WOODSTOCK INSTITUTE

Advancing Economic Security and Community Prosperity

67 E. Madison, Suite 2108
Chicago, Illinois 60603-3014
Phone: (312) 368-0310
Fax: (312) 368-0316
www.woodstockinst.org

Comments on Federal Reserve Board of Governors Advanced Notice of Proposed Rulemaking (ANPR) on the Community Reinvestment Act (CRA)
Docket Number R-1723 and RIN Number 7100-AF94
Via email: regs.comments@federalreserve.gov

To Whom it May Concern,

By the time Congress passed the Equal Credit Opportunity Act, the Fair Housing Act, and the Community Reinvestment Act, overt discriminatory practices by the conventional banking industry were no longer the primary reason that kept minority communities out of the middle-class. By the time these laws were on the books and being enforced, decades of discrimination and corresponding disinvestment had impoverished many Black and Brown families, creating economic barriers to accessing the financial mainstream. These economic barriers denied families of color access to the equity that allowed white families to join the middle-class. And by the time these laws were on the books, economic segregation had become ingrained after a century of institutionalized discriminatory policies of the Federal government in housing incentives and regulatory oversight that ignored existing laws that banned such activity.

The Federal Reserve is not without its skeletons on the issue of equitable access to credit. The name on the Federal Reserve Board of Governor's primary building in Washington, D.C. is that of William McChesney Martin who believed discrimination in banking didn't exist because, if it did, the market would have rectified it on its own. The shadow of that belief is cast throughout the regulatory landscape and explains why 95% of all financial institutions regulated under the Community Reinvestment Act receive at least a Satisfactory rating even though the communities they serve are struggling just as much in 2021 than they were in 1977; why the local National Public Radio (NPR) affiliate in Chicago is moving the needle on fair lending better than decades of CRA exams; or why financial entities not covered by the Community Reinvestment Act are the source of more lending in low- and moderate-income communities throughout the United States than those covered by the law.

At the core of our country's racial wealth gap is not a lack of laws or regulations mandating moral behavior, but a consistent and complete failure of implementation dating from the 1866 Civil Rights Act to the Office of the Comptroller of the Currency's 2020 rulemaking on CRA. In this context enters the Federal Reserve's Advanced Notice of Proposed Rulemaking to reform the Community Reinvestment Act's implementing regulation and its second question (of 99) on how the Act can address systemic racism, which is where Woodstock Institute's comments will begin.

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

The most effective manner from which to ensure appropriate compliance with any law or regulation is to make the punishment associated with non-compliance more expensive than the cost incurred by implementing the policies, procedures and controls necessary for compliance. Thus far, the two versions of the CRA's implementing regulations have fallen short of this goal, as have the implementation associated with the Equal Credit Opportunity Act (ECOA) and the Fair Housing Act (FHA). Prior to the recent revision of the CRA regulation in the mid-1990s, two of the twelve CRA Assessment Factors had a direct connection between Fair Lending and the CRA; one in the creation of what was then called Service Areas and the other with regard to overall lending activity. The revision of the regulation from the twelve assessment factors to the three tests (Lending, Investment and Service) watered down this connection, tenuous as it already was. As it stands today, the regulatory precedent has been set that a financial institution can be found in violation of either or both the ECOA and FHA, settle with a monetary fine without admission of guilt, and continue to be found "Satisfactory" in its CRA performance.

Woodstock requests the Federal Reserve to consider two actions relating to this issue that can dramatically address systemic racism in banking. The first is to enhance enforcement of ECOA and the FHA. ProPublica, the Woodstock Institute and our local NPR station should not be the first to expose fair lending and equal credit violations by regulated financial institutions. The second action we request is to implement a bookend to the proposed "Presumption of Satisfactory." If a financial institution is found to have substantively violated any civil rights, equal protection or consumer protection laws, and irrespective of whether they settle without admitting guilt or if the violations are dated, they should be immediately downgraded to "Needs to Improve." The combination of effective enforcement of consumer protection laws with the "Presumption of Needs to Improve" will create the incentive for financial institutions to invest in the controls necessary from which to comply in a sustainable and systematic manner, and to actively engage in the development and distribution of products and services to address any issues raised as a result of their internal analysis.

Of final note on the topic of systemic inequity is the disproportionately negative impact that climate change has on low- and moderate-income communities. The case made by the Federal Reserve Bank of San Francisco in their 2019 paper for banks to receive CRA consideration for lending and investment activities which strengthen low-income communities against climate change is timely, appropriate and must be addressed in this proposal.

