August 4, 2022

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

RE: Community Reinvestment Act Regulations, Docket ID OCC-2022-0002, Regulation BB, Docket No. R-1769

To whom it may concern,

The Coalition of Community Development Financial Institutions ("The Coalition") appreciates the opportunity to respond to the May 2022 Joint Notice of Proposed Rulemaking ("NPR") inviting public comment on the joint agencies' proposed overhaul of the Community Reinvestment Act ("CRA").

Formed in 1992 as an ad-hoc policy development and advocacy initiative, the Coalition is the unified voice of the CDFI industry and works to promote the work of community development financial institutions (CDFIs). Through its member organizations, the Coalition represents CDFIs working in all 50 states, the District of Columbia, and Puerto Rico. This national network of CDFIs includes community development loan funds, community development banks, community development credit unions, microenterprise lenders, community development corporations, and community development venture capital funds. The CDFI Coalition coordinates industry-wide initiatives to increase the availability of capital, credit, and financial services to low-income communities across the nation.

The proposed regulations recognize the important role CDFIs play in helping banks meet their CRA obligations. Banks and FDIC-insured depository institutions often look to CDFIs when they seek to meet the requirements of the CRA. Banks help capitalize CDFIs and funds managed by CDFIs with grants and equity as shareholders and provide them with deposits, loans, and investments. In return, banks receive CRA consideration for serving borrowers outside their typical customer profiles through a responsible CDFI partner.

CDFIs rely on CRA to secure capital from private financial institutions. CDFI Program Award recipients raise 21 percent of their capital from financial institutions, according to the latest data from the CDFI Fund. Without CRA, the CDFI industry today would be a fraction of its current size, and the scale of its lending, investing, and impact correspondingly reduced. Communities count on CDFIs, and CDFIs count on CRA to secure capital.

At a baseline, CRA modernization should result in a net increase in both the quantity and quality of financial products and services available in LMI areas. The burden is on federal regulators to show – with data and evidence – that their proposal would meet these baseline goals for reform.

Recent Growth of the CDFI Industry

CDFIs – like the CRA - emerged in response to disparities in capital allocation by traditional financial institutions to many urban neighborhoods and rural areas, particularly those with high poverty and unemployment rates.

Since the formation of the CDFI Fund in 1994, CDFI activity has grown significantly. Between 2013 and 2022, the number of certified CDFIs grew from 808 to 1,264, with total assets approaching $200 billion.

Some of the growth in the CDFI industry is also driven by recent federal investments in CDFIs and MDIs. The 116th Congress made a substantial investment in CDFIs through new appropriations and a set-aside in the Paycheck Protection Program (PPP). Recognizing the critical role played by CDFIs in rural and urban communities across the country, *the Consolidated Appropriations Act, 2021 (PL 116-260)* provided $12 billion for CDFIs and community-based lenders and investors, including $1.25 billion for CDFIs to provide technical and financial services to communities and businesses hard hit by the Coronavirus pandemic, $1.75 billion for the CDFI Equitable Recovery Program to increase lending and investing activity targeted to low-income and minority communities and populations, and $9 billion for the Emergency Capital Investment Program (ECIP). ECIP was designed to provide capital to depository institutions that are certified CDFI or MDIs.

However, much of the CDFI industry's growth can be attributed to increased recognition by banks that CDFIs are their best partners in meeting their CRA obligations. We commend regulators for recognizing the role of CDFIs in CRA compliance and rewarding banks for supporting the mission-driven work of CDFIs.

Below are our comments and feedback on the proposal.

