

October 13, 2026

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Attention: Comment Processing
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RE: Community Reinvestment Act Regulations; [[Docket ID OCC-2026-0694] [FDIC RIN 3064-AG31]

To Whom It May Concern:

The Independent Community Bankers of America¹ (ICBA) appreciates the opportunity to comment on the joint notice of proposed rulemaking issued by the Office of the Comptroller of the Currency (OCC) and the Federal Deposit Insurance Corporation (FDIC) (together, the Agencies) to amend their Community Reinvestment Act (CRA) regulations (the Proposal).

ICBA has long supported the goals of the CRA while advocating for a framework tailored to the size, complexity, and local business model of community banks. ICBA has also been directly engaged in recent CRA policy, including as a plaintiff in the litigation that led a federal court to enjoin the Agencies' 2023 CRA rules. The Proposal represents a meaningful step toward a CRA framework that is faithful to the statute, focused on lending, and proportionate in its demands on community banks. The comments below explain where the Proposal succeeds and where targeted modifications would make it stronger.

Executive Summary

ICBA supports the Proposal and offers the following principal recommendations:

- **Bank category thresholds.** ICBA strongly supports modernizing the asset thresholds, which would increase the proportionality of the rule. However, ICBA urges the Agencies to

¹ The Independent Community Bankers of America® has one mission: to create and promote an environment where community banks flourish. We power the potential of the nation's community banks through effective advocacy, education, and innovation. As local and trusted sources of credit, America's community banks leverage their relationship-based business model and innovative offerings to channel deposits into the neighborhoods they serve, creating jobs, fostering economic prosperity, and fueling their customers' financial goals and dreams. For more information, visit ICBA's website at www.icba.org.

increase this effect, by setting the small bank threshold at \$10 billion, which is the long-recognized threshold that defines “community banks.” In the alternative, the Agencies should consider setting the “small bank” threshold at \$5 billion, consistent with the Small Business Administration’s recently proposed size standard for small banks.

- **Illustrative list of approved activities.** Codifying an illustrative list of qualifying community development activities would replace decades of guesswork with transparency and give community banks the confidence to invest in worthwhile projects.
- **Community development definitions.** ICBA supports the proposed definitions and recommends that the final rule expressly recognize the role of Minority Depository Institutions (MDIs), Community Development Financial Institutions (CDFIs), and mutual banks, including through a presumption that they have a community development purpose and recognition of capital investments in them, such as mutual capital certificates, as “complex.”
- **Community development grants.** The proposed 15 percent cap on recipients’ indirect costs would burden the small, local nonprofits that serve communities most directly. ICBA urges a *de minimis* exception, an exemption for small nonprofits, and an attestation safe harbor.
- **Activities outside assessment areas.** ICBA supports the optional geographic flexibility framework and recommends a *de minimis* exception for modest activities outside assessment areas, confirmation that activities with minority- and women-owned institutions remain exempt from the standard, and comparable treatment for CDFI banks and mutual banks.
- **Major product lines.** ICBA appreciates the redoubled focus on lending and narrowed consideration of lending products to only major product lines.
- **Assessment areas.** ICBA supports retaining an assessment area framework grounded in a bank’s physical presence, as the statute and the court in the CRA litigation require, and urges the Agencies to codify that limit. However, ICBA cautions against a strict and mandatory radius test on crossing MSA boundaries, where mountains and other geographical features might interfere with the boundaries.
- **Harmonization.** The benefits of this Proposal will only be fully recognized if all the Federal Banking Agencies finalize a join rulemaking. Failing to keep consistency in CRA regulations will seed confusion and uncertainty, which stands in direct contrast to the aims of the proposal.

General Comments

Community banks are the foundation of the nation’s local economies. They make up roughly 90 percent of the nation’s insured depository institutions, and they are often the only physical banking presence in rural towns and underserved neighborhoods.² Community banks are relationship-based lenders. They make credit decisions based on local knowledge, long-standing customer ties, and a personal stake in the borrower’s success, rather than on a distant algorithm.

² See Fed. Deposit Ins. Corp., 2023 Annual Report 54 (2024).

As a result, community banks provide a share of small business and agricultural credit far larger than their share of industry assets, and they keep local deposits working in the communities that generated them.³

Yet the community banking sector is being constrained and contracted by onerous regulations and market pressures. The number of banks has fallen from more than 18,000 in the mid-1980s to roughly 4,200 today,⁴ and new bank formation has slowed to a trickle since the 2008 financial crisis. This trend is, in large part, due to the cumulative weight of regulatory burden.

Compliance costs are largely fixed, so they consume a far larger share of operating expenses at small institutions than at large ones, and each new reporting requirement, examination procedure, or data collection mandate falls hardest on the banks with the fewest resources to absorb it. Regulations that are not tailored to the size and risk of community banks thus inadvertently accelerate the very consolidation that undermines access to credit in the communities the CRA was meant to protect.

It is against this backdrop that ICBA strongly supports the purpose of the CRA. Enacted in 1977 in response to redlining, the CRA affirms that regulated financial institutions have a continuing and affirmative obligation to help meet the credit needs of the local communities in which they are chartered, including low- and moderate-income (LMI) neighborhoods, consistent with safe and sound operations. Properly implemented, CRA regulations encourage lending that strengthens neighborhoods, supports homeownership, and finances the small businesses and farms that drive local economic growth.

ICBA believes the Proposal largely strikes this balance. The proposed changes would preserve every bank's obligation to serve its community while ending one-size-fits-all requirements designed for the largest, most complex institutions. ICBA commends the Agencies for this effort and offers the following recommendations to ensure that the final rule achieves the CRA's goals while right-sizing the regulatory burden on the community banks that have long been the CRA's most natural practitioners.

Proposed Changes to Bank Category Thresholds Would Better Achieve Proportionality

Of all the changes proposed by the Agencies, ICBA is most appreciative of the proposed revisions to the asset thresholds that set the bank category boundaries. Inflation and consolidation have pushed hundreds of community banks into exams built for the largest banks.

ICBA has long advocated for thresholds that reflect the size and structure of today's banking industry, and the Proposal is a meaningful step toward restoring the proportionality the Agencies originally built into the CRA framework. Recalibrating these boundaries would allow community banks to redirect scarce compliance resources toward what the CRA is ultimately meant to promote. The Proposal also rightly recognizes that evaluation methods designed for the largest,

³ *Id.*, finding community banks held only 11.5% of banking-industry assets, but held 38.3% of the industry's small loans to farmers and businesses as of June 2023. It also reports that community banks held more than 57% of total deposits in 1,956 rural and micropolitan counties.