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

Creating an assessment process by which financial products and services necessary for the basic functions of an economy are matched with the availability of those products, overlaid with financial institutions in the area, and then compared with actual provision. With the ability of financial institutions to gather deposits and lend in any geography they choose, it is too easy for them to create a business model that excludes minority, LMI and non-metropolitan markets while leveraging the exceptions within Reg BB that allow them not to serve particular markets. For example, a retail institution that provides commercial and mortgage loans could open a Loan Production Office (LPO) in a market where they're comfortable providing business loans but would prefer not to offer mortgages irrespective of community need and the availability of that product from other providers. Under the proposed changes, the financial institution would only have to show its activities based on the primary lending products offered by the LPO and not consider the capacity of the institution to provide other products that are needed by the community.

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

The Assessment Area procedures should require that a county or a city be presumed to be the Assessment Area for a small bank unless that bank can demonstrate that it is not discriminating or arbitrarily excluding LMI tracts by establishing a smaller Assessment Area.

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

The assumption that a small bank cannot appropriately serve a large geography is a mistaken assumption. As such, the capacity and complexity of the financial institution should be a larger factor in justifying its Assessment Areas than its asset size.

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

Yes, but assessment of CRA performance should be based on the capacity of the institution to provide a suite of products that are needed in the community versus the products the institution may have "cherry picked" to provide. If not, there will likely be scenarios where institutions open an LPO in a banking desert for the enhanced consideration, but only offer a fraction of the financial products and services needed in that community. Similarly, an institution could pick the most profitable product to offer through an LPO without consideration of community need, and only be assessed by the distribution of that one product.

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

In much of the developed world, cell phones are deposit-taking ATMs. The United States is a few years behind much of Asia and Europe in this and other functionalities, but we'll catch up. Most ATMs in Asia and Europe not only allow for deposits and withdrawals, but also video-chatting features with loan and investment representatives that, in some cases, allow customers to sign contracts on the screen. It will only be a matter of time before this functionality is available in the United States. So yes, deposit taking ATMs and whatever they may be called or become in the future will need to be included.

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

Delineation of new assessment areas should apply more broadly to all financial institutions. Many "conventional" financial institutions (large and small) have created internet banks and virtual remote capture capacity for the purposes of gathering deposits and/or originating loans in markets where it is too expensive or difficult to open branches or LPOs. In some of these markets, these internet-only subsidiaries have significant deposit or lending market share with no commensurate CRA requirements due to organizational structure and exceptions within current regulations. A "Top 10" market share threshold for deposits, loans or both would represent a reasonable starting point as a trigger for additional assessment areas. Similarly, the choice by a financial institution not to serve a banking desert utilizing its online banking platform when it has the capacity to do so should be challenged.

As the former head of CRA compliance for a Federal Reserve-regulated venture-capital bank, I experienced an ongoing issue with regard to the CRA regulations' "In / Out" ratio. With fewer than a handful of physical branches in the same geographic region, deposits were coming from technology and life-science industry clusters throughout the United States and loans were being originated in those same markets even though there were no physical branches. In response, the bank geocoded the addresses of all depositors, mapped it out, overlaid that information with the concentration of lending activity, and negotiated an agreement with the Federal Reserve that the intent of the regulation was being satisfied even though exceptions needed to be made with regard to technical compliance. Every institution at which I have worked as head of CRA (small and global) has the ability to do this with minimal burden. This information is regularly used for business and product development purposes. Any institution (internet only or otherwise) who claims that marrying depositor address information with product delivery and distribution (aka "wallet share") is a costly regulatory burden is not being forthright - this is done internally all the time. While there may be a challenge in creating industry standards for the collection, reporting and analysis of this information, a super-majority of this information is located in just a handful of 3rd party software platforms, all of which define data fields in fairly similar manners. As such, this barrier is not insurmountable. Do not apologize for asking information from financial institutions that they already have (and use) that will ensure greater clarity, accountability and impact in the provision of financial products and services to LMI and minority communities.

