Community Development Bankers Association
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April 1, 2020

Via Electronic Submission

The Honorable Joseph Otting
Comptroller
Office of the Comptroller of the Currency
400 7th Street SW, Suite 3E-218
Washington, DC 20219

The Honorable Jelena Williams
Chairman
Federal Deposit
550 17th Street, NW
Washington, DC 20429

RE: Reform of the Community Reinvestment Act; Docket ID OCC-2018-0008; OCC RIN 1557-AE34; FDIC RIN 3064-AF22

Dear Comptroller Otting and Chairman McWilliams,

The members of the Community Development Bankers Association (CDBA) respectfully submit the enclosed comments in response to the Notice of Proposed Rulemaking (NPR) published in the Federal Register on January 9, 2020 on reform of the Community Reinvestment Act (CRA).

1. WHO WE ARE & WHOM WE SERVE

CDBA is the national trade association of banks and thrifts with a primary mission of promoting community development. There are 138 banks with the Department of the Treasury's Community Development Financial Institution (CDFI) designation – which means at least 60% of their total lending, services, and other activities are targeted to low- and moderate-income (LMI) and economically distressed communities. CDFI banks have a primary mission of community development and work in impoverished urban, rural, and Native American communities. Our members are on the front lines serving LMI communities that are too often by-passed by traditional banks and financial service providers.

2. CDBA SUPPORTS A STRONG CRA

CDBA strongly supports the purposes and objectives of CRA. Enacted 40 years ago, CRA has been instrumental in ensuring LMI communities have access to credit and financial services. CDBA believes that the current framework for CRA is effective, but needs modernization to reflect changes in the financial service landscape. We applaud all three bank regulatory agencies for their efforts thus far to update CRA. We share the goals articulated in the NPR to improve clarity, transparency and consistency in implementation of CRA. We also share a desire to incorporate objective metrics for measuring performance. Most of all, we support ensuring that CRA is effective in serving communities with the greatest needs

A broad consensus exists that it is time to update CRA. Yet, we have very serious concerns about the proposed new general performance standards. The framework and metrics outlined in the NPR represent a more significant departure from current practice than our banks are willing to support. Our members have raised concerns about regulatory burden, costs, and disruption this proposal will create. We have heard concerns that a solely formula-based system can generate unintended negative outcomes. Unfortunately, at this time, there is insufficient data to assess how a proposal of this magnitude will affect banks and the communities they serve. Without data and further analysis, our members cannot discern the extent of the possible benefits or drawbacks. Our members are very concerned that the proposal will greatly reduce banks' flexibility to develop initiatives that address local market conditions and meet unique community needs. For these reasons, we ask your agencies to pause from implementing the general performance standards at this time. We ask instead that the agencies publish any available performance data and engage with us and other CRA stakeholders in a constructive dialogue on potential alternative frameworks and metrics informed by historic performance data

We also strongly urge the three regulatory agencies – OCC, FDIC and Board of Governors of the Federal Reserve to work together and build a consensus final rule. Without a single uniform Federal policy, it will create an uneven CRA playing field. We would be pleased to continue a dialogue with all of the agencies to develop alternative objective methods for measuring performance. We believe all new ideas must be tested prior to implementation to understand any implications.

3. SMALL BANK OPT OUT

CDBA does not believe that the proposed rule is appropriate for ANY size bank. CDBA supports exemption of small banks up to $500 million from the general performance standards, but strongly recommends all CDFI, MDI or mission focused banks be exempted regardless of asset size given their unique business models and explicit focus on distressed markets and underserved populations. Implementation of the proposed new rule will be very costly without a clear benefit to banks or their communities. Community banks have far fewer resources to absorb the costs for setting up new data systems and staff training.

4. REGULATORY BURDEN & COSTS

The proposed rule creates a new, heavy, and permanent data collection regime for all banks, regardless of whether they opt out of the general performance standards or not. The costs and regulatory burden for all banks will be enormous. Increasing regulatory costs will likely result in growing bank deserts as it will incent more industry consolidation. The policy rationale and justification for such burden is unclear.

5. PRINCIPLES FOR AN ALTERNATIVE PROPOSAL

As stated, we strongly oppose the general performance standards as outlined in the proposed rule. We urge you to refrain from implementation on this portion of the rule. We would be pleased to engage in a dialogue with the agencies and other CRA stakeholders to develop alternative objective methods for measuring performance. CDBA members believe that the current framework for CRA is effective, but needs modernization. We believe, however, that this result can be best achieved by modifying the existing framework – rather than inventing a new system.

- **PERFORMANCE CONTEXT:** While imperfect, the strength of the existing CRA framework lies in its flexibility. Each bank can develop a strategy that fits its business model, local economic conditions, and opportunities. Performance context should be the starting point for any CRA evaluation system. The distressed urban, rural, and Native communities served by CDFI and MDI banks are often "outliers" relative to more prosperous communities. We do not believe any formula-based system can be designed that will fully capture the diverse markets, opportunities and challenges of every community in the nation.

- **METRIC DASHBOARD:** We agree with the agencies' goal of enhancing transparency and consistency of examinations. We believe the list of Qualified Activities and the process for timely updates are a good step in the right direction. We support the concept of using standardized metrics. **We strongly believe all metrics must be evaluated within the context of each bank's business model, delivery channel mix of products and services, and market opportunity and challenges.**

  CDBA urges the agencies to develop a **standard performance metric dashboard** using data currently collected by banks or available publicly. The dashboard metrics should be a tool to guide the evaluation of a bank's CRA performance. **The agencies should not set standards for pass-fail or assignment of CRA ratings based on a metric outcome until the metrics go through a new public comment process and the system is fully tested with real data from banks**.