⁴ Fed. Deposit Ins. Corp., *Quarterly Banking Profile*, Balance Sheet: Number of Institutions Reporting (1984–2026), <https://banks.data.fdic.gov/bankfind-suite/historical>; Fed. Deposit Ins. Corp., *FDIC Releases Results of Summary of Deposits Annual Survey* (Sept. 18, 2026), <https://www.fdic.gov/news/press-releases/2026/fdic-releases-results-summary-deposits-annual-survey>

most complex institutions should not be applied wholesale to banks whose business models are inherently local.

While every bank would remain subject to the CRA, the proposed thresholds would provide relief for approximately 800 community banks by reclassifying them as small banks, subject only to the lending test. Nearly 400 additional banks would be reclassified from large banks to intermediate banks, relieving them of stringent requirements that should be reserved for only the largest financial institutions.

The need for this recalibration is evident in the structure of today's industry. Community banks make up roughly 90 percent of the nation's insured institutions, yet they hold only a small fraction of its assets. Subjecting hundreds of community banks to the most intensive evaluation methods does little to expand the reinvestment footprint of the industry as a whole, while imposing real and disproportionate costs on the institutions least equipped to bear them.

"Small Bank" Threshold

When the Agencies adopted the 1995 framework, they set the small bank threshold at \$250 million, capturing approximately 80 percent of all banks, which together held roughly 14 percent of industry assets, and reserving the more rigorous large bank evaluation for the minority of institutions that held the remaining 86 percent.⁵

The 2005 amendments reaffirmed that approach, raising the small bank threshold to \$1 billion, creating the intermediate small bank category for institutions between \$250 million and \$1 billion, and indexing both thresholds to inflation so that the vast majority of banks would remain outside the most onerous categories.⁶

However, after decades of inflation and consolidation, that balance has eroded. Under current CRA definitions, "small banks" represent only about 57 percent of institutions.⁷ The proposed thresholds would restore the original allocation, with small banks again representing approximately 80 percent of institutions and the large bank category once more covering roughly 85 percent of industry assets.⁸

While ICBA strongly supports the proposed thresholds, the Agencies should consider whether going further would better reflect today's marketplace and the intrinsically different nature of community banks. Community banks relationship-based model, local funding, local decision-making, and concentrated geographic footprints mean that reinvestment in the community is

⁵ Community Reinvestment Act, 60 Fed. Reg. 22156, 22180, 22202 (May 4, 1995) (setting the small bank threshold at \$250 million); Community Reinvestment Act Regulations, 69 Fed. Reg. 51611, 51612 (proposed Aug. 20, 2004) (small banks were about 80.4 percent of banks and held about 13.8 percent of industry assets; large banks were about 19.6 percent of banks and held about 86.2 percent); *see also* Community Reinvestment Act Regulations, 91 Fed. Reg. 52114, 52120 & nn.91–93 (proposed Aug. 12, 2026).

⁶ Community Reinvestment Act Regulations, 70 Fed. Reg. 44256, 44258, 44264, 44266, 44269 (Aug. 2, 2005); *see also* 91 Fed. Reg. at 52120 nn.89, 91.

⁷ 91 Fed. Reg. at 52120 & nn.94–96 (using year-end 2024 and 2025 Call Report data for about 3,577 agency-supervised banks, small banks other than intermediate small banks were about 57.0 percent of banks and held about 2.0 percent of industry assets; annual inflation adjustments "have not been sufficient to keep up with changes in the industry, including its overall growth and consolidation").

⁸ 91 Fed. Reg. at 52121–22 (under the proposed thresholds, small banks would be about 79.8 percent of banks, and large banks, about 2.4 percent of banks, would hold about 85.4 percent of industry assets, aligning with the 1995 distribution).

inherently in their own best interest. Without the success of their communities, community banks would cease to exist.

These structural differences also mean that compliance burdens fall disproportionately on community banks. The largest institutions can spread the cost of dedicated CRA staff, data systems, and outside consultants across enormous balance sheets. A framework that properly accounts for these differences would also allow examiners to focus their resources where the capacity to meet unmet credit needs is greatest.

ICBA believes that \$10 billion is a more appropriate threshold for “small banks.” The threshold is a commonly-accepted practice to differentiate smaller banks and larger institutions. , and “community bank” is the natural regulatory counterpart to the more colloquially used “small bank.” Congress has repeatedly drawn the line at \$10 billion, including in the Dodd-Frank Act for Consumer Financial Protection Bureau supervision and the debit interchange fee cap. The Economic Growth, Regulatory Relief, and Consumer Protection Act of 2018 used the same threshold for the community bank leverage ratio and the Volcker Rule exemption. And the Federal Reserve likewise defines community banking organizations as those with \$10 billion or less in total assets, and the Agencies themselves rely on the \$10 billion figure.

ICBA therefore urges the Agencies to set the small bank threshold at \$10 billion, ensuring that community banks are evaluated under the streamlined lending test that best reflects their business model.

In the alternative, should the Agencies decline to adopt a \$10 billion threshold, ICBA recommends that the small bank threshold be set at no less than \$5 billion. Support for this threshold comes from the Small Business Administration’s recent proposal to raise its size standard for small banks from \$850 million to \$5 billion.

The Proposal itself acknowledges the divergence between the two standards, observing that since 2005 the SBA’s small bank standard has increased approximately 466.7 percent while the CRA thresholds, adjusted only for inflation, have increased approximately 64.8 percent. Aligning the CRA small bank threshold with the SBA’s proposed standard would promote consistency across federal definitions of a small bank, reduce regulatory complexity, and provide meaningful relief to community banks that, by any reasonable measure, are small institutions.

“Intermediate Bank” Threshold

While ICBA appreciates the Agencies’ proposal to increase the asset threshold of “Intermediate Banks” to \$10 billion, we encourage the Agencies to increase that threshold even further, set at \$30 billion. The intermediate category was created to bridge the gap between the streamlined small bank evaluation and the full large bank framework, giving growing institutions a measured transition rather than an abrupt jump in compliance obligations as they expand. That bridge works only if it spans a meaningful range of asset sizes. A \$30 billion threshold would keep that structure intact, so that a bank crossing \$10 billion is not immediately pushed toward the most intensive evaluation methods while it is still, by any practical measure, a regional institution with a local or regional footprint.

The \$30 billion threshold also has a basis elsewhere in the FDIC’s recent rulemaking from June 2026, where the Corporation proposed raising the asset threshold for deposit insurance assessment purposes from \$10 billion to \$30 billion, with periodic inflation adjustments.⁹ Aligning

⁹ FDIC, Amendments to Deposit Insurance Assessment Regulations, RIN 3064-AG27 (proposed June 30, 2026).

the CRA intermediate threshold with that benchmark would promote consistency across the FDIC's regulations and reserve the large bank evaluation for the institutions with the scale, resources, and market reach it was designed to assess.