Comments on the proposed regulations:

Summary of our comments:

- Adopt the proposed regulation's consideration of activities with Treasury Department-Certified CDFIs in the Community Development Test.
- Maintain the inclusion of these activities with CDFIs as one of 9 factors considered in the qualitative examination;
- Rethink the proposed asset thresholds, which reduce the community development financing obligations of many banks under CRA;
- Evaluate banks' responsiveness to BIPOC communities in their assessment areas and release the related reporting data;
- Re-weigh the Community Development and Retail Lending Tests at 50/50;
- Retain the Investment Test and consider the impact of new regulations on highly successful community development tax credits like the NMTC and LIHTC, as well as community development venture capital funds;
- Treat investments in funds managed by CDFIs as investments in CDFIs;
- Consider how to ensure that standard loan products are not treated with equal weight as equity investments, EQ2, grants, and other forms of financing that are more attractive to CDFIs;

- Adopt the newly proposed assessment areas, which will increase investment in underserved areas; and
- Increase public input into the CRA evaluation process.

Comment: The proposed regulation acknowledges the role of CDFIs in helping banks meet their CRA obligations

Comment: We support the rule's consideration of activities with *Treasury Department-Certified* CDFIs

We applaud regulators for recognizing CDFIs as an essential partner for financial institutions seeking to meet their CRA obligations. With boots on the ground in underserved communities, CDFIs are conventional banks' most effective partners in meeting the goals of CRA.

The proposed rule explicitly makes "all activities with Treasury Department-certified CDFIs" qualify as eligible community development activities. Significantly, regulators differentiated between certified and non-certified CDFIs: activities with certified CDFIs automatically qualify, whereas activities with non-certified CDFIs must align with another prong of the community development definition. Treasury's certification standards keep bad actors with predatory and abusive lending practices often targeted at low-income and marginalized communities from becoming certified CDFIs. Because the certification is often used as a "seal of approval" for federal and philanthropic resources, the process qualifies only responsible, mission-based lenders and investors.

Allowing community development credit for bank investments in CDFIs and funds managed by CDFIs, both within and outside a bank's geographic assessment area, is also strongly supported. This will increase investments in areas lacking a bank presence, specifically underserved rural counties and Indian Country.

We also support the inclusion of "Activities Supporting MDIs, WDIs, LICUs, and Treasury Department-Certified CDFIs" as one of nine areas of the qualitative impact review. CDFIs and other mission-driven lenders and investors are banks' best partners for meeting their CRA obligations.

<u>A point of clarification:</u> The final regulation should explicitly include "CDFI" in language related to consideration for "investments, loan participations, and other ventures undertaken by any bank, including by MDIs and WDIs, in cooperation with other MDIs, other WDIs, or LICUs". CDFI banks are the only set of CRA-regulated depositories with annual certification requirements and a mandate to primarily serve LMI communities. The customer bases and services areas of Low-Income Credit Unions and CDFI credit unions do not always overlap. Therefore, it is critical that the regulation explicitly include CDFIs in this category to clarify that activities undertaken with ALL types of certified CDFIs will receive positive consideration.

Comment: We support efforts to reward innovative activities undertaken with a CDFI

We support regulators' proposed method of measuring long-term loans and investments in CDFIs. As a result, banks will receive credit for the principal outstanding on loans during the entire loan period. This will lessen the incentive for CRA-motivated loan churn.

The current regulations reward banks for meeting targets, looking at the number and dollar amount of loans, and short-term loans that match the CRA examination cycle are rated more favorably. However, the timeframe and the terms of the loans in question are not necessarily consistent with the timeframe of the loan capital that CDFIs need to make meaningful investments in distressed communities. Qualitative CRA evaluations should reward banks that provide concessionary pricing, longer-term support, flexible risk capital, or other favorable terms on deposits and investments in and loans to CDFIs.

While the current framework states that "innovative or complex" activities receive consideration, implementation of this recognition has been inconsistent from region to region and between the various regulators. For the most part, regulators focus on measuring the number and dollar amount of CRA transactions with significantly less attention given to the "innovative or complex" nature of a bank's products or services. This focus had the unintended consequence of creating disincentives for mainstream banks to (1) provide longer-term financing, which would reduce liquidity risk and asset-liability management challenges for CDFIs with demand for long-term loans but only short-term money to lend; (2) provide capital that allows CDFIs to offer flexible risk capital to businesses and projects in communities; and (3) engage in transactions that are high impact but may take years to put together and involve multiple financing sources.