  Similar to financial performance indicators, CRA performance metrics should be published and available for comparison to other peer banks (by geography, asset size, business model, etc.). Banks should also have the opportunity to describe innovative or other high-impact initiatives that cannot easily be captured with numeric benchmarks.

  The dashboard metrics could include the indicators outlined in the proposed rule's retail distribution test, CD Minimum Test, and CRA Evaluation Measures provided those measures are amended to eliminate any new data collection burdens (i.e. deposits geocoded by customer address) and the agencies publish the data sources that will be used as comparator measures. Other metrics that may be useful include: (1) Loan to Deposit Ratio; (2) current CRA Inside-Outside Ratio; (3) Market share of deposits by geography (based on FDIC Summary of Deposits Survey); (4) Percentage by number and dollar volume of all loans made in LMI and distressed census tracts; (5) Percentage by number and dollar volume of HMDA and consumer loans to LMI people; (6) Percentage by number and dollar volume of consumer and small business loans made in LMI and distressed census tracts; (7) Percentage by number and dollar volume of small business and small farm loans to small businesses and small farms; (8) Percentage of loans to small businesses with less than $1 million in total revenues; (9) Percentage of loans to small businesses with loan amounts of less than $100,000 and less than $1 million; (10) Percentages of loans to small businesses owned by low-income or historically disadvantage populations[1]; (11) Number and dollar value of community development loans and investments; (12) Total dollars of donations as a percentage of total revenues; (13) Total number of hours and dollar value of community services; (14) total number of employee non-community service qualifying volunteer hours; and (15) average number of volunteer hours per employee.

- **BUSINESS MODEL & DELIVERY CHANNELS:** A bank's business model and delivery channels have a strong bearing on how it reaches and serves customers. A CDFI bank or traditional community bank is principally located in, collects deposits, and serves a defined local geography. Their CRA activities and evaluation should reflect this local focus. By contrast, an internet bank, credit card bank, limited purpose, or wholesale bank may raise deposits and serve customers on a nationwide basis primarily using mobile or internet delivery channel. Thus, they need a CRA evaluation tailored to their business model and strategy. The largest banks with a national or super-regional focus have a complex business model with a mix of retail, internet, credit card, or other methods should have corresponding CRA evaluation process that reflect their diverse delivery channels.

- **CDFI BANK BUSINESS MODEL:** In our November 2018 response to the ANPR, CDBA urged the regulatory agencies **to explicitly recognize CDFI banks as a distinct business model and adopt a set of tailored CRA requirements.** Unlike most banks, CDFI banks have a primary mission of promoting community development and/or serving economically disenfranchised populations. At least 60% of CDFI bank's total activities must be in LMI or serve distressed communities.

  Most importantly, CDBA recommends that CRA reporting align with the reporting requirement of the U.S. Treasury Department's CDFI Fund. Federal banking regulatory agencies implementing CRA and the Treasury Department are interested in the same outcomes – improving the economic well-being of LMI communities through access to responsible credit and financial services. Yet these agencies have very different definitions, regulatory standards, and reporting requirements. This lack of policy coordination results in voluminous double reporting that creates an unnecessary administrative burden and siphons resources away from entities serving underserved communities. We propose that the agencies work to close the gap by developing

[1] US Treasury Department has definitions for Other Targeted Populations that could be used to define historically disadvantaged populations. Upon implementation of Dodd Frank Section 1071, demographic data could be used for this metric

common definitions and reporting standards, as well as sharing data. Our specific recommendations:
  - Maximize alignment of definitions used for CRA and CDFI certification, geographic service areas, program application, service tests, and reporting;
  - Reduce reporting burden by streamlining and sharing data submitted by CDFI banks for Call Reports, CRA, HMDA, CDFI annual re-certification, and CDFI award compliance;
  - Give CRA consideration for all activities performed within CRA Assessment Areas, CDFI Investment Areas, and that benefit low-income or Underserved Target Populations; and
  - Give CRA consideration for collecting social impact data and actively participating in CDFI Fund Programs or other Federal, state, or local programs that offer tools to enhance services to their CDFI Target Markets or to reach deeper to serve low-income people and communities.

- TRAINING: CDBA strongly recommends enhanced interagency CRA training for examiners. To address discrepancies in implementation of CRA between bank regulatory agencies, we recommend that all CRA examiner trainings be conducted on an interagency basis. We recommend bank CRA officers be permitted to attend the same trainings to further facilitate common understanding of how CRA exams are conducted.

6. COMMENTS ON THE PROPOSED RULE

A. Subpart A: DEFINITIONS

CDBA believes that performance context is important at each phase of the CRA evaluation process even in the case of its definitions. Under the proposed rule, retail domestic deposits are important for: (1) determining whether a bank primarily serves a facility based Assessment Area or whether it needs to designate a deposit-based Assessment Area(s); and (2) under the CRA Evaluation Metric. As currently defined in the proposal:

> "Retail domestic deposit means a ''deposit'' as defined in section 3(l) of the FDIA (12 U.S.C. 1813(l)) and as reported on Schedule RC–E, item 1, of the Call Report that is held in the United States and is provided by an individual, partnership, or corporation other than a deposit that is obtained, directly or indirectly, from or through the mediation or assistance of a deposit broker as that term is defined in section 29 of the FDIA (12 U.S.C. 1831f(g))."

CDBA proposes the following refinements to definition of retail domestic deposits:

1. <u>Non-Brokered Reciprocal Deposits</u>: CDBA urges the agencies to exclude non-brokered reciprocal deposits from the definition of retail domestic deposits in the proposed CRA rule. The current proposed definition would include these deposits as part of retail domestic deposits.

