banks with assets of $10 billion or less have the option of using a standardized template or collecting and maintaining the data in their own format? If large banks with assets of $10 billion or less are required to collect and maintain community development services data, would a longer transition period for these banks to begin to collect and maintain deposits data (such as an additional 12 or 24 months beyond the transition period for large banks with assets of over $10 billion) make this alternative more feasible? Does the added value from being able to use this

data in the construction of a metric outweigh the burden involved in requiring data collection by these banks?

All banks should be required to collect community development services data in a machine readable form, as prescribed by the agencies, equivalent to the data required to be collected and maintained by large banks with assets of over $10 billion. The standardized template should only be used if the bank doesn't have the capacity yet to do so. A 12-month capacity building plan should be submitted by a bank that is still working towards providing data in machine readable form. The agencies should research opportunities to import data on community development activities from other systems. To reduce reporting burden and to capture the full profile of a bank's community development activities, data on bank community development activities that are part of other federal information collections should at least be cross-walked to determine if there is any duplicate data collection. At some point, the full profile of a bank with its community development activities should reside in one system.

Question 170. Should large banks with assets of over $10 billion be required to collect, maintain, and report data on the number of full-time equivalent employees at the assessment area, state, multistate MSA and institution level in order to develop a standardized metric to evaluate community development service performance for these banks?

It's our understanding that purpose of developing the metric is to obtain a more transparent measure for consistently evaluating the extent to which these banks provide community development services activities. Once a standardized metric has been developed, it will be important that sufficient data be submitted to meet this objective. Requiring banks to report data on the number of full-time equivalent employees will help complete the profile of the bank's investment in community development services.

Question 171. Should small banks that opt to be evaluated under the metrics-based Retail Lending Test be required to collect, maintain, and report related data or is it appropriate to use data that a small bank maintains in its own format or by sampling the bank's loan files?

Small banks should be required to be evaluated under the metrics-based Retail Lending Test and to collect, maintain, and report relevant data unless they don't have the capacity to do so. If the small bank doesn't have the capacity to do so, the small bank should develop a crosswalk that matches their data to the metrics in the Retail Lending Test. The bank can explain any gaps or mismatches in its performance context notes. If this is not possible, the bank should provide data it maintains in its own format and submit a capacity building plan which identifies what actions and resources would be needed for the bank to be evaluated under the metrics-based Retail Lending Test.

Question 172. Would a tool to identify retail lending assessment areas based on reported data be useful?

Yes, and it would be great if this tool facilitated visualizations such as maps and charts of retail lending assessment areas layered with other maps including sociodemographic information such as race, ethnicity, and age.

Question 173. Should the agencies disclose HMDA data by race and ethnicity in large bank CRA performance evaluations?

Race and ethnicity are existing fields in the HMDA Loan Application that banks should be required to disclose in performance evaluations. It is unclear why only large banks should be required to disclose this information. Racial disparities in the banking system are systemic, and therefore, a system-wide approach is needed to identify and eliminate these disparities. At some point in the future, the agencies should collaborate with other agencies that collect bank data and profile information that can populate CRA systems. This would eliminate the need for the banks to report this data in multiple places. Race and ethnicity data can shed light on where disparities exist and how pervasive they are in mortgage lending. Given the history of race-based discrimination within the banking system, it is critical that moving forward there is greater transparency on decisions that can negatively or positively impact intergenerational wealth for BIPOC.

Question 174. Are there other ways the agencies could encourage public comments related to CRA examinations, including any suggested changes to proposed § __.46?

Bank customers and people who live in the assessment area should have an opportunity to identity any issues with banking services or unmet credit needs. However, the average customer may not understand the examination process or have the time or interest to learn about it. Presenting the examination information using lay terms in familiar formats such as report cards, charts, and progress trackers may increase public engagement in the CRA examination process. At the time people apply for accounts, the banks should provide them with information on how to comment on bank performance and periodically invite them to rate the bank using a few general criteria from each community development category (ie, affordable housing, community services, economic development, and revitalization and stabilization).

Question 175. Is there additional data the agencies should provide the public and what would that be?

The public would benefit from seeing all releasable bank information provided to the CRA agencies and to other federal agencies in one place on the web. This would require additional coordination and systems integration but would help identify gaps in data, duplicate reporting, and create a more consolidated profile of each bank.

Question 176. Should the agencies publish bank-related data, such as retail lending and community development financing metrics, in advance of an examination to provide additional information to the public?

Greater transparency will lead to greater accountability. Metrics for all assessment areas should be provided online with descriptions/definitions that a lay person could understand. Ideally, this information would be published in advance of an examination.

Question 177. Should the agencies ask for public comment about community credit needs and opportunities in specific geographies?

Seeking public comment may not result in pertinent information on community credit needs in specific geographies. It would however give the agencies information on common concerns across the country. A more targeted approach such as engaging people who live in the specific geographies of interest may prove more relevant. Treasury Department-certified CDFIs that work directly with communities in the specific geographies of interest may be able to support or facilitate the public engagement process.

Question 178. The agencies ask for comment on the proposed effective date and the applicability dates for the various provisions of the proposed rule, including on the proposed start date for CRA examinations under the new tests.

The proposal would establish an effective date for the final rule the first day of the first calendar quarter that begins at least 60 days after publication in the Federal Register and applicability dates for different provisions. A chart or some way to easily summarize when certain applicability dates occur would be helpful given the wide scope and length the rule and the need for banks to transition to the new provisions.

Question 179. Would it be better to tie the timing of a change to the proposed small business and small farm definitions to when the CFPB finalizes its Section 1071 Rulemaking or to provide an additional 12 months after the CFPB finalizes its proposed rule? What are the advantages and disadvantages of each option?

We are proposing alternate definitions for small business and small farms (see response to *Questions 36 and 62)*. Banks should be given 6 months to transition to using the new definitions. If the agencies don't use our proposed definitions, they should wait until CFPB finalizes its Section 1071 Rulemaking and allow an additional 6 months to transition.

Question 180. When should the agencies sunset the agencies' small business loan and small farm loan definitions?

The agencies should sunset the agencies' small business loan and small farm loan definitions within 12 months after publication of the interim final or final rule. [This assumes the agencies adopt definition proposed under Response 36.]