Evaluate banks' responsiveness to BIPOC communities in their assessment areas and release the related reporting data.

Despite the many successes of CRA in driving investment to long-neglected areas, there has been very little measurable progress toward closing the racial wealth gap since the passage of CRA. A recent Urban Institute study shatters the myth that LMI communities align well with BIPOC neighborhoods and communities that have suffered discrimination. Moreover, the study found that "LMI neighborhoods do not highly overlap with minority neighborhoods" and found that "even compared with the persistently low minority homeownership rate, minority neighborhoods do not receive their proportionate share of purchase loans from either institutions covered by the CRA."

The proposed regulation requires large banks to collect and report demographic data for the retail test, but this data is not used in their evaluation. The data is limited in scope to mortgage borrowers and does not include commercial products or even the provision of community services. It is unclear how much of this data will be released to the public.

In response to these criticisms, regulators have argued that race-based tests might be struck down in court. The NPR does suggest that banks will see their CRA scores downgraded if they violate anti-discrimination laws. Still, without robust data collection and dissemination, it is difficult – if not impossible – to prove that a bank is engaging in discriminatory practices. Addressing the harm from past financial sector discrimination is broadly understood as the original intent of CRA, as the NPR preamble discusses in detail.

In the summer of 2020, disparities in health outcomes during COVID-19 and the murder of George Floyd shined a spotlight on systemic racism. Over the past two years, CDFIs and banks have partnered on new diversity, equity, and inclusion initiatives to address racial inequity. Under the proposed regulation, examiners would not evaluate these initiatives or factor them into scoring.

At a bare minimum, regulators should:

- Release demographic reporting data to the public. If regulators feel their hands are tied by the potential for lawsuits, allow researchers, advocates, and policymakers to see the data and draw their own conclusions;
- Provide favorable consideration for banks seeking to serve areas with documented racial disparities in lending; and
- Factor successful discrimination lawsuits and other punitive legal measures into a bank's CRA scoring.

However, we were pleased that the regulation provides significant incentives for banks to increase their lending and investment in Native Areas. It also continues CRA's longstanding support of Minority Depository Institutions.

Elimination of the Investment Test Tilts the Scale in Favor of Debt over Equity, EQ2, and Grants

Recommendation: Protect successful community development tax credit programs
The proposal eliminates the Investment Test for large banks. Instead, regulators would examine both community development loans and equity investments under a single, combined community development test. We encourage regulators to restore the Investment test or design a separate mechanism to ensure large banks do not rely on debt alone to meet their community development obligations under CRA.

The elimination of the investment test would severely disrupt the community development tax credit equity markets. As you know, under current regulations, banks receive CRA consideration for tax credit equity investments through the Investment Test. CRA compliance often serves as their primary or secondary motivator for making tax credit investments. CRA modernization should take care not to disrupt longstanding, successful, highly impactful programs like the New Markets Tax Credit (NMTC) and Low-Income Housing Tax Credit (LIHTC).

The regulatory uncertainty generated by the 2020 CRA overhaul roiled the tax credit equity markets. While the markets recovered, the experience demonstrated how important CRA is to existing streams of funding for LMI communities. For example, lower LIHTC pricing means fewer units of affordable housing. A drop in NMTC pricing means less subsidy to thoughtful, high-impact community development projects. Conversely, higher equity pricing drives dollars into areas of more profound distress.

Recommendation: Protect investments in community development venture capital funds and other funds that provide flexible risk capital to businesses and projects in communities
Elimination of the Investment Text would also discourage bank investment in community development venture capital funds and other CDFIs that provide flexible risk capital to businesses and projects in low-income communities. These funds cannot be prudently capitalized with debt, and it is not practical to raise sufficient grant capital to capitalize a fund. Underwriting an investment in a fund is much more complex than lending to a fund, so elimination of the incentive of the Investment Test would severely limit the availability of equity capital to help businesses grow and create jobs in low-income

communities. Further, separately-incorporated, off-balance sheet funds managed by a CDFI should be given CRA credit, as discussed below.