Non-brokered reciprocal deposits are critically important to how CDFI banks and Minority Depository Institutions (MDIs) raise deposits. If included in the retail domestic deposit definition, it could inadvertently trigger new CRA obligations for our banks in new higher income deposit-based Assessment Areas. The definition could also inadvertently discourage such mission focused institutions from utilizing a historically important funding and liquidity source.

CDBA members serve our Nation's most distressed and credit starved communities. Our banks operate in places with modest discretionary income and insufficient means to raise deposits to meet the demand for credit. Thus, our banks often raise a portion of the deposits from civic-minded institutions and high net worth individuals. This growing "impact investor" group is drawn to our members because of their missions and impact. Some of these depositors are located within the banks' local Assessment Areas; but many are not. An analysis by Promontory Interfinancial Network (PIN) has found that CDFI banks are four times more likely to use such non-brokered reciprocal deposits than their similar asset size peers; likewise, MDI banks are three times more likely to raise reciprocal deposits than their similar asset size peers.

Inclusion of non-brokered reciprocal deposits in retail domestic deposits could have the unintended consequence of forcing CDFI and MDI banks to limit the amount of such deposits they raise as not to create new "deposit-based" CRA obligations in places that do not need their services. Yet, this will hurt their LMI Assessment Areas because they will have less capital to lend.

To this end, we recommend the proposed rule be amended as suggested below:

"Retail domestic deposit means a ''deposit'' as defined in section 3(l) of the FDIA (12 U.S.C. 1813(l)) and as reported on Schedule RC–E, item 1, of the Call Report that is held in the United States and is provided by an individual, partnership, or corporation <u>**(i)**</u> other than a deposit that is obtained, directly or indirectly, from or through the mediation or assistance of a deposit broker as that term is defined in section 29 of the FDIA (12 U.S.C. 1831f(g<u>**)),"or (ii) reciprocal deposits that pursuant to 12 USC 1831f(i), are not considered to be funds obtained, directly or indirectly, by or through a deposit broker.**</u>

**** Recommended changes are underlined and bolded above.**

2. <u>Prepaid Cards</u>: CDBA urges the agencies to ensure prepaid cards are excluded from the definition of retail domestic deposits. Prepaid cards have proven a powerful tool to help the 8+ million US households that are "unbanked" or without a savings account. The large majority of these households are LMI. Prepaid cards can help unbanked consumers save money, transfer funds, make deposits, write checks and make purchases. Several CDFI banks have developed pre-paid card products that help transition unbanked and underbanked customers to a banking relationship.

As currently defined, prepaid cards fall into the definition of brokered deposits (and thus are exempt from the retail domestic deposit definition). The FDIC, however, recently promulgated a proposed rule on brokered deposits that could change this definition. If so, prepaid cards could fall into the definition of retail domestic deposits. This would be highly problematic for bank-issuers given the fluid nature of prepaid cards.
Many types of prepaid cards do not have an address associated with the purchaser or the user. For example, if a prepaid gift card is purchased at a retail store, no identifying information is collected on the purchaser or the end consumer of the card. Furthermore, many prepaid cards are one-time use cards that may be issued in one geography, but customers can easily move them to a different geography. One of the key benefits of a prepaid card is that it is highly mobile. But, this feature will make it impossible for bank issues to track where the "deposit" is actually located for the purpose of calculating whether the deposit is within a facility based Assessment Area or not. For reasons of practicality, we ask that prepaid cards be excluded from the definition of retail domestic deposits for the purposes of CRA – regardless of the outcome of the FDIC's pending decision on prepaid cards and brokered deposits.

3. <u>Geocoding Deposits by Customer Address</u>: Under the proposed rule, to ascertain whether they need to designate a facility-based and/or deposit-based Assessment Area, all banks will be required to geocode all of their deposits by customer address. To be noted, most banks do not currently geocode customer accounts in this manner; rather, they track deposits by the branch in which an account was established.

   To this end, the agencies need to recognize that this provision alone will create significant new regulatory burden and costs for all banks (even for banks under $500 million that opt out of the proposed rule). All current accounts will need to be geocoded. According to the U.S. Postal Service, the average customer moves 11.7 times in their lifetime. Thus, banks will need to create systems to monitor and re-geocode customer address changes. This provision creates the heaviest burden for CDFI and MDI banks that serve a high portion of LMI customers and people of color relative to other banks. Data from the US Census Bureau found that people that move often have lower incomes and are more likely to be non-white with 10% of non-Hispanic whites moving between 2012 and 2013, compared to 13 percent of Asian-Americans, 13 percent of Hispanics and 14 percent of African-Americans.

4. <u>Rural Census Tracts</u>: CDBA urges the agencies to provide some accommodation for rural banks. CDFI banks serving rural communities often have significant challenges in accurately geocoding customer addresses located on rural routes – or where customers use post office boxes given their remote locations. In fact, many of the most economically distressed communities are rural and remote. The proposed new geocoding requirements could result in underestimating the levels of service banks provide to customers in rural areas; thus, the proposed requirements could have significant unintended consequences for how Assessment Area boundaries are drawn.

B. Subpart B: QUALIFYING ACTIVITIES

QUALIFIED ACTIVITIES LIST: CDBA supports the agencies' plan to publish the illustrative list on their websites and/or in the Federal Register and to update the list on an ongoing basis and through a notice and comment process. We appreciate the intent of the agencies to provide timely responsiveness to inquiries submitted by banks on questions regarding eligibility of activities. CDBA strongly recommends that this process be an interagency process involving all three of the bank regulatory agencies. As noted, we strongly believe that there should be an even CRA playing field across the industry.