Increasing the 'Intermediate Bank' limit to \$30 billion would also accommodate the Agencies' potential increase of the "Small Bank" threshold at \$10 or \$5 billion. If the Agencies adopt a \$10 billion small bank threshold, the intermediate bank category must be rescaled to match, or it would shrink to a narrow band and lose its purpose.

Focusing Performance on Credit Services and Lending Incentivizes Banks to Increase Access to Capital in their Communities

The Agencies propose targeted revisions to the performance tests and standards to better align examinations with the statute's core objective of assessing how effectively banks meet their communities' credit needs, to account for differences in banks' business models, and to reduce regulatory burden. Retail lending evaluations for banks of all sizes would focus on a bank's major product lines and evaluations would consider the range of retail credit products and services offered, rather than retail deposit services. Finally, community development activities and retail banking services not evaluated under another test would be considered as performance context, with an emphasis on the responsiveness of a bank's activities to community needs. ICBA supports this refocusing, which ties CRA examinations more closely to the lending that most directly meets community credit needs.

Part of this approach will require the Agencies to identify a bank's major product lines. Rather than leaving the selection of evaluated products largely to examiner discretion, the Proposal would establish a clearer standard for small, intermediate, and large banks and offers two alternatives.

Under Option 1, examiners would evaluate the bank's two largest product lines among home mortgage, small business, small farm, and consumer lending, measured across the whole bank by both dollar volume and loan count over the evaluation period; a bank lending in only one product line would be evaluated on that line alone.¹⁰

Under Option 2, examiners would identify major product lines separately in each assessment area, weighing the bank's overall lending volume and business strategy, its capacity to lend in that area, and whether the product meaningfully contributes to local credit needs, so that a bank could have more or fewer than two major product lines and they could differ by area.¹¹

Under either option, consumer lending would qualify as a major product line only if it accounts for more than half of the bank's retail lending by both dollar volume and loan count, or if the bank elects to have its consumer lending evaluated.¹² The Agencies explain that the change would tailor examinations to each bank's business model and reduce the burden of evaluating products that are not meaningful to it, and they seek comment on a *de minimis* loan floor, the treatment of consumer loans, whether to measure lending by dollars, count, or both, and whether the method should differ by bank size.¹³

¹⁰ 91 Fed. Reg. 52114, 52124.

¹¹ *Id.*

¹² 91 Fed. Reg. 52114, 52124.

¹³ 91 Fed. Reg. 52114, 52124.

Ultimately, ICBA believes that Option 1 would provide greater predictability and consistency. Because the two major product lines would be determined using objective, bank-wide criteria, banks could anticipate the scope of their CRA examinations, examiner discretion would be limited, and the lending test would be applied consistently across agencies and examination teams. By capping the review at two major product lines, the approach would also reduce the burden of evaluating lending activities that represent a relatively small portion of a bank's business. The treatment of consumer lending would further prevent examinations from expanding to cover incidental consumer portfolios, while preserving a bank's ability to seek CRA consideration for those activities. These features are consistent with ICBA's long-standing support for a tailored, predictable examination framework that reduces unnecessary compliance burden.

Illustrative List

Since the Agencies first set out to reform CRA regulations more than a decade ago, ICBA has stressed banker frustration with the predictability of receiving community development credit. Under the existing framework and subjectivity of examiner discretion, community banks have not had clear guidance on which activities would qualify for CRA consideration as community development.

Based on subjective, examiner discretion, activities that received CRA credit varied by region and by examiner.¹⁴ Without a published standard, banks gravitated toward the loans and investments the agencies had previously credited, rather than toward activities that might best meet local needs.¹⁵

The OCC sought to address this long-standing problem in its 2020 final rule, which established a list of activities that would receive CRA credit¹⁶ and required the OCC to maintain that list on its website.¹⁷ Although the OCC rescinded its 2020 rule in 2021, it retained its activity confirmation process as a matter of policy, and the 2023 final rule adopted by the Federal Reserve, FDIC, and OCC, since enjoined, again called for an illustrative list, to be jointly maintained, issued, and updated by the agencies.¹⁸

The Proposal departs from that approach. Proposed § __.13(a) would instead require each Agency to separately maintain, and periodically update, its own publicly available, non-exhaustive illustrative list of qualifying community development activities, and the Agencies state only that they "intend" to coordinate.¹⁹

ICBA strongly supports codifying the illustrative list, which would promote transparency and give banks the confidence to plan and invest in their CRA programs. However, ICBA's members are concerned that permitting separate lists falls short of the Proposal's goal of modernizing the CRA framework. Nothing in the Proposal would prevent the OCC and FDIC from developing divergent lists over time, and the Federal Reserve, which has not joined the Proposal, would maintain no list at all. The result could recreate the very uncertainty that existed before 2020, when banks lacked clear regulatory guidance, except that the qualifying status of an activity would now turn on a bank's charter rather than on the CRA's definitions.

¹⁴ 85 Fed. Reg. 34734, 34738.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* at 34749.

¹⁸ 89 Fed. Reg. 6574, 6709.

¹⁹ 91 Fed. Reg. 52114, 52137.

ICBA is concerned that diverging lists of qualified activity could produce inconsistent strategies within a bank and its affiliated organizations. A list of qualifying activities only creates certainty if every bank works from the same list, and separate lists would tie an activity's CRA value to a bank's charter rather than its impact.

For example, a holding company that owns both a national bank and a state nonmember bank could find that the same investment in an affordable housing fund appears on one Agency's list but not the other's, forcing it to manage parallel CRA strategies for identical activities. A community bank weighing a charter conversion would face uncertainty about whether activities it has long relied upon will continue to qualify.

The Agencies already have a proven model for avoiding these problems in the Interagency Questions and Answers, which the banking agencies have issued jointly for decades. ICBA therefore urges the Agencies to require a single, jointly maintained illustrative list, published through the Federal Financial Institutions Examination Council, updated on a regular schedule (for example, at least annually), and incorporating activities confirmed through the proposed confirmation process, with confidential information appropriately redacted. ICBA also encourages the Federal Reserve to adopt the same list so that state member banks benefit from the same clarity.

Proposed Changes to Assessment Areas will Adhere to Statutory Intent and Comport with the Judicial Settlement

Just as the Proposal clarifies how a bank's performance is measured, it also preserves a sound approach to where that performance is measured. Assessment areas are built from whole metropolitan areas or political subdivisions, a bank may adjust them to the portion of a political subdivision it can reasonably be expected to serve, and they generally may not extend substantially beyond an MSA or State boundary or arbitrarily exclude LMI census tracts.