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

There is no financial institution that serves the United States in an equitable manner throughout all geographies. Similarly, there is no financial institution in the United States that can provide the financial resources to appropriately address the credit needs of LMI individuals and communities throughout all geographies. Spreading limited resources across such a large geographic market would diffuse the impact of those resources to the point where they are not substantive or helpful. As such, those institutions who aspire to have the entire country as an assessment area should be required to develop a strategic plan from which they identify a reasonable number of markets (based on the institution's capacity, resources and community input) that are banking deserts or underserved by other institutions, perform outreach to ascertain community input and need, and to develop a business plan from which to serve those markets in a responsive and substantive manner.

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

Assuming that the agencies do not ask for the deposit and lending distribution data each institution has that can identify specific assessment areas based on the concentration of those products, the ideal would be to challenge internet banks to serve banking deserts. Adding another competitor for community development loans and investments in already overbanked markets only creates a race to the bottom of which institution will take the biggest cut in rate, fee and underwriting criteria in order to check the box necessary to say they originated a CRA-reportable deal (as is the case today).

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

There is great value to the consistency and predictability of the evaluation process associated with the metrics-based approach. In addition, many small financial institutions are uniquely positioned to identify and originate smaller community development transactions than their larger counterparts. Having the default approach for these institutions include all subtests would serve as an incentive for small institutions to provide these products directly or in partnership with Community Development Financial Institutions (CDFIs) or their larger counterparts. Our recommendation is to have the default approach be the metrics-based approach.

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

The default approach for both small and large retail banks should be the metrics-based approach that includes all four subsets. Many small institutions have a long track record of exceptional performance in community development finance and service, as well as retail services. Compliance with all four subtests should be based on capacity and complexity, not size. Small can be mighty. As such, small institutions should default into the approach with all four subtests and make the case should they choose to opt out.

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

Some large banks are simple; some small banks are complex. Our belief is that every bank should be evaluated equally irrespective of size, and that exceptions to assessment processes should be based on the capacity and complexity of the institution and be granted on a case-by-case basis.

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

It would seem to be the best of bad alternatives. If most banks decided to half-heartedly serve an LMI or minority community, then all will do well in this screen since the "average" already includes disinvestment by the industry serving the market and a performance threshold of 30% lowers the bar even more. Grading on a curve doesn't seem appropriate given the track record of the industry. But given the unavailability of better comparative data and the agency's desire for a screen, there doesn't seem to be a better alternative. There is, however, great concern regarding the 30% threshold. A regulatory precedent was set with regard to interstate banking and deposit generation that set a threshold of 50%. While still low when applied to the performance of already underperforming financial institutions, it is better than 30%.

A more useful retail lending screen would be one based on equity. This "equity ratio" would compare a bank's level of lending in a middle- and upper-income (MUI) community with its lending in an LMI community, with a percentage threshold set to normalize performance.

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

The retail distribution metrics are appropriate for all retail banks. No adjustments are needed for small banks.

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

They should be separated in order to identify the opportunity to elevate the rating beyond "Satisfactory" for those institutions who meet the metric threshold but do so by predominantly serving low-income.

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

It is a step in the right direction for the Board to look at consumer lending on par with mortgage, business and farm lending, and it should be analyzed with similar rigor. Given time and advocacy, the sources necessary to create benchmarks for consumer lending will either be identified or created at the State or Federal levels. Particular care should be made to ensure that consumer loans that are considered for CRA purposes are responsible and appropriate for LMI consumers. "Responsible and appropriate" should be defined as loans with interest rates below 36 percent APR as calculated under the Military Lending Act (MAPR). Similarly, negative CRA consideration should be given to financial institutions who rent their charter to predatory lenders or who support predatory lenders by purchasing asset-backed securities that include such loans.

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

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

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

Most large financial institutions do this kind of analysis already. Consistency is fine so long as the performance measures and thresholds are not set at levels so low as to negate any opportunity for LMI communities to thrive. Setting performance measures and thresholds at a level that aims to solve the problem that CRA was passed to address would minimize CRA ratings inflation and serve as an incentive for more innovative and responsive financial products and services.

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

Differences in risk tolerances, capacity, portfolio concentrations, business model, staffing and competition may make these thresholds and metrics difficult to translate into the reality of the institution. Examiners will likely have to continue to use judgement in these cases, but far less often than they do now.