We applaud the agencies for their commitment to provide timely responses to bank inquiries about Qualified Activities. We have reservations, however, about the provision that states "An activity is confirmed as a qualifying activity if the bank is not informed of an OCC objection within 6 months of submission of a complete Qualifying Activity Confirmation Request Form." Such a provision can be easily abused. Instead, the agencies should ensure their internal, interagency review processes are sufficiently streamlined to respond within 60 days.

CDBA recommends the creation of a robust public database of CRA case studies and peer performance data to enhance transparency. The case studies should describe the project or activity and include an explanation of why specific activities are deemed CRA "eligible" or "ineligible."

LMI BENEFIT NEXUS: CDBA recommends that ALL CRA qualified activities be required to demonstrate a clear nexus between the activity and benefits created for LMI populations. The success of any CRA reform must be measured by whether it results in more credit and services delivered to LMI people. CDBA believes most of the list of qualified activities appear to be consistent with the objectives of CRA. Several of the new proposed activities, however, raise real concerns about whether they are consistent with intent and could dilute the effectiveness of CDFI banks' efforts in LMI communities. These are discussed below.

PRIMARY VERSUS PARTIAL: CDBA urges the agencies to provide greater clarity as respect to how activities that "partially" or "primarily" benefit LMI individuals or families will receive CRA credit. Consistent with current practice, if an activity "primarily" benefits LMI individuals or families the bank should get full CRA credit. In the case of an activity that "partially" serves LMI individuals or families the proposed rule is vague as to how much credit a bank will receive. CDBA recommends that a bank receive pro-rata credit based on the extent to which such activity serves LMI populations. For example, if a bank provides support to a mixed income housing development, they should receive a pro-rated share of CRA credit equivalent to the portion of LMI households served.

ESSENTIAL COMMUNITY FACILITIES: CDBA supports inclusion of activities that support essential community facilities (such as schools and hospitals) that benefit or serve LMI individuals, LMI census tracts, or other targeted areas of need, such as distressed areas or Indian country. As noted above under "Primary Versus Partial," the extent of benefits provided to LMI individuals should be established and CRA credit allowed accordingly. In the case of places designated as Medically Underserved Areas by the U.S. Health Resources and Services Administration (HRSA), CDBA recommends that all of banks' support to health care facility projects be considered CRA eligible.

ESSENTIAL INFRASTRUCTURE: Context is an important consideration in determining whether infrastructure should be an eligible CRA activity. CRA credit should only be permitted in documented cases where conventional public sources or non-CRA related private funding sources are not available or unable to fill a need (i.e. rural broadband). In areas with ample public resources, this provision could be easily abused (i.e. credit for stadiums located in LMI census tracts). Consistent with the purposes of CRA, banks should receive credit for infrastructure projects if such activity primarily benefits LMI individuals or families. CDBA recommends that if an infrastructure project serves an entire community, the bank should receive a pro-rated share of CRA credit equivalent to the portion of the infrastructure projects users that are LMI. If LMI benefit cannot feasibility be determined, then the project should be ineligible for CRA.

OPPORTUNITY ZONES/QUALIFIED OPPORTUNITY FUNDS: Many Qualified Opportunity Funds (QOFs) as defined in 26 U.S.C. 1400Z- 2(d) (1), are effective in channeling resources to projects that create benefits for LMI residents. Yet, many others are not, and some QOF funded projects create displacement of LMI residents and gentrification. Context is an important consideration in determining whether QOF activities should receive CRA credit. Thus, CDBA does not support allowing all bank investments into QOFs to receive CRA credit. If a bank provides support to a QOF, it should only receive CRA to the extent the activities funded by the QOF benefit LMI residents. If a QOF invests in multiple projects, the bank should get CRA credit for that portion of activities the create benefits for LMI individuals and families.

SMALL BUSINESS & SMALL FARMS: We support increasing the size of loans to small businesses and small farms from $1 million to $2 million. The proposed increase in the revenue thresholds, in combination with the general performance standards, will negatively affect the smallest businesses. While we oppose the current general performance standards, we believe the regulatory agencies should ensure the any evaluation process adopted gives banks robust incentives to encourage them to continue providing small business and small farm loans under $1 million and serving small businesses and small farms with under $1 million in revenue. We also urge you to consider providing extra incentives for banks serving populations historically disadvantaged in accessing small business credit and affected by systemic racial wealth gaps.

CDFI ACTIVITIES: CDBA strongly supports the addition of support provided to CDFIs as an explicit Qualified Activity. With this change, CDFI banks seeking CRA-motivated deposits and investments will be empowered to collaborate with other banks located throughout the United States regardless of whether or not they have overlapping Assessment Areas. CDFI are credited with investing billions of dollars in low-income areas and unserved populations, aligning perfectly with the purposes of CRA.

We recommend a minor modification to the proposed rule to clarify the scope of eligible CRA support activities. Currently, the language in the proposed rule says a "*A capital investment, loan participation, or other venture undertaken by a bank in cooperation with a minority depository institution, women's depository institution, CDFI, or low-income credit union that helps to meet the credit needs of the institution's or credit union's local community*." We recommend explicitly modifying the language to be broader to include *"capital investment,* ***deposits, loans****, loan participations,* ***other financial and nonfinancial support****, or other venture undertaken…"* We believe this will eliminate any ambiguity with examiners that the full range of bank support to CDFIs is a Qualified Activity.

CD SERVICES: CDBA supports amending the term "CD services" to allow banks to receive CRA credit for all volunteer hours provided to a CD project (i.e. not just financial service related hours) to the extent the volunteer activities benefit LMI individuals and families.

PAYDAY ALTERNATIVES: To help combat predatory loans, CDBA recommends payday loan alternatives benefitting LMI consumers be added to the list of Qualified Activities.