The 2023 CRA rules would have upended this framework by requiring large banks to delineate facility-based assessment areas from whole counties and, more significantly, by creating "retail lending assessment areas" wherever a large bank's mortgage or small business lending exceeded specified volume thresholds, regardless of whether the bank had any physical presence there.

However, recent court rulings have found that prior interpretation of "entire community" clashed with the statutory text. Now the Proposal reflects this limit, stating plainly that "consideration of retail lending outside of a bank's assessment area(s) would exceed the agencies' statutory authority." ICBA strongly supports this approach and urges the Agencies to codify the limit in the text of the final rule, so that the statutory boundary does not depend on future rulemakings or examiner discretion.

While the Proposal has not explicitly included language that would alter the existing framework, the preamble poses several questions for stakeholder feedback.

MSA boundaries. The Agencies are considering revising the current rule, which provides that an assessment area "may not extend substantially beyond an MSA boundary," to provide instead that it "may not extend beyond an MSA boundary." The Agencies acknowledge that this change would limit flexibility, but believe it would better conform to the statutory definition of "metropolitan area." The change would also rescind existing guidance permitting assessment areas that extend modestly beyond an MSA.

Substantial portion of loans. The Agencies acknowledge that they and the banks they supervise “have often confronted ambiguity” as to when the “substantial portion of its loans” standard requires a bank to add surrounding census tracts to its assessment area. They are considering two alternatives: establishing a numerical threshold (Question 55), or replacing the standard with a requirement to include all census tracts within a fixed or density-based radius of the bank’s main office, branches, and deposit-taking ATMs (Question 56). The Agencies suggest that the radius approach “may prove to be a preferable option” because of its simplicity and lack of discretion.

Whole counties for large banks. The Agencies are considering requiring large banks to use whole counties or county equivalents as the smallest building block of their assessment areas, citing transparency and comparability. Performance context would account for situations in which a large bank has limited capacity to serve an entire county, such as a single branch on the periphery of an expansive county.

Of these, revisiting the “substantial portion” standard would help the largest number of community banks. ICBA supports replacing the undefined standard with an objective numerical threshold that banks can apply themselves before an examination.

Ideally, that threshold would operate as a safe harbor measured at the county level over a multi-year period, so that a single anomalous year does not redraw a bank’s assessment area.

In contrast, ICBA does not support a mandatory radius test. While a radius is simple, it would potentially ignore rivers, mountains, highways, commuting patterns, and the bank’s actual customer base. In rural markets in particular, even a density-adjusted radius could sweep in large areas that a community bank has no realistic capacity to serve.

ICBA also opposes an absolute prohibition on assessment areas that cross MSA boundaries. Such a rule would fall hardest on rural and exurban community banks whose natural markets straddle metropolitan and nonmetropolitan counties, forcing them to split a single, coherent market into multiple assessment areas, each requiring separate analysis and documentation, with no corresponding benefit to the communities involved.

Finally, ICBA recommends several additional protections. The Agencies should grandfather existing assessment areas absent a material change in a bank’s branch network. This would defer to a bank’s reasonable delineation and require a written rationale before an examiner expands or rejects an assessment area. ICBA also encourages the Agencies to consider how branchless and internet-based banks that gather deposits nationwide will be held to comparable reinvestment obligations, so that the facility-based framework does not become a competitive advantage for institutions with no physical presence at all.

The Proposed Changes to Defined Terms will Provide Benefit Throughout the Framework, Yet Additional Modifications Could Facilitate Greater Access to Credit

The Proposal’s revisions to the community development definitions would bring welcome clarity and codify long-standing guidance, and ICBA supports them. ICBA offers several recommendations that would further encourage the partnerships, investments, and local institutions that expand access to credit in underserved communities. A recurring theme is the role of mission-focused depository institutions, including CDFIs, MDIs, and mutual banks, which convert capital and deposits directly into lending in LMI, minority, and rural communities.

Specific to CDFIs, ICBA urges the Agencies to restore the broader CRA eligibility for activities supporting all types of CDFIs, regardless of geography. The 2023 proposal appropriately

recognized that loans, investments, and grants supporting CDFIs should receive CRA consideration without regard to the geographic areas served by the CDFI. This approach provided CDFIs with treatment comparable to that long afforded to minority depository institutions, women-owned depository institutions, and low-income credit unions and was broadly supported by the banking industry and the regulatory agencies.

The proposed 2026 rule would narrow this treatment by expressly providing geographic flexibility for activities supporting nonprofit organizations, including nonprofit CDFIs, as well as MDIs, WDIs, and LICUs, while subjecting activities supporting other CDFIs to the general assessment-area requirements or proposed geographic flexibility standards. This distinction is difficult to justify given the role and mission of CDFIs. CDFIs are specifically chartered or certified to expand access to capital and financial services in underserved communities, often across geographic boundaries that do not align with a supporting bank's assessment areas. Requiring traditional banks to satisfy geographic requirements before receiving CRA consideration for supporting these institutions could unnecessarily limit the pool of potential partners and reduce access to capital for smaller CDFIs, particularly CDFI banks operating in areas without large or regional banking institutions.

The agencies should therefore explicitly recognize support for all CDFIs as a qualifying community development activity and align the treatment of CDFIs with the proposed treatment of MDIs, WDIs, and LICUs. Loans, investments, and grants to CDFIs should be eligible for CRA consideration regardless of the geography served by the CDFI. This would provide greater clarity, eliminate an unnecessary regulatory distinction, and better advance the CRA's objective of promoting access to credit and investment in low- and moderate-income communities.

Economic development: technical assistance.

ICBA welcomes the proposed definition of “economic development” under paragraph (3) of the “community development” definition in proposed § __.12. In particular, ICBA appreciates that paragraph (3)(ii) would codify existing guidance by expressly recognizing technical assistance and supportive services, such as shared space, technology, or administrative assistance, for businesses and farms that meet the size eligibility standards of the SBA's Certified Development Company or Small Business Investment Company programs or that have gross annual revenues of \$1 million or less. ICBA recommends that the preamble to the final rule also make clear that technical assistance and supportive services provided to mission-focused financial institutions qualify for CRA consideration. These institutions are themselves frequently small businesses, operate with lean staffing, and deploy their resources almost entirely in the communities the CRA is intended to serve.

For example, a community bank might lend its compliance officer to help a newly certified CDFI bank build its BSA/AML program, provide a small MDI with access to its core processing or cybersecurity tools at cost, or host a mutual bank's staff for loan underwriting and credit administration training. Similarly, a bank could provide shared office space or back-office support to a mission-focused lender opening a new loan production office in an underserved market. Each of these activities strengthens an institution whose lending directly reaches LMI borrowers, small businesses, and small farms, and each fits naturally within the statutory directive in 12 U.S.C. 2903(b) to consider ventures undertaken in cooperation with minority- and women-owned financial institutions.