Question 23: *Should adjustments to the recommended conclusion under the performance ranges approach be incorporated based on examiner judgment, a predetermined list of performance context factors, specific activities, or other means to ensure qualitative aspects and performance context are taken into account in a limited manner? If specific kinds of activities are listed as being related to "outstanding" performance, what activities should be included?*

Examiner judgement will continue to be key to CRA exams as long as there are CRA exams. Where things fell a bit through the cracks was the elimination / termination of the FFIEC Advanced CRA Examination Techniques training program, which then caused a swelling tide of inconsistent treatment within and among agencies because there was no interagency "sounding board" from which to share and learn from actual experiences. A predetermined list of performance context factors, specific activities or other means can be created in time through the precedents set in actual exams and made publicly available. Similar to the ambition of a list of qualifying activities, a dynamic and evolving list of "qualitative aspects" would reflect the diversity of the banking industry, the diversity of the communities they serve, and the breadth of ways that institutions can exceed expectations.

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

Banking deserts should be defined as geographic areas where residents' access to a suite of affordable financial products and services necessary for a community and its economy to thrive are restricted or nonexistent due to (a) the physical absence of financial institutions within convenient traveling distance, or (b) a lack of access by community members to alternative on-line products. Examiner judgement should be made using performance context criteria with regard to thresholds of "convenience" and "access".

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

The only accurate measure of compliance would be to collect and assess the distribution of client addresses with the availability of (a) physical branches and/or (b) access and utilization of alternative delivery channels.

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

The answer to this resides within the answers to questions 25 and 26. In a manner similar to defining banking deserts, examiner judgement should be exercised using performance context information and community contacts / outreach to determine the accessibility of branches located in middle- and upper-income census tracts by LMI individuals or adjacent LMI communities. Once the issue of convenience and access has been settled, a quantitative analysis would be performed to overlay convenience / access with utilization by assessing the geographic distribution of the clients using those branches. Again, this can only be done accurately by requiring financial institutions to provide the data they have regarding the geocoding of their clients.

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

The only accurate measure of compliance would be to collect and assess the distribution of client addresses with demographic information to assess both the accessibility and usage of non-branch delivery channels by LMI communities, individuals, small businesses and small farms.

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

"Readily available" may be the issue here. Financial institutions have and use the information from which to conduct this assessment but may claim that providing that data would be a costly regulatory burden. At the end of the day, however, data regarding product usage by customers based on address would be the most accurate assessment of responsiveness.

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

Large banks use this information for a number of purposes including, but not limited to: determining the effectiveness of product development and geographically targeted product marketing campaigns; determining the profitability of a branch; determining staff levels a targeted geography; assessing the profitability of products based on region; and a variety of other metrics necessary to maximize shareholder value, achieve earnings per share benchmarks, and achieve efficiency ratio objectives. It would not be unfair for the Board to ask that this data be shared with examiners in order for them to make an assessment on responsiveness, accessibility and usage by and for LMI communities.

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

No. If there is sufficiently accurate and relevant data, a statement would be unnecessary because the analysis would show the strategy of the institution irrespective of what it may choose to publish.

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

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

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

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

Financial institutions have created a functional infrastructure from which to provide the information and assessment necessary for proper evaluation of home mortgage, small business and small farm lending. There seems to be minimal value added by this threshold, and it could result in the unintended consequence of eliminating reasons behind poor performance that may be important to LMI communities. Given its importance and prevalence, consumer lending should be added.

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

It would seem more appropriate to marry the institution's major product lines with the distribution of those products at the assessment area level, irrespective of threshold or share. An institution that has a relatively robust infrastructure from which to provide small business loans should need to explain variations by assessment areas of the provision of that product should it be widely distributed in some, and barely distributed in others. The trigger for that explanation would be the analysis of major product lines in a particular assessment area when compared to other financial institutions serving that market, or in comparison with performance in middle- and upper-income communities.

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

Neither. The standard should be based on whether the financial institution offers consumer loans and, if so, whether the institution provides those loans in an egalitarian manner as required by law.

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

If the provision of this data and its subsequent evaluation in a CRA exam marries this assessment with responsiveness to the specific consumer loan product needs of LMI communities and individuals, then a separate evaluation by loan category would be appropriate and useful.

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

RCC Part II was the basis from which financial institutions were to provide information on their lending to small businesses and farms. While it was unfortunate that most financial institutions paid no attention or put any effort into reporting accurate data into this report prior to its identification and incorporation in the last revision of Regulation BB, they've figure it out and are now in relative compliance. Detaching from the Call Report definitions and creating a new one would need to be justified based on additional value to LMI and underserved communities. This threshold does not seem to have been met in this proposal. The definitions should remain connected. Additionally, and equally important, the Board should not forget that the definition of small business also includes the thresholds set by the Small Business Investment Company and Small Business Development Company programs within the U.S. Small Business Administration. The $1 million revenue threshold was the "intellectually lazy" definition that seems to have become the only standard from which to define small businesses and farms. The Board should either eliminate these two additional definitions or highlight them as additional flexibility to allow financial institutions greater leeway in identifying and reporting small business lending activity.