RETAIL BANKING SERVICES: CDBA recommends adding retail services that benefit LMI people and places to the list of Qualified Activities. Under the current system, banks can get credit for these activities. While these activities may be harder to quantify, they are highly valuable to communities.

REDUCTION OF ACTIVITES CAUSED BY MULTIPLIERS: The proposed rule raised a question regarding how to ensure banks do not reduce provision of credit for activities with multipliers because they will receive the same amount of credit by doing less. We believe this question highlights one of the fundamental flaws of using a solely formula-based system as outlined in the general performance standards. CDBA believes a bank's performance context, strategy, and business model need to be the lenses through which all qualified activities are evaluated. Every formula-based system has great potential for unintended consequences – which is why it is bad public policy.

C. Subpart C: REDEFINING ASSESSMENT AREAS

Technology is fundamentally reshaping the financial services industry. Modernizing CRA to consider technology-driven delivery channels should be a key priority. CRA needs to incorporate the evolution toward mobile, internet, and other digital delivery mechanisms while recognizing the continuing importance of brick-and-mortar branches.

Under the proposed rule, all banks will be required to establish Assessment Area(s) in communities whereby they have a "physical location." If more than 50% of a bank's retail domestic deposits are outside a bank's facility based Assessment Area(s), it must designate deposit-based Assessment Area(s) in the smallest geography where they receive 5% or more of their retail domestic deposits.

LACK OF DATA AND ANALYSIS: Among CDBA's greatest reservation about the Assessment Area proposal is the lack of data or analysis on how these levels of performance correlate to historic industry performance. CDBA strongly urges the agencies to conduct such analysis and share it publicly prior to issuance of a final rule. Such information should inform the rulemaking process to prevent unintended consequences.

Our members generally do not geocode retail domestic deposits by customer address. Thus, we found it difficult to assess the impact of the proposed standard for designation of facility-based and deposit-based Assessment Areas. While the concept of using deposits as a criteria is reasonable, we are uncertain as to whether a 50% threshold for determining whether a bank needs to create a deposit-based Assessment Area is appropriate or not. Likewise, we are uncertain as to whether the 5% threshold is an appropriate standard for designation of individual deposit-based Assessment Areas.

DEFINITIONS: CDBA believes the current definition of retail domestic deposits is too broad for the purposes of designating Assessment Areas. Our recommendations can be found above under DEFINITIONS.

FACILITY-BASED ASSESSMENT AREAS: CDBA recommends using an analysis of geocoded loan data to complement deposit data. Using both criteria together will help develop a more robust and accurate picture of a bank's service area.

DEPOSIT-BASED ASSESSMENT AREAS: As an alternative to the proposal outlined in the rule, CDBA recommends that "deposit-based" Assessment Areas be based on a bank's **market share** of deposits and/or loans in each Assessment Area; rather than the percentage of deposits from an Assessment Area. For example, consider that deposits from sparsely populated rural counties might be a tiny percentage of a large bank's portfolio. Yet, that bank's market share in the county could exceed that of "facility-based" banks with physical branches in that county. As described, the proposal is biased toward higher population centers that have a greater likelihood that deposit share will cross the proposed Assessment Area threshold.

D. Subpart D: GENERAL PERFORMANCE STANDARDS

CDBA supports creation of objective methods for measuring CRA performance, as well as improvements in transparency and consistency in implementation. We believe a blended approach that begins with performance context, but which uses a dashboard of key objective metrics will produce the best outcomes for banks and their communities.

CDBA believes the proposed general performance standards will produce the opposite result as what is intended. No matter how sophisticated, we do not believe a formula-based approach can adequately capture the nuances of every community – and could easily result in harm to our banks and communities. A solely formula-based approach may be transparent, but is highly likely to produce arbitrary and inconsistent results.

A one-size-fits-all formula-based system can create incentives that generate unintended outcomes. A more thoughtful and holistic approach is better for both our banks and our communities. We believe the metrics as proposed will produce arbitrary outcomes and inconsistent ratings because numbers only tell a portion of any bank or community's story. In short, numbers are meaningless without context.

Most importantly, CDBA members believe the proposal will greatly reduce banks' flexibility to develop strategies and initiatives that address local market conditions and respond to challenges and opportunities unique to each community. While imperfect, the strength of the existing CRA framework lies in its flexibility to be tailored to fit individual banks and local communities. Each bank can develop a CRA strategy that fits its business model, local economic conditions, and opportunities. The distressed urban, rural, and Native communities served by CDFI and MDI banks are often "outliers" relative to more prosperous communities. We believe a one-size-fits-all formula-based approach will marginalize the work of CDFI and MDI banks and the communities they serve.

Most notable, the agencies provided no evidence they conducted meaningful analysis on the impact of the proposed methodology on already overburdened small banks. Analysis should have been conducted prior to publication of the NPR and used to inform rule writing. Instead, the agencies shifted the burden to banks and published a Request for Information (RFI) [Docket ID OCC-2019-0029] asking banks to supply data and analysis on the impact of the proposed rule. Several of our members attempted to conduct this analysis. The proposed rule unfortunately leaves too many unknown variables for banks to assess how they might fare under the proposed system.

7. CRA EVALUATION MEASURE

The CRA Evaluation Measure is highly problematic. The measure is based on an overly simplistic assumption there is a direct correlation between the balance sheet of a bank and the "right" amount of CRA activity. We strongly question whether using balance sheet is an appropriate measure. The policy rationale for creating such a credit allocation system is unclear. The rule attempts to make this assumption actionable using an awkward measure of the dollar value of qualified CRA activities to the average quarterly value of retail domestic deposits.