Comment: Reconsider the reclassification of large banks as intermediate
Without an investment test, some of the largest banks *may* choose to maintain their community development tax credit product lines. Those activities qualify under the new Community Development Financing Test, though the proposed regulations treat loans and equity investments identically. But even if that is the case, the NPR recategorizes more than 250 banks from large to intermediate. Under the current regulations, those banks must comply with the Investment Test. Under the NPR, these banks will no longer be subject to the Investment Test or the Community Development Financing Test. This, in our opinion, will have significant consequences for community tax credit investments. Regional banks make a considerable amount of direct community development tax credit investments and also participate in the syndication markets.

Without a strong incentive for tax credit investments, it will be much more difficult CDFIs to bring billions of dollars in debt capital to highly impactful projects in LMI communities.

However, we also urge regulators to provide additional favorable consideration to Treasury-certified CDFI Banks. CDFI banks are unique within the banking industry because they have a primary mission of promoting community development and/or serving economically disenfranchised populations. About half of CDFI Banks are also MDIs.

These mission-driven banks are subject to the same regulatory and reporting requirements as other banks. Banks with CDFI certification, however, have additional reporting requirements to the U.S. Department of Treasury to maintain their CDFI status – regardless of whether or not they participate in the agency's programs.

As we discussed earlier, CDFI Certification reporting requirements ensure CDFIs are serving LMI areas and families. CDFI Banks submit robust data on their community development activities to the CDFI Fund on an annual basis. According to the CDFI Fund's 2020 Annual Certification Report, CDFI Banks targeted more than 75 percent of their financial products to low-income areas or people in 2020. Greater policy coordination between the bank regulatory agencies' implementation of CRA and the Treasury CDFI certification and reporting requirements could reduce overlap and duplicative reporting, tailoring reporting requirements to fit the CDFI bank business models, and making CRA more effective for these organizations.

Comment: Maintain the Investment Test or create a mechanism for recognizing banks' equity equivalent investments (EQ2) in CDFIs.

In the 1990s, community development practitioners worked with bank partners to develop a new equity equivalent lending product (EQ2) for CDFIs. EQ2 is an important financial tool for CDFIs. It allows CDFIs to strengthen their capital structures, leverage additional debt capital, and as a result, increase lending and investing in LMI communities.

Like permanent capital, EQ2 enhances a CDFIs' lending flexibility and increases its debt capacity by protecting senior lenders from losses. However, unlike permanent capital, the investment must eventually be repaid and requires interest payments during its term, although at a rate often well below the prevailing market rates.

The proposed quantitative Community Development Financing Test would treat EQ2 investments into CDFIs the same as standard debt products. We encourage regulators to design a mechanism for encouraging these types of activities.

Comment: Provide enhanced consideration of grants to CDFIs

Under the 1995 framework, large banks can receive credit under the investment test for grants to CDFIs. CDFIs count on grant funding from financial institutions to serve businesses in their target markets. The NPR would give equal quantitative consideration to grants and loans while providing some consideration for grants in the qualitative impact review. All things being equal, many banks will error toward vanilla debt products in meeting their community development obligations.

Recommendations: Potential solutions to address the elimination of the Investment Test:

If regulators are intent on eliminating the Investment Test for large banks, then we suggest the following potential solutions to reward banks for making grants to CDFIs and other community organizations:

- Provide additional consideration (or weight) for grants, equity investments, and EQ2 provided to CDFIs under the quantitative portion of the Community Development Financing Test.
- Retain and strengthen the qualitative impact review category, "Activities That Are a Qualifying Grant or Contribution," to explicitly include grants to CDFIs and other community-based organizations.
- Modify the Community Development Services Test to also evaluate banks' grant contributions to CDFIs and other community-based lenders, rather than limiting the test to their in-kind services. This change would create a distinct pathway for grants separate and apart from other investments.
- Model the Community Development Services Test after the Retail Services Test by evaluating the "responsiveness" of financing products. This would be additive to the qualitative impact review under the Community Development Financing Test. Banks could receive additional consideration for high-quality loans and investments, including providing EQ2 to a CDFI. And in the absence of an investment test, this test would allow an examiner to look holistically at the mix of product offerings provided by a bank (equity, grants, loans) to reward those that are offering grants in higher measures than their peers.