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

CRA consideration should only be provided for home mortgage loans purchased directly from an originating lender. Such purchases need to be differentiated in the public evaluation to determine whether a financial institution is outsourcing its lending to LMI communities.

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

Deposits seem as good a denominator as any. Of greater concern is the fact that this metric-based approach will not address the scrum associated with the origination of community development (CD) loans and investments in major metropolitan markets in order to satisfy these benchmarks, which will continue to create an irrational market in pricing and underwriting. It is not unusual to see a financial institution pay upwards of $1.20 for $1 of tax credits in order to get an affordable housing deal, and a rate on the construction debt so low as to not cover the banks' cost of funds. This is not banking. In most all of these markets, there are no CD deals that are unfunded while, just a few miles away in non-metropolitan and rural markets, communities are starved for this same capital. This metric would reinforce this irrational market where supply exceeds demand in some, and others go without. We request that the Federal Reserve provide the ability for financial institutions to originate CD deals outside of their assessment areas if demand in an assessment area has already been met and competition for deals within those markets would require pricing concessions that are counter to financial best practices.

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

Tier 1 capital.

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

Yes.

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

The thresholds would likely be self-calibrating given that they will reflect local capacity, competition and demand. It will just take time to gather sufficient data over the years to use those thresholds comparatively as the basis for evaluation. Performance context will be important. An institution should not be penalized for not wanting to provide concessionary rates or fees in order to finance community development deals within one of their assessment areas where competition is fierce. An incentive should be developed to allow that institution to channel its resources to areas outside of its assessment areas where there is less competition and, thus, more need for this type of capital. In that case, this institution would not meet the local threshold, but performance context may deem the institution "satisfactory" for its commitment to banking deserts.

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

An impact score is an appropriate way to leverage performance context into a quantifiable outcome but will not address criticisms of inconsistent treatment and consideration. Inter-agency examiner training will be important in minimizing inconsistent assessment and utilizing of the impact score. As such, financial institutions should have the option to provide any additional performance context information they deem appropriate in making the case for impact scores. Additionally, the Board and other agencies should provide public information on examples of community development finance activities and their responding impact scores in order to (a) provide incentives to other institutions to perform similarly, (b) provide clarity to institutions on what is considered, and (c) create a catalogue of precedent that examiners can use while evaluating institutional performance.

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

Quantitative metrics for the evaluation of community development services should include the categorizing the areas of focus of those services, quantifying the number of employees and hours involved in each category, and marrying those categories with the most pressing CRA-related challenges within those assessment areas as identified through community outreach. Performance would be assessed based on the ratio of CRA qualified volunteer hours per full time employee compared with peer institutions in the same market, with additional consideration given to the responsiveness of those services based on identified community needs.

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

An impact score would create an incentive for the institution to be responsive and to have a strategy of recruitment and deployment of services in the community. Using performance context information, activities that are centered on high priority local issues should be provided additional weight. Similarly, CRA qualified volunteerism by executives should also be provided additional weight. Finally, CRA qualified services in banking deserts should be given additional weight.

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

This idea was proposed in the last revision of the CRA regulation. Bank trade associations, however, made it clear that if the agencies expanded the scope of a bank regulation to activities that were not directly tied to banking, it would represent a dangerous "mission creep" precedent and would be immediately challenged in court. If this position no longer holds true, the proposal is well based and reasonable. In many small, rural and non-metropolitan communities, civic organizations like the Elks Lodge or local Kiwanis Club are the only community and economic development organization in the area. Participation and leadership by financial institution representatives should be encouraged and rewarded irrespective of the size of the institution.

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

Middle- and upper-income schools have a surplus of professional parents who volunteer and assist in neighborhood schools including, but not limited to financial literacy. This is not the case for low- and moderate-income or minority majority schools. The incentive for professionals to volunteer in these schools should stay in place as should the incentive to work with prospective LMI homebuyers versus middle- and upper-income homebuyers who likely have better credit scores, a better education, and access to more support services.