Economic development: government programs.

Proposed paragraph (3)(iii) of the “community development” definition would also recognize Federal, State, local, or Tribal government programs, projects, or initiatives that serve small businesses or small farms, and lists illustrative examples, including CDFIs that finance small businesses or small farms. ICBA welcomes the inclusion of CDFIs and recommends that the list also include MDIs and mutual banks. Like CDFIs, both hold special designation or recognition under Federal law: MDIs are recognized and supported under Section 308 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, and mutual banks are chartered under a distinct Federal and State framework that obligates them to operate for the benefit of their depositors and communities rather than outside shareholders. Both are similarly mission-based, and both are significant sources of credit to small businesses and small farms.

For example, a community bank’s participation in a small business loan originated by an MDI serving a predominantly minority neighborhood, or its purchase of a portion of a mutual bank’s small farm loan portfolio to free up the mutual’s lending capacity, should be presumed to promote economic development in the same manner as comparable activities with a CDFI. Expressly listing MDIs and mutual banks would give banks the same certainty the Agencies intend to provide for activities with SBA Certified Development Companies, Small Business Investment Companies, Qualified Community Development Entities, and USDA Rural Business Investment Companies, and would encourage partnerships that channel capital to small businesses that might not otherwise qualify for traditional bank financing.

Every dollar invested in an MDI, CDFI bank or mutual bank becomes a multiple of new lending in LMI, minority and rural communities, and the definitions should reward that partnership instead of overlooking it.

Revitalization or stabilization of targeted geographic areas.

The proposed definition would include “any other area targeted by a government entity for redevelopment that qualifies for significant economic incentives, such as tax credits, tax abatements, or grants.” ICBA supports this addition.

ICBA recognizes that the Agencies considered, but decided against, specifically naming areas such as qualified opportunity zones in order to preserve flexibility as government programs evolve. ICBA nonetheless recommends that the final rule expressly identify Qualified Opportunity Zones and Persistent Poverty Counties as non-exhaustive examples of qualifying areas while retaining the general category. Doing so would provide certainty for banks and examiners without limiting the category’s flexibility.

The case for naming Persistent Poverty Counties is particularly strong. These counties, generally defined as those in which 20 percent or more of the population has lived in poverty over the past 30 years, are already targeted by Congress and Federal agencies, including the CDFI Fund and USDA, for prioritized investment. Yet many of these counties do not have a formally adopted redevelopment plan with tax credits, tax abatements, or grants attached, and many contain metropolitan or moderate-income census tracts that would not fall within the existing “distressed or underserved nonmetropolitan middle-income” category.

A community bank financing a grocery store, a rural health clinic, or other essential facility in a Persistent Poverty County should not have to demonstrate that a local redevelopment designation also applies. Likewise, explicitly naming Qualified Opportunity Zones, which the preamble already

cites as an example, would ensure that examiners treat financing of a manufacturing facility or mixed-use project within a zone as qualifying without case-by-case debate.

Community development grants.

The proposed definition of “community development grant” would require that a grant or donation (1) be directly used by the recipient for a program, project, or initiative with a primary purpose of community development; (2) benefit the bank’s assessment area(s); and (3) when provided by a large bank, go to a recipient whose indirect costs for administering the grant or donation do not exceed 15 percent, calculated consistent with the Uniform Guidance for Federal Awards, 2 CFR part 200. Large banks would also need to obtain the recipient’s written commitment, a written attestation of the 15 percent limit, and supporting documentation such as IRS Form 990 and annual operating and program budgets.

While ICBA appreciates the Agencies’ goal of ensuring that grant dollars reach local communities rather than intermediaries, ICBA is concerned that smaller, local nonprofit organizations will have difficulty meeting this limitation. A cap built on minimum overhead rate for small nonprofits would end up punishing the very organizations that rate was designed to promote.

While larger nonprofits benefit from economies of scale, small, local organizations do not. Many smaller nonprofits also lack the accounting systems to calculate and document indirect costs under the Uniform Guidance. Perversely, compliance may require a nonprofit to purchase software or hire outside accountants, which would itself be an indirect cost and make the limit even harder to meet. The requirement would also increase cost and documentation burden for the grantor bank, which would need to collect, review, and retain evidence of each recipient’s adherence.

ICBA therefore urges the Agencies to consider one or more of the following alternatives:

- (1) a *de minimis* exception under which the indirect cost limit and its documentation requirements would not apply to grants or donations below a specified dollar amount, such as \$25,000 per recipient per year;
- (2) an exemption for small nonprofit organizations, such as those eligible to file IRS Form 990-EZ or 990-N, or those with annual revenues below a set threshold;
- (3) a safe harbor allowing banks to rely on a recipient’s good-faith written attestation, without further supporting documentation, absent information indicating the attestation is inaccurate;
- (4) recognition of a recipient’s existing negotiated indirect cost rate agreement with a Federal agency as satisfying the standard;
- (5) measurement of indirect costs at the organization level using the functional expense allocation already reported on Form 990, rather than grant by grant; or
- (6) a categorical exclusion for grants supporting disaster relief and for in-kind donations, where indirect costs are inherently minimal or difficult to separate. ICBA also urges the Agencies to confirm that the indirect cost limit will continue to apply only to large banks and will not be extended to small or intermediate banks.

Nonprofit intermediaries

The proposed definition of "community development grant" would require the organization receiving a bank's grant to use the funds directly. This proposed limitation could deny CRA consideration whenever a bank funds a nonprofit intermediary that passes grants or low-cost capital on to the local organizations doing the community development work. ICBA is concerned about this provision as it will make it more difficult for a community bank to deliver needed funds to LMI communities.

Rather than standing between banks and communities, intermediaries can be an efficient and accountable way for banks to reach certain communities. A well-run intermediary can serve several purposes for the benefit of both the bank and end-beneficiary of the grant. Intermediary organizations can pool funds from several banks and vet community organizations that individual banks may lack the capacity to evaluate. They also provides technical assistance, monitor how funds are used, and consolidate reporting. This enables a community bank to support a wide network of small local nonprofits without building its own grantmaking operation. A rule that treats intermediary groups as an obstacle would shrink the pool of organizations banks can practically support.

Instead, ICBA recommends that the final rule create a defined category of "qualified nonprofit intermediary" that addresses the Agencies' accountability concerns without excluding these arrangements. Both the intermediary and each downstream recipient would have to be tax-exempt nonprofits, and each downstream activity would have to qualify as community development on its own merits. The intermediary would document the amount of the bank's funding it deployed, the tax-exempt purpose of each recipient, how the funds were used, and where the activity took place or whom it served. The downstream recipient's use of the funds would satisfy the direct-use requirement. CRA consideration would follow the location or beneficiaries of the downstream activity rather than the intermediary's headquarters, and it would be limited to the dollars shown to have reached qualifying uses.