DOLLAR VALUE OF QUALIFYING CRA ACTIVITIES: The numerator of the CRA Evaluation Measure places a sole emphasis on the dollar value of Qualifying CRA activities. CDFI and MDI banks work in the most distressed credit markets. Loan sizes are typically small. Yet, making a small loan takes just as must time, effort and expense as a large one. The CRA Evaluation Measure does not consider the number of loans, complexity of transactions, or the amount of technical assistance needed to ensure our customers are successful. This methodology devalues the work CDFI banks and other small banks do with small borrowers and creates an unfair CRA playing field. Larger banks have a greater ability to compete against small banks for larger loans; thus, making it easier for a large bank to achieve a favorable CRA rating. Under the current system, both large and small dollar value CRA qualified activities are considered fairly within the context of the bank's strategy and needs of the community.

DEPOSITS: The numerator of CRA Evaluation Measure uses the average quarterly value of retail domestic deposits. The use of retail domestic deposits as a denominator is imperfect because many types and sources of deposits are rolled into the retail domestic deposits definition. As outlined above under DEFINITIONS, CDBA recommends that some types of deposits be excluded from the definition. Banks will need to develop internal systems to track deposit activities every quarter, which is another new expense.

BRANCHES: Unlike the current CRA regulatory system, the proposal devalues bank branches. The CRA Evaluation Measure adjusts the presumptive rating of a bank by a ratio of portion of branches in LMI census tracts to total branches that is weighted at a mere 0.01 (or 100th of 1%). Significant research has long correlated the relationship between bank branches in LMI communities and access to credit and basic financial services. The current CRA rule recognizes this relationship and rewards banks that maintain a presence in LMI communities. The proposed rule sends the misguided statement that bank branches in LMI communities are not important.

PRESUMPTIVE RATING/GRADING SCALE: A critical flaw of the CRA Evaluation Metric is that performance context is an after-thought. Only after a bank's "presumptive rating" is calculated using the CRA Evaluation Measure can a banker ask examiners to consider context in adjusting a rating. Performance context should be the lens through which every bank's CRA activities are evaluated. No one-size-fits-all formula, no matter how sophisticated, can capture the market differences between a remote rural county in the Mississippi Delta, a disinvested neighborhood in Chicago, or a Native American reservation. CDFI banks work in the most distressed communities in the nation. Most of the markets our banks serve are outliners; thus, CDFI banks may not fit well in a formula designed for traditional banks.

Significant questions remain about the grading scale; thus, making it impossible to assess whether the scale for the presumptive ratings are appropriate or not. The agencies offered no analysis on how these levels of performance correlate to historic industry performance. If analysis was conducted, it ought to have been provided as part of the public comment process on this NPR. If not, such should be conducted prior to issuance of a final rule. Furthermore, given the significant number of changes to the list and definitions for Qualifying CRA Activities, it was difficult for CDBA members to assess how their current performance correlates to the grading scale.

BANK LEVEL RATINGS: CDBA has concerns about the process for establishing bank level presumptive rating. We strongly recommend that to receive a Satisfactory or Outstanding rating at the bank level, a <u>substantial majority</u> of a bank's Assessment Areas should achieve a Satisfactory or Outstanding rating. Per the proposed rule, at the bank level:

> *"[A] bank's presumptive rating would be based on the comparison of its average bank-level CRA evaluation measure to the established empirical benchmark, except that a bank could not receive a satisfactory or an outstanding unless it also received that rating in a significant portion, such as more than 50 percent, of its assessment areas and in*

those assessment areas where it holds a significant amount of deposits, such as more than 50 percent."

Allowing banks to receive a Satisfactory or Outstanding Rating when they fail to receive a Satisfactory grade for 49% of all of the their Assessments sets a woefully low bar for performance that will create negative consequences for LMI communities and the national economy. Setting a specific numeric threshold for Satisfactory or Outstanding performance is a clear example of a metric that could benefit from data and analysis on the historic performance. On its face, to receive an overall Satisfactory rating, a bank should have a Satisfactory rating in a substantial majority (i.e. at least 80%) of its Assessment Areas. To receive an Outstanding rating, no bank should have less than a Satisfactory rating in any Assessment Area. Yet, as previously stated, performance context is critically important. For example, a remote rural or Native American region may lack sufficient market opportunities for a bank to maximize its CRA activities despite having a strong commitment to LMI communities. Hard numeric thresholds need to consider the context of local economies.

As proposed, we believe this system also creates an inherent bias toward the largest banks. CDFI banks are strongly committed to LMI communities. In fact, to be a US Treasury Department designated CDFI, a bank must demonstrate on an annual basis that at least 60% of its lending and service activities serve LMI people and places. Like other small banks, CDFI banks are local. Small banks typically have a small number of Assessment Areas – making it highly unlikely that they will choose not to serve nearly half. In fact, CDFIs find that serving their LMI communities is good business. By comparison, the top 10 banks by asset size had a median number of 122.5 Assessment Areas with the three largest banks having 209-388. By contrast, among the smallest banks the median number of Assessment Areas was 14.[2] For the largest banks, it will be a far easier financial decision to ignore many of their non-local Assessment Areas because there are no consequences.

8. RETAIL DISTRIBUTION TEST

Performance context for a retail distribution test is critically important as the opportunities in different markets can vary substantially. Unfortunately, the proposed general performance standards consider performance context as an afterthought.