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

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

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

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

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

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

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

This is a rabbit hole. A list by the Board becomes an industry constraint. Allow financial institutions to utilize the feedback mechanism currently proposed to build a growing and dynamic community-driven catalogue of responsive activities.

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

Subsidized projects should be reviewed under the current pro rata process. Unsubsidized should receive 50% consideration of the over-arching project for any development where 20% or more of the units are affordable. This may serve as an incentive for developers to only use subsidies when absolutely necessary.

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

The Board should assess whether a community development service activity is targeting LMI by using available data either collected by the agency or provided by the bank. When appropriate, proxy information that meets the "straight face test" should be accepted when other data is not readily available. The Board should include in its "pre-approval" feedback process precedents that are set in identifying proxies for appropriate LMI-targeted services.

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

It shouldn't. This standard is either completely ignored or gamed by financial institutions that know examiners will not verify or follow-up on the data they provide. This should either be removed or appropriately enforced.

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

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

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

No. If a bank wants CRA consideration for an activity related to this, they should work with their primary regulator to ensure that the project meets the intent of the law. These projects are too diverse, and the economic conditions surrounding them do not lend well to codified lists of pre-approved activities.

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

Since these standards would not apply equally across all geographies, the Board should not create national standards to define these terms. They should be treated on a case-by-case basis, based on community input and the information provided by the bank and performance context. Pre-approval may be handy in these situations.

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

The originating concept of "revitalization and stabilization" was to provide banks with the flexibility to make the case for those activities that did not fit cleanly into the other categories. Many assumptions were made in the creation of the "conditions" under which those types of activities would be presumed to be CRA qualified that haven't played out consistently. At the end of the day, the banks need to make the case. Examiners need to check for existing precedence in order to create consistency, and these types of activities should be catalogued and made public so as to build a body of evidence for what has counted. Association with a federal, state, local, or tribal government plan is helpful, but the case for how an activity benefits LMI should stand on its own merits.

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

MDIs are important organizations that are dedicated to the neighborhoods and populations they serve, but not all MDIs are created equal. An MDI serving a minority low-wealth population is quite different from an MDI serving a high-wealth ethnic market. As such, CRA consideration can only be assessed based upon the mission, focus and activities of the institution and not solely on the fact that they are an MDI. Similarly, the type of support provided to MDIs needs to be assessed as to whether it provides the institution with the capital and capacity they need to deploy financial products and services in the community, or whether it's simply a parked deposit that adds no benefit to the community the MDI is chartered to serve. Long-term low-cost capital, loan guarantees, loan loss reserves, participations, and subordination to (not by) the MDI are examples of investments that increase the capacity of a mission-driven MDI to serve their markets effectively and sustainably. Lazy investments like deposits or short-term debt should not be considered.

There is a regulatory barrier that prevents many MDIs from providing financial products and services not ordinarily provided by their larger financial institution counterparts. This barrier is the disconnect between the regulatory expectations of CRA examination staff and the regulatory expectations of the safety and soundness examination staff. Effective mission-driven MDIs are expert in creating credit enhancement layer cakes of capital for their borrowers that look risky but perform well; they are equally adept at making a loan that pays late actually perform through technical assistance and, when necessary, restructuring; they also acknowledge that local entrepreneurs who are not low-income are as critical to the economic vibrancy of the community as those who are low-income. MDIs need the regulatory flexibility at the safety & soundness and CRA level in order to provide products and services that the conventional industry chooses not to provide in these markets.

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

We have seen a moral hazard develop in the industry as it relates to the support of CDFIs by financial institutions. In most cases, CDFIs are able to provide better service to LMI and minority markets than financial institutions, but is that a "feature" or a "bug" in the industry? If a bank chooses to prioritize their efficiency ratio over customer service and are provided a regulatory "out" by pushing high-touch low-wealth clients to CDFIs, then they will do so. At the same time that they receive CRA consideration for this relationship, they are working counter to the goal of "mainstreaming" LMI and minority customers and reinforcing the segregation in the financial industry. As such, there a many CDFIs that are offering products and services that could be provided by financial institutions. Many CDFI executives complain about competing with banks; many CDFIs pitch banks for investments based on portfolio performance that mirror that of conventional portfolios; and many community advocates are starting to see CDFIs behaving more like banks than non-profits. The assessment of bank investment in CDFIs by regulatory examiners should include a discussion as to why the institution is working through a CDFI as opposed to providing the product themselves.