Federal Home Loan bank Affordable Housing Grants

ICBA also urges the Agencies to address a long-standing gap in how CRA treats grants that community banks deliver through the Federal Home Loan Bank (FHLB) system. These include Affordable Housing Program (AHP) direct subsidies and comparable FHLB homeownership, special-needs, and disaster-recovery grants. Under the existing framework, a grant generally counts as a qualified investment only when the bank funds it from its own resources. Because AHP dollars come from the FHLB, examiners have typically treated the member bank as a conduit. At most, they credit a few hours of community development service for preparing the application. Neither the current regulations nor the Proposal speaks to these programs directly. Their treatment is left to examiner discretion, which produces the same inconsistency the illustrative list is meant to resolve.

Project sponsors cannot apply for AHP funds on their own. A member institution must submit the application, disburse the subsidy, and monitor the project for compliance over its retention period. Under the governing AHP agreement, the bank must also repay the FHLB if the project falls out of compliance. The FHLB may collect directly from the bank's accounts, even when the bank cannot recover from the sponsor. A bank that carries this administrative burden and balance-sheet exposure is acting as the grantor, and not merely as a pass-through. Yet the existing framework gives it little or no recognition for the work.

ICBA therefore recommends that the Agencies confirm that AHP subsidies and comparable FHLB grants qualify as community development grants, or as another qualifying activity. This should apply when the member bank administers the award and bears repayment risk. The Agencies

should also recognize that these awards are often one layer of a larger financing package and credit the bank's role in assembling it.

For example, a rural community bank financing a small LMI rental project may be unable to lend the full amount because of its legal lending limit or concentration limits. By sponsoring an AHP application, the bank can close the funding gap with an FHLB subsidy. The banks then administer that subsidy for the life of the project and remains liable if the project falls out of compliance.

Clear recognition would also add new resources rather than simply steer existing ones. Federal law requires each FHLB to set aside 10 percent of its annual earnings for AHP. In 2023 that produced roughly \$750 million, alongside approximately \$1 billion in voluntary FHLB housing and community development commitments. Encouraging community banks to take part in these programs would grow the pool of future affordable housing dollars. These grants are also among the few community development tools that scale for smaller banks without the size to take part in tax-credit equity or national funds.

Community development investments.

ICBA supports the proposed definition of “community development investment,” which would include a deposit or membership share in a financial institution that has as its primary purpose community development and that benefits the depositing bank’s assessment area(s). MDIs, CDFI banks, and mutual banks engage in significant community development activity, driven in part by their own CRA obligations and mission. However, many of these institutions do not have a charter or bylaws that expressly states community development as their primary purpose, even though their lending and deposit activity is overwhelmingly directed to LMI and rural communities.

ICBA recommends that the Agencies presume that a depository institution has a primary purpose of community development if it (1) is a certified CDFI or a designated MDI, or (2) is otherwise predominantly engaged in LMI lending, or a predominant share of its borrowers and depositors reside in LMI or nonmetropolitan rural areas. This approach would mirror the target market criteria the CDFI Fund applies in certifying CDFIs, which generally require that at least 60 percent of an institution’s financing activity be directed to eligible target markets.

For example, a community bank that places a certificate of deposit with an MDI headquartered in its assessment area, or with a mutual savings bank whose mortgage and small business lending is concentrated in LMI and rural census tracts, should be able to receive CRA consideration without first having to establish that the receiving institution’s governing documents name community development as its primary purpose.

Such deposits provide stable, low-cost funding that the receiving institution can lend out locally, and they reflect the same type of partnership that Congress encouraged in 12 U.S.C. 2903(b) and that the Agencies would continue to recognize in proposed § __.21(e). A clear presumption would reduce documentation burden for both institutions and encourage more banks to support mission-focused depositories.

Complexity.

The Proposal would define “complexity” to focus on lending: an investment, grant, or service would be complex if it is a necessary or beneficial component of a multicomponent financing transaction involving a loan, and a loan or loan-equivalent investment would be complex if it requires specialized expertise to consummate, such as an activity “not routinely provided by private investors.” ICBA recommends that the definition, or the accompanying preamble, expressly recognize that investments, grants, services, and deposits made in or for MDIs, CDFI

banks, and mutual banks meet this standard. These institutions consistently struggle to access capital, and every dollar of capital they raise supports a multiple of new lending in their own communities. Capital investments in these institutions are, by their nature, not routinely provided by private investors and require specialized expertise to structure and evaluate.

For example, mutual banks have no shareholders, and generally cannot issue common stock. They must rely on retained earnings to build capital. Mutual capital certificates (MCCs) offer an alternative, and regulators have recently taken steps to make them more usable, including October 2025 OCC and Federal Reserve guidance clarifying when MCCs qualify as regulatory capital and a July 2026 Federal Reserve proposal to modernize Regulation MM and expand capital-raising options for mutual holding companies.

Yet MCCs are rarely issued or purchased, and no robust or liquid market for them exists. Recognizing a bank's purchase of MCCs as "complex" would increase the attractiveness of these instruments, improve their marketability, and give mutual banks a more viable path to raise capital beyond retained earnings. A community bank that purchases MCCs issued by a mutual savings bank to fund expanded residential lending in LMI tracts, or that invests in a CDFI bank's subordinated debt to support small business lending, is engaging in precisely the kind of specialized, non-routine transaction the complexity factor is meant to reward.

Many mutual organizers also seek to raise capital to charter *de novo* institutions, which itself should be recognized as a complex and non-routine transaction. Investments that help capitalize a *de novo* mutual, MDI, or CDFI bank require significant expertise, carry meaningful risk, and are almost never provided by conventional private investors. Recognizing them as complex would help reverse the multi-decade drought in *de novo* mutual bank formation and expand access to locally controlled banking in underserved markets.

Essential community facility.

ICBA appreciates the inclusion of the defined term "essential community facility," meaning a facility that is open to the public and provides a valuable resource or service, including a school, library, park, supermarket, hospital or other healthcare facility, public safety facility, or youth or community center.

There is nothing more essential to a community than the presence of a locally owned community bank. Locally-owned community banks are uniquely positioned to fill vital roles because their relationship-based lending relies on local knowledge, local decision-making, and long-standing ties to borrowers that distant institutions cannot replicate.

The FDIC's Community Banking Studies have likewise found that community banks are often the only physical banking presence in rural and underserved counties.

Accordingly, ICBA recommends that the Agencies clarify that a community bank branch, or a *de novo* community bank, located in or serving a targeted geographic area meets the definition of an "essential community facility."