CDBA has significant concerns over the Retail Distribution Test and its component parts – the Geographic Distribution Test and Borrower Distribution Test. The Geographic Distribution Test is intended to assess a bank's distribution of lending in LMI census tracts to small businesses and small farms. The Borrower Distribution Test is intended to assess a bank's distribution of lending to LMI borrowers for home mortgage and consumers, small businesses and small farms. Banks may choose to be evaluated using a demographic threshold or a peer threshold.
Among CDBA members' greatest concerns with the Retail Distribution Test are the lack of analysis provided by the agencies about the potential impact of these metrics. Many of the data points in the formulas proposed are not readily available. If the agencies intend to use specific data sources, the sources should be specified in the proposed rule. Several CDBA member

[2] https://ncrc.org/wp-content/uploads/2019/07/Implications-for-CRA-reform-V3.pdf

banks attempted to do the calculations, but could not due to lack of data. CDBA is also concerned about the process for setting demographic or peer comparators. Without analysis, it is impossible to know whether the comparators are set at appropriate levels to incent performance. Without an established methodology, these thresholds could be subject to significant fluctuation with changing leadership at the agencies.
CDBA members have significant reservations about the rigidity of the proposed pass or fail grading system under the Retail Distribution Test. These concerns are aligned with our general concern about using a formula-based system and our strong opposition to the proposed system. A bank may do an effective job at addressing its community needs, but if it misses one idiosyncratic metric under the formula for reasons outside its control, it will fail the entire test and its CRA exam. As previously noted, performance context is critically important as the starting point for any CRA evaluation to prevent any such unintended outcomes.

LOAN MINIMUM: The proposed loan minimums are a concern because the context of individual markets are not considered under the rule. Both the Geographic Distribution Test and Borrower Distribution Test are applied to every major product line that comprises 15% or more of annual originations and whereby the banks make at least 20 loans per year within each the Assessment Area. For many small banks, the minimum of 20 originations per year in each Assessment Area could be problematic. Many small banks – particularly in rural communities – do not originate that many loans across multiple product lines. Thus, the bank would have limited data points for conducting an analysis – meaning the results can be swayed by only a few loans. This could make the difference between passing or failing a test. If a bank fails a test for a single product line, they fail the entire test. Again, market context plays an important role in determining whether a product line should or should not be considered as part of a CRA evaluation. Any final rule should clearly articulate how it will treat small banks and banks operating in areas where market demand for a particular product may result in less than 20 loans per assessment area. Simply disallowing the activity from consideration could create significant negative, unintended outcomes.

GEOGRAPHIC DISTRIBUTION TEST: The numerator of the Geographic Distribution Test is straightforward and comprised of a ratio of: (1) the number of bank small loans or businesses (or small farms) in LMI census tracts in an Assessment Area, divided by (2) the number of such loans in the overall Assessment Area. The denominator is far trickier and more problematic: Under the Demographic Comparator method, the denominator is comprised of a ratio of: (1) the number of businesses (or farms) in LMI census tracts in the Assessment Area, divided by (2) the number of businesses (or farms) in the Assessment Area. It is unclear, however, which data sources will be used for this calculation of the number of businesses in the Assessment Area and LMI census tracts. Without such specificity, our member banks could not assess how they might fare under the test.

A bank will be judged on whether, using the calculations above, the bank's performance meets or exceeds a demographic comparator target established by the agencies. While the rule uses an example of a 55% demographic comparator threshold, it provides no detail on how this threshold is established or what threshold will actually be used. It could be set very low, allowing all banks to pass. However, it could also be set too high, making banks fail.

Under the Peer Comparator method, the denominator is comprised of a ratio of: (1) the number of all Small Loans to Businesses (or farms) in LMI census tracts in an Assessments Area that are originated by ALL banks serving that Assessment Area, divided by: (2) the number of all Small Loans to Businesses (or farms) in an Assessment Area that are originated by ALL banks serving that Assessment Area. Once again, the rule does not specify the sources of data to be used for this calculation. If current period data is used, banks will not know what target they need to meet. If a past period data is used, it could create a "race to the bottom" in which banks do only the bare minimum to pass – or it may be difficult for banks to assess where their performance should be in an economic downturn.

A bank will be judged on whether its performance meets or exceeds a peer comparator target. While the rule uses an example of a 65% peer comparator threshold, it provides no detail on how this threshold is established. Again, if it is set too low, poor performing banks will pass. If the bar is too high, even superior performing banks can fail. Under the proposed test, small banks will be compared to big banks serving the same Assessment Areas despite the significant difference in capacity.

BORROWER DISTRIBUTION TEST: Like the Geographic Distribution, the Borrower Distribution Test has similar problems. Loans for home mortgage, consumer, small business, and small farms are each calculated separately. A small business loan example is used below. The numerator is comprised of a ratio of: (1) the number of the bank's small loans to businesses made to small business in the Assessment Area, divided by (2) the number of the bank's loans to businesses in the Assessment Area. Again, the denominator is more problematic:
Under the Demographic Comparator method, the denominator is comprised of a ratio of: (1) the number of small businesses in the Assessment Area, divided by (2) the number of total businesses in the Assessment Area. Again, like the Demographic Comparator method for the Geographic Distribution test, the proposed rule does not specify which sources of data will be used as part of the evaluation. Furthermore, a bank will be judged on whether its performance meets or exceeds a demographic comparator target established by the agencies. The rule provides no detail on how this threshold is established.
Under the Peer Comparator method, the denominator is comprised of a ratio of: (1) the number of ALL banks' small loans to businesses made to small businesses in an Assessment Area, divided by: (2) the number of ALL banks' small loans to business in the Assessment Area. Again, the proposed provides no detail on how banks will know in real time what other banks in the Assessment Area are doing.

A bank is judged on whether its performance meets or exceeds a peer comparator target. Yet again, the rule provides no detail on how this threshold is established. Small banks will be unfairly compared to the performance of larger banks with far more capacity.