Finally, a bank should receive CRA consideration for loans, investments or services in conjunction with a CDFI operating in a market that includes their assessment area(s) or has demonstrated that a banking hotspot provides them with the flexibility to channel capital and services to a CDFI serving a nearby underserved area.

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

Yes, provided that that sufficient justification is made to show why activities occurred in those areas versus the confines of an assessment areas.

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

This would be more relevant for internet, wholesale or limited purpose banks than for conventional financial institutions with a traditional branching network. The issue is funneling deposits away from their sources and into other geographies, irrespective of the needs of the community where those assets are being redirected. For those institutions whose assessment areas are within a designated area of need, there doesn't seem to be justification to provide additional consideration given that they would have these responsibilities anyway.

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

Yes. The foundation for this could be an inter-agency version of a document the OCC used to publish that provided detailed highlights of particularly innovative and responsive community development investments. Resurrecting this document, making it inter-agency, including all financial products and services, and making it searchable would provide an immense level of consistency for bank and examination staff, and serve as areas of study for non-profits and academics.

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

A process by which CDFIs, banks, non-profits and other community stakeholders to ask questions and get clarity regarding CRA activity was put in place after the last revision of the CRA regulation but abandoned a few years later. These FFIEC CRA Interpretive letters would achieve the purpose mentioned in the ANPR and would provide more detail, context and clarity through its narrative than a

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

Assessment areas where a bank has the lion's share of its activities are typically those that are either over-banked or competitively banked. Weighting activities in those areas in the ratings process reinforces the notion that over-banked and competitively banked areas will continue to be the primary focus of the CRA and, therefore, banks. A stated ambition of the Fed in justifying a revision to Reg BB is to look for innovative manners in which access and the provision of financial products and services is more equitable across various types of geographies and populations. With this in mind, why not treat each Assessment Area equally in terms of the rating process in the hope of achieving that ambition?

Question 79: *For a bank with multiple assessment areas in a state or multistate MSA, should the Board limit how high a rating can be for the state or multistate MSA if there is a pattern of persistently weaker performance in multiple assessment areas?*

Yes; no higher than Satisfactory.

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

Yes.

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

Eliminating "high" and "low" satisfactory ratings brings into question the objective behind CRA reform, which is to improve the objectivity and rigor of CRA exams so that banks would be motivated to increase their lending, investing and services in LMI and underserved communities. Four ratings categories would create ranges that would be too wide and would fail to indicate meaningful distinctions in performance. Five ratings are needed in order to more realistically capture differences in performance on the substests as well as the overall ratings.

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

The only accurate measure of compliance would be to collect and assess the distribution of client addresses. Every institution has the ability to do perform this analysis without burden. This information is regularly used for business and product development purposes. While there may be a challenge in creating industry standards for the collection, reporting and analysis of this information, a super-majority of this information is located in just a handful of 3rd party software platforms, all of which define data fields in fairly similar manners; so this barrier is not insurmountable.

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

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

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

Question 95: *Are the community development financing data points proposed for collection and reporting appropriate? Should other be considered?*

Similar to HMDA and small business data, the community development lending and investment data must be submitted annually and publicly by banks on a census tract level, a county level, and for the assessment areas. The community development data should also be reported separately for the major categories of community development including affordable housing, community services, economic development, and activities that revitalize and stabilize LMI census tracts. CRA exams often contain tables breaking out community development financing into the major categories. Community development loans, investments, and grants should be reported separately since each of these types of financing respond to different needs and contain different levels of explicit or implicit subsidies.

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

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

As any community development financing data reporting is implemented, the agencies must carefully oversee data collection and community development activities to ensure that the financing is not displacing or harming LMI people. For example, in high-cost areas of the country, abusive multifamily lending in LMI tracts has facilitated the displacement and eviction of LMI tenants.

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

Collecting and reporting at the loan or investment level is appropriate. Providing that data (individually by transaction and aggregated by assessment area) in the public portion of the CRA exam would be helpful.

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

Collection using a Board template would be effective.

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

A Board-provided template would be effective so long as it is a dynamic template. Banks, CDFIs, non-profit organizations and community stakeholders should be provided the option of adding new data points that don't cleanly or rationally fit those currently on the template. Each year, the Board (or FFIEC) should look to see if there is sufficient justification and evidence to expand, eliminate or add service data points towards the evolution of the template.