Strengthen Community Development Scoring and Increase Transparency

Recommendation: Increase the weight of community development scoring from 40 to 50 percent.

We join other community development organizations in calling for an increase in the weight of the community development test for large banks from 40 percent to 50 percent. The Community Development Financing Test would count for 35 percent, and the Services Test would count for 15 percent.

While the proposed scoring system is more robust than today's system, where 97% score satisfactory or better (and over 80% score "satisfactory"), it undervalues community development activities to such an extent as to make them irrelevant to banks scoring well on their Retail Services Test.

Recommendation: Increase Community Input and Participation in the CRA Process

The proposal does not create a viable mechanism for community input and feedback (other than public comments on CRA strategic plans). Instead, the regulation includes requirements that CRA consideration is limited to activities aligned with "federal, state, local, or tribal government plan, program, or initiatives."

Regulators should solicit community comments on exams and require that banks post a public response to commenters. In addition, the agencies should actively solicit community stakeholder input on the performance of banks.

We recommend CRA consideration of Community Benefits Agreements, perhaps under the qualitative community impact evaluation. In addition, regulators should solicit community-based groups – including CDFIs - for their input on bank practices relating to climate, displacement, discrimination, and other harmful practices.

We support the proposed assessment area regulations

Comment: The NPR will help CDFIs serve CRA-deserts, including low-population regions, rural and Native communities.

There is widespread agreement that under the 1995 Assessment Area structure, too many less-populated communities across our nation attract minimal CRA-motivated bank investment. These so-called "CRA-deserts" are concentrated in rural areas and Native lands – communities already dealing with elevated poverty levels and a lack of credit and financial services. Reforms to Assessment Areas are needed to drive more bank investment to low-population areas to address this imbalance.

However, a CRA desert should be clearly defined by regulatory agencies with the eligible areas listed and regularly updated. We opposed the approach taken by the OCC in 2020, which may have given banks broad discretion to define CRA deserts.

We applaud regulators for making the following changes to assessment areas:

- To incent bank activity in non-metropolitan regions, regulators propose consolidating the non-metro portions within a state into a single Assessment Area. This reform could result in more investment in rural and Native communities and streamline the evaluation process for banks and examiners; and
- Due to the historic nature of discrimination against Native communities and the urgent need for capital in Indian Country, regulators propose that a bank should receive CRA consideration for retail lending activities conducted within Indian Country regardless of whether those activities are located in the bank's assessment area. Residents of Indian Country face significant challenges in securing commercial credit, including significantly longer distances from brick-and-mortar financial institutions and poor and limited internet for mobile or online banking, which is compounded by a lack of equity resources, collateral, and credit history; experiences, and

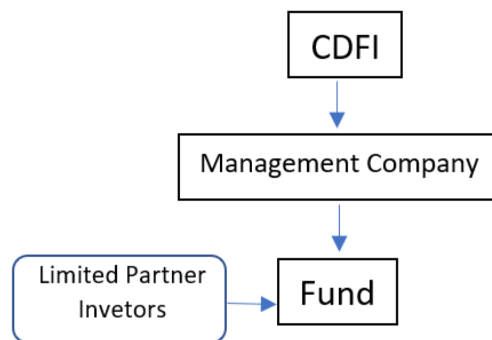
perceptions among Native entrepreneurs that commercial bank financing is difficult to secure; and a lack of diversity in funding sources.

Provide CRA Credit for Off-Balance Sheet Funds

Recommendation: Treat funds managed by a CDFI as part of the CDFI for CRA purposes, whether or not those funds are on the balance sheet of the CDFI

Communities require flexible, risk capital to start and grow businesses and to undertake new, high-impact projects. As noted above, the proposed quantitative community development test will drive bank support toward shorter-term, less flexible, lower-risk support for CDFIs and the communities they serve, leaving communities without the full range of types of capital they need to survive and thrive.