For example, financing or other support that enables a community bank to open or retain a branch in a distressed or underserved nonmetropolitan middle-income census tract, in a Persistent Poverty County, or in an LMI neighborhood that has lost its last bank branch should qualify as revitalization or stabilization activity, just as financing for a supermarket or health clinic in that area would. The Proposal already recognizes the value of preserving banking access by crediting banks that donate, sell on favorable terms, or make available rent-free a branch to an MDI or women's depository institution in a predominantly minority neighborhood. Extending that logic to

recognize local community banks themselves as essential community facilities would help stem the loss of banking access in the communities that need it most.

ICBA Welcomes Flexibility on Credit for Outside Assessment Area Activity

While the Proposal appropriately anchors CRA evaluations to a bank's assessment areas, it also offers welcome flexibility for community development activity beyond them. Proposed § __.13(e) would establish a general framework under which the Agencies would consider community development loans, investments, and grants that benefit or serve areas outside a bank's assessment area(s). This consideration would be entirely at the bank's option, and it would replace the current "broader statewide or regional area" concept.

The Agencies explain that the current geographic limitations have produced "CRA hot spots," where many banks compete for a limited pool of qualifying activities, and "CRA deserts," including many rural areas, where little community development activity occurs. To receive consideration for activities outside its assessment areas, a bank would first need to show that it is meeting the community development needs of its assessment areas by satisfying a "geographic flexibility standard," for which the Agencies propose two alternatives.

Under Option 1, a quantitative standard, a bank would need to devote a minimum share of its tier 1 capital, allocated to each assessment area by weight, to community development activities in that assessment area for each year of the evaluation period.

Under Option 2, a qualitative standard, a bank would qualify if it has an adequate level of community development activities in each assessment area over the evaluation period, considering both the dollar amount and the responsiveness of those activities to local needs, a level the Agencies align with what has historically been considered "low satisfactory."

Under either option, a bank that meets the standard in all of its assessment areas would receive consideration for outside-area activities in its State, multistate MSA, and institution-level ratings, while a bank that meets the standard in only some areas would receive consideration only in those States or multistate MSAs where it met the standard in every assessment area.

Importantly, a bank would never be required to engage in activities outside its assessment areas to achieve a "satisfactory" or "outstanding" rating. ICBA supports this optional framework, which would allow banks to comply with the CRA more efficiently, provide certainty about the level of assessment area activity needed to unlock broader consideration, and help direct capital to underserved areas without diluting the statute's focus on the communities where banks maintain a physical presence.

While this flexibility is appreciated, ICBA suggests further refinement. A bank that wants to send a modest share of its community development dollars to a CRA desert shouldn't first have to prove itself in every assessment area it serves, especially when the recipient is a mission-driven lender already reaching underserved borrowers.

Consistent with its recommendation for a *de minimis* exception to the indirect cost limit on community development grants, ICBA urges the Agencies to adopt a *de minimis* exception to the geographic flexibility standard.

Under this exception, a bank could receive consideration for a limited amount of community development activity outside its assessment areas without first demonstrating that it has met the standard in every assessment area. The exception could be capped at a modest level, such as a fixed annual dollar amount or a small percentage of the bank's tier 1 capital or total community

development activity, so that it would not displace the Agencies' assessment of performance inside the bank's assessment areas.

Because a bank's ratings would continue to rest on its assessment area performance, a narrow exception would remain consistent with the statute's focus on the communities surrounding a bank's physical locations. Many worthy recipients of community development activity fall outside a bank's assessment areas yet generate meaningful benefits for the communities they serve, and mission-focused depository institutions, including MDIs, CDFI banks, and mutual banks, are among the most important of them.

There is already a statutory and regulatory foundation for this approach. Under 12 U.S.C. 2903(b), carried forward in proposed § __.21(e), the Agencies consider capital investments, loan participations, and other ventures undertaken in cooperation with minority- and women-owned financial institutions and low-income credit unions, and the proposed rule expressly provides that "such activities need not also benefit the bank's or savings association's assessment area(s)." ICBA urges the Agencies to confirm in the final rule that activities qualifying under § __.21(e) are not subject to the geographic flexibility standard, and to extend comparable treatment to CDFI banks and mutual banks, whose missions and community impact are closely analogous.

As an example, an intermediate community bank in suburban Ohio that places a \$250,000 certificate of deposit with an MDI serving a predominantly minority neighborhood in Detroit could receive consideration under § __.21(e) regardless of where that neighborhood is located.

But if the same bank instead invests in subordinated debt issued by a CDFI bank in the Mississippi Delta that is not minority-owned, or purchases mutual capital certificates issued by a rural mutual savings bank in another State to support that bank's residential and agricultural lending, it would receive no consideration unless it first meets the geographic flexibility standard in every one of its own assessment areas, even though each activity directly expands credit in an underserved community.

Reduced Burden Associated with Data Collection

Small Business and Small Farm Data

Under the current rules, CRA small business and small farm data are defined by the size of the loan rather than the size of the borrower. A "loan to a small business" is a loan with an original amount of \$1 million or less that is reported on the Call Report as either a loan secured by nonfarm nonresidential property or a commercial and industrial loan,²⁰ and a "loan to a small farm" is similarly defined as a loan of \$500,000 or less. Because these definitions turn on loan size rather than the borrower's gross annual revenue (GAR), a loan of \$1 million or less to a large business with substantial revenues counts as a small business loan for CRA purposes, while a larger loan to a genuinely small business may not. The purpose of the CRA is to ensure that banks help meet the credit needs of their local communities, including their small businesses and small farms, and community banks thrive when those businesses succeed and can obtain credit. A data framework that conflates small loans with small businesses does not measure that purpose well.

The Proposal recognizes an opportunity to address this mismatch. The Agencies note that the Consumer Financial Protection Bureau recently amended its small business lending data rule under Section 1071 of the Dodd-Frank Act, and they ask whether it would be feasible to partially

²⁰ Federal Financial Institutions Examination Council, FFIEC 031 Historical Versions, pg. 211, [FFIEC031_FFIEC041_202512_i.pdf](#).

or fully discontinue CRA small business and small farm data collection and rely on Section 1071 data instead. ICBA supports discontinuing duplicative CRA small business data collection in favor of Section 1071 data to the fullest extent possible. The revised Section 1071 rule, finalized in May 2026, defines a small business as one with GAR of \$1 million or less, the same revenue benchmark examiners already use to evaluate the distribution of a bank’s lending to businesses of different sizes. Relying on Section 1071 data would therefore measure lending to businesses that are actually small, rather than lending in small amounts, and would spare covered banks from collecting and reporting two overlapping data sets on the same loans.