9. COMMUNITY DEVELOPMENT MINIMUM TEST

Under this test, a bank must demonstrate that it has carried out qualified Community Development (CD) that cumulatively equals 2% or greater of the quarterly dollar average of the

bank's retail domestic deposits. This test is applied both at the bank level and for each Assessment Area. Only the quantitative value of both CD loans and investments are considered – versus complexity of a transaction or impact.
Performance context will strongly influence the opportunities for undertaking Community Development activities. Among urban banks, many of our members felt the 2% level was far below their current performance. For rural banks, there was concern that 2% was too high given more scarce opportunities.

CDBA's greatest concern about this provision, however, is the agencies' lack of analysis to demonstrate whether the 2% threshold will represent a reduction or increase in support for these important activities. Several CDBA members tried to perform this analysis. Due to the industry-wide lack of geocoded data on retail domestic deposits, however, this analysis could not be performed.

10. RURAL BANK CONSIDERATIONS

MIDDLE-DISTRESSED-UNDERSERVED CENSUS TRACTS: The proposal expands middle-distressed-underserved tract designation to urban areas, but fails to address concerns with middle-distressed-underserved tracts in rural communities. Middle-distressed-underserved tracts in many rural Assessment Areas tend to be in communities that have tenuous economies that are prone to tumbling into moderate-income, or even low-income status with the next annual census estimate. Rural communities have fewer businesses and business sectors, making job markets volatile, with few alternatives for newly unemployed workers.

Recognizing the vulnerability of rural middle-distressed-underserved tracts, CDBA urges the agencies to apply the same treatment to rural middle-distressed-underserved tracts equal as to moderate- and low-income tracts, spurring sustained assistance to stabilize economies to create long-lasting economic gains. Yet, census tract income level designations can change every year. Thus, banks located in economically unsteady rural markets may experience numerous changes in tract income designations. Banks have little flexibility regarding physical branch location, and certainly cannot adjust their locations annually. To remedy this, the agencies should consider branches that are less than 0.25 miles from LMI tract boundaries or broaden the time horizon for tract designations. For example, if a branch were located in an LMI or middle-distressed-underserved tract at any time in the past 10 years, it would be considered as serving an LMI geography (Q 15, page 76).

SUMMARY

In enacting CRA, Congress stated that the purpose of CRA was to ensure that regulated financial institutions demonstrate that they "serve the convenience and needs of the communities in which they are chartered to do business." As such, these institutions have a "continuing and affirmative obligation to help meet the credit needs of the local communities in which they are chartered." CRA has made great strides in ensuring access to credit in LMI communities and among minority and low-income borrowers over the past three decades. Systemic economic and social challenges, however, perpetuate a lack of access to fair services for many and allow predatory providers to thrive. Given growing economic inequity in urban, rural, and Native American communities, it is important to get CRA reform right.

We welcome the opportunity to continue this dialogue. Thank you for considering these important matters. Please contact Jeannine Jacokes at (202) 689-8935 ext. 222 or *jacokesj@pcgloanfund.org*.

Thank you for your consideration.

Sincerely,

Jeannine S. Jacokes

Jeannine Jacokes
Chief Executive Officer

On Behalf of the Membership of the Community Development Bankers Association

Amalgamated Bank (NY)
Bank of Anguilla (MS)
Bank of Brookhaven (MS)
Bank of Cherokee County (OK)
Bank of Commerce (MS)
Bank of Franklin (MS)
Bank of Kilmichael (MS)
Bank of Lake Village (AR)
Bank of St. Francisville (LA)
Bank of Vernon (AL)
Bank of Winona (MS)
BankFirst Financial Services (MS)
BankPlus (MS)
Bay Bank (WI)
Beneficial State Bank (CA)
BNA Bank (MS)

BOM Bank (LA)
Broadway Federal Bank (CA)
Carver Federal Savings Bank (NY)
Carver State Bank (GA)
Central Bank of Kansas City (MO)
Century Bank of the Ozarks (MO)
Citizens Bank & Trust (MS)
Citizens National Bank of Meridian (MS)
City First Bank of D.C., N.A. (DC)
Commercial Capital Bank (LA)
Community Bancshares of Mississippi (MS)
Community Bank of the Bay (CA)
Farmers & Merchants Bank (MS)
FBT Bank & Mortgage Bank (AR)
First Eagle Bank (IL)
First Independence Bank (MI)
First National Bank & Trust (AL)
First Security Bank (MS)
First SouthWest Bank (CO)
FNBC Bank (AR)
GN Bank (IL)
Great Southern Bank (MS)
Guaranty Bank and Trust Company (MS)
Holmes County Bank and Trust Company (MS)
Industrial Bank (DC)
International Bank of Chicago (IL)
Legacy Bank and Trust (MO)
Mechanics and Farmers Bank (NC)
Merchants and Planters Bank (MS)
Metro Bank (KY)
Mission Valley Bank (CA)
National Cooperative Bank (VA)
Native American Bank, N.A. (CO)
Neighborhood National Bank (CA)
New Haven Bank (CT)
NOAH Bank (PA)
OneUnited Bank (MA)
Optus Bank (SC)
Pan American Bank (IL)
Partners Bank (AR)
Peoples Bank (MS)
Planters Bank (MS)
PriorityOne Bank (MS)
Providence Bank & Trust

Security Federal Bank (SC)
Security State Bank (OK)
Southern Bancorp, Inc. (AR)
Spring Bank (NY)
State Bank & Trust Company (MS)
Sunrise Banks (MN)
Sycamore Bank
Texas National Bank (TX)
The Cleveland State Bank (MS)
The Commercial Bank (MS)
The First, A National Banking Assoc. (MS)
The Harbor Bank of Maryland (MD)
The Jefferson Bank (MS)
Union Bank & Trust (AR)
United Bank (AL)
United Bank of Philadelphia (PA)
United Mississippi Bank (MS)
Virginia Community Capital (VA)