One way in which CDFIs provide flexible, high-impact, risk capital to communities is through off-balance sheet funds that are separately incorporated, typically as limited partnerships or limited liability companies, which the CDFI manages either directly or through an intermediary management company that the CDFI controls. This structure is used to remove risk from the balance sheet of the CDFI (the entity that pays salaries and rent). This is typical for community development venture capital funds and other types of CDFIs that seek to provide flexible risk capital to businesses and other community efforts that could not be prudently provided by the CDFI corporate entity itself. Banks should receive credit for providing capital and other support to such off-balance sheet funds of CDFIs, just as if the support were provided to the CDFI corporate entity itself, and in fact, extra credit should be provided for innovativeness and impact. This should be done *only* in cases where the CDFI is in full control of the investments and loans that the off-balance sheet entity provides to communities. A sample structure diagram is represented below.



Other General Comments

Community Facilities

CDFIs provide billions in capital to new or improved community facilities and social service providers every year. We support the new community development definition, which clarifies that banks can and should make investments in “essential community facilities that benefit or serve residents of targeted census tracts.” This includes community facilities like hospitals, daycare centers, and other social service providers. Under the old framework, banks were required to show that investments in community

facilities would also attract or retain businesses and residents. The proposed regulation removes that requirement and replaces it with an improved requirement that "the activities do not displace or exclude low- or moderate-income residents."

Below, find our answers to several of the questions posed by regulators.

III. Community Development Definitions

A. Primary Purpose of Community Development

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

Yes, examiners should provide partial consideration to some activities beyond affordable housing. Real estate financing often combines multiple purposes and uses. For example, in the case of a loan to a mixed-use project combining market-rate housing and commercial space with a Federally Qualified Health Center, the portion of the loan supporting the FQHC should receive credit while the rest of the loan should not (unless it meets other criteria of community development). CRA must encourage community development activities benefiting low-income people in high-cost, mixed-income communities.

However, the risk of partial consideration is that banks can undertake large transactions in metropolitan areas with a fractional benefit to LMI communities. These activities should be evaluated for the potential for abuse. For example, a large hospital in an affluent area might provide 5% of its services to Medicaid recipients. A loan to this facility should not receive CRA credit. These sorts of large transactions can potentially crowd out other higher-impact activities – including investment in CDFIs.

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

The purchase of mortgage-backed securities should receive minimal CRA credit.

C: Economic Development

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

Yes. The regulation should include qualitative consideration for the creation or retention of high-quality jobs that are accessible to LMI individuals.

E. Redefining Revitalization and Stabilization Activities

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

We suggest direct solicitation of community feedback about banks' practices, products, and services.

F. Activities with MDIs, WDIs, LICUs, and CDFIs

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

We support the consideration of activities undertaken by an MDI or WDI to promote its own sustainability and profitability. The agencies should also consider activities undertaken to promote the sustainability of CDFIs.

Historically, regulators have not recognized CDFIs as equivalent to MDIs and LICUs, because they were not explicitly cited in the 1977 CRA statute, which predated the 1994 CDFI Fund authorizing statute. We support regulators' proposal to include CDFIs since the CDFI standard for targeting service to low-income communities is far more stringent than the requirements for MDIs and ICUs. Through robust reporting and certification requirements, Treasury ensures CDFIs meet their obligations to their target markets and populations. The proposed rule recognizes and rewards banks for boosting the capacity of lending partners with a strong stake in LMI communities, and CDFIs fit the bill.

IV. Qualifying Activities Confirmation and Illustrative List of Activities

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

Yes – particularly in regards to activities that might otherwise receive partial credit. See our answer to question 1. In particular, the agency should maintain skepticism about large investments seeking partial CRA credit based on a fraction of their services benefiting LMI residents.

V. Impact Review of Community Development Activities

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

Rather than excluding short-term deposits or other activities supporting CDFIs, we encourage regulators to provide additional consideration to equity investments in CDFIs, EQ2 and long-term debt financing to CDFIs, and grants to CDFIs. As we discussed earlier, the regulations provide very little incentive for banks to provide equity investments. We also recommend providing consideration additional consideration for activities supporting the sustainability of CDFIs.

VII. Performance Tests, Standards, and Ratings in General

A. Performance Tests, Tailoring to Bank Size, and Asset Thresholds

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

For large banks, the test undervalues the importance of community development in CRA ratings. We join other industry stakeholders in proposing a 50/50 split between the Community Development and Retail Lending Tests.

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

The currently proposed asset thresholds would remove over 200 large banks from community development product evaluations. Some have estimated that this would eliminate more than $1 billion in CRA-motivated community development activities annually. Great care should be taken in creating asset thresholds that maintain or increase the amount of CRA-motivating community development financing in low-income communities.

C. Performance Context Information Considered

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

The current maximum loan size of $1 million to qualify as a "small business loan" should be retained to ensure that CRA credit for small business lending targets businesses facing critical capital gaps. There is a significant need for smaller dollar loans, especially in communities of color and among LMI entrepreneurs, and increasing the threshold would discourage this level of lending.

CRA consideration should not be given for all loans to businesses that meet the Small Business Administration (SBA) standards for small businesses. The SBA size standards for employee size are simply too high of a threshold to meaningfully segment the small business lending market. In certain industries, companies with 500, 750, or even more than 1,000 employees are still considered "small businesses" by the SBA. While these loans are important for the growth of industry and job creation, it is questionable whether these businesses should still be considered small. Additionally, banks would likely make these business loans without the incentive of CRA because such loans are more likely to be profitable. Instead of relying on the number of employees to define a small business, a "small business" should be defined as a business with $1 million or less in annual revenue.

Small business lending activities that impact or support LMI communities should receive consideration under CRA. We support the regulation's inclusion of loans to very small businesses (under 250,000 in revenue) as one of nine criteria considered in the qualitative review. Lenders should continue to receive

credit for providing small business loan referrals to CDFIs and purchasing small business loans from CDFIs. Loans to small businesses located in LMI communities, to LMI or underrepresented borrowers, or to businesses that employ LMI workers with quality jobs and benefits should be considered to have a community development purpose and receive favorable CRA consideration. Small business loans that benefit a broader community should be considered only to the extent that LMI people and places benefit directly.

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

The regulation recognizes the problem posed by CRA-motivated "loan churning," or the short-term purchase and resale loans to LMI borrowers for CRA credit. Loan originations should be valued more highly than loan purchases. However, we do support CRA consideration for loans purchased from a CDFI. The market for purchased loans provides liquidity CDFIs and enhances their capacity to lend to LMI communities.

XIII. Community Development Services Test

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

Banks should only receive CRA consideration for volunteer activities directly related to the provision of financial services or that have a community development purpose. Community development services should be related to financial services or the regulatory definition of community development (including affordable housing and economic development). For example, volunteering to teach financial literacy courses should be considered.

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

To the extent that discretionary funding is available, agencies should invest in technical assistance and technology platforms that streamline data collection for small banks.

We also recommend favorable consideration of CDFI Banks. Please see our answer on page 6 for more on this.

Disclosure of HMDA Data by Race and Ethnicity

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

Yes, at a minimum. Home Mortgage Disclosure Act data is largely already available to the public. The agencies propose to disclose in the CRA performance evaluation of a large bank the distribution of race and ethnicity of the bank's home mortgage loan originations and applications in each of the bank's facility-based assessment areas, and as applicable, in its retail lending assessment areas. We urge regulators to release much more robust information than they are currently proposing.

Many commenters have pushed regulators to include race-based tests in CRA evaluations. While the statute does not mention race, the clear intent of CRA was to address past racial discrimination.

In response to this criticism, regulators have pointed to the potential for lawsuits striking down regulations with race-based metrics.

The proposed regulations would require large banks to collect and report the racial and ethnic backgrounds of their mortgage borrowers. At a minimum, regulators should make as much of this data available to the public as possible.