The table below illustrates the core differences between CRA small business loans and Section 1071.

	CRA Small Business	Section 1071
Triggers Reporting	CRA large bank 2 Years	1000 originations in 2 calendar years
Actions Reported	Originations and purchases are reported	Applications are reported
Excluded Transactions to Entities		Loans to non-profits, and agricultural lending are excluded transactions
Transactions Included	\$1M loan amount for loans for a small business purpose; \$500M loan amount for loans for a small farm purpose that are coded using call codes	Loans to small business revenue that amounts to \$1M
Data Collection Use	CRA uses independent borrower and geographic measures, loan distributions to small businesses and small farms, and loan distributions in LMI census tracts	Redlining data, fair decisioning data, and fair pricing data
Statistical Analysis	Difference to median using a distribution and comparing it to the aggregate or all other large bank reporting	Redlining the difference to mean fair decisioning and pricing, and regression and comparative file reviews.

Because Section 1071 applies to covered lenders regardless of charter, including nonbank lenders and larger CDFI loan funds that meet its coverage threshold, its data would offer a broader view of local small business credit markets than bank-only CRA data, helping banks and examiners better understand unmet credit needs as part of performance context.

Additionally, Section 1071 captures information about applications as well as originations, offering richer insight into the demand for credit in a bank’s community. Finally, eliminating duplicative

reporting would reduce the risk that the same loan is coded inconsistently under two regimes. For example, a \$750,000 equipment loan to a manufacturer with \$40 million in annual revenue counts today as a CRA small business loan, while a \$1.2 million loan to a family-owned business with \$900,000 in annual revenue is excluded from CRA small business loan data, even though only the latter plainly serves a small business.

The Agencies should, however, account for two limits of the revised Section 1071 rule: it excludes agricultural lending, and it applies only to lenders with at least 1,000 covered originations in each of two consecutive years. Because Section 1071 will not generate small farm data, the Agencies should streamline, rather than expand, small farm data requirements, and they should not impose new CRA data collection on any bank that falls outside Section 1071's coverage.

Consumer Lending Data

Community banks are built around localized credit delivery, focusing primarily on home mortgage, small business, and agricultural lending tailored to the needs of their communities. For most community banks, consumer lending is secondary to these core products. Under the Proposal, large banks for which consumer lending is a major product line would be required to collect and maintain consumer loan data, while other banks could continue to collect such data at their option in order to have their consumer lending evaluated. The Agencies ask whether, to the extent banks may continue to opt into a consumer lending evaluation, the optional data collection provisions should be retained. ICBA urges the Agencies to retain them. A mandatory consumer data collection standard would impose substantial administrative burden for a loan category that, for most community banks, is not a core product, while an optional framework honors the principle of proportionality and the emphasis on flexibility that run throughout the Proposal.

Optionality also serves a real purpose for the community banks that do emphasize consumer lending. For some, small-dollar consumer loans are among the most responsive products they offer to LMI borrowers. A rural community bank that makes hundreds of used-vehicle loans so that LMI residents can commute to work, or a bank that offers small-dollar installment loans as an affordable alternative to high-cost payday lending, should be able to demonstrate that responsiveness by electing to collect data and have its consumer lending evaluated. Eliminating the option would deny these banks credit for meaningful activity, while mandating collection would burden the many banks for which consumer lending is incidental. ICBA also asks the Agencies to consider allowing a bank that opts in to collect data only for the consumer loan categories it wishes to have evaluated, as the current rules permit, rather than requiring data for all categories. Preserving an optional, flexible approach would best match data obligations to each bank's size, business model, and risk profile.

Downgrades in Consumer Protection Violations Create Duplicative Standards for Banks

The current rules require a bank's CRA rating level to be downgraded by one point if the bank violates CRA rules and consumer protection laws such as the Truth in Lending Act, unfair, deceptive, or abusive acts or practices (UDAAP), the Equal Credit Opportunity Act, and the Military Lending Act. Past Treasury reports have acknowledged that CRA is not a consumer protection law and the Consumer Financial Protection Bureau (CFPB) does not have authority over CRA.²¹ Treasury added that the agencies' policy is not to downgrade a bank by "more than one level" unless there is a logical connection between a bank's CRA rating and the evidence of

²¹ The Dept. of the Treasury, Community Reinvestment Act – Findings and Recommendations, pg. 19, (Apr. 3, 2018), [4-3-18 CRA memo.pdf](#).

discriminatory or other illegal credit practices in the bank's CRA lending activity.²² In the event there is strong qualitative and quantitative evidence of violations, the OCC would consider any remedial actions taken by the bank in the agency's evaluation.²³

The OCC later updated its 2018 Policies and Procedures Manual, which departed from Treasury's treatment of downgrades to a bank's CRA level by changing the language from "by more than one level" to the current language, "by only one rating level unless the agencies find egregious illegal practices."²⁴ An egregious finding still depends on whether there's a nexus between a bank's CRA rating and the evidence of discriminatory or other illegal credit practices in the bank's CRA lending activity.

The Proposal expounds on several aspects of the OCC's 2018 Manual. The Proposal would include and codify UDAAP, the Military Lending Act, and the Service Members' Civil Relief Act in the list of violations. Most importantly, the Agencies propose two alternatives for how they consider discriminatory and other illegal credit practices. The first alternative requires evidence that a discriminatory or other illegal credit practice violates a law, rule, or regulation cited in a public enforcement action by a Federal or State agency or in a judicial order. The second alternative proposes that a discriminatory or other illegal credit practice violates a law, rule, or regulation cited in a Federal or State agency examination report, enforcement action, or judicial order. The second alternative would also allow Agencies to withhold confidential supervisory information from the public section of the bank's CRA Performance Evaluation.

Both options place greater emphasis on objective, clearly defined criteria for CRA downgrades, which would benefit both banks and examiners by allowing institutions to better understand the specific violations and material information underlying an adverse rating determination. Of the alternatives presented, Option 2 appears more comprehensive because it considers examination findings in addition to judicial orders and enforcement actions. Although banks may be concerned about the inclusion of examination findings as a factor in downgrades, limiting consideration to findings involving specific violations of law identified in the regulation would promote greater objectivity and consistency.

ICBA recommends the agencies should clarify whether "regulatory actions" encompasses both formal and informal actions, as the current language does not clearly distinguish between them. Defining the types of actions that may be considered would provide banks with greater transparency and predictability in how consumer protection violations affect their CRA evaluations.

ICBA also recommends that the Agencies should consider how changes to downgrades in consumer protections have not addressed the differences between consumer protection laws and CRA regulations. For example, Treasury's 2018 Findings and Recommendations acknowledge that banks still receive double downgrades for consumer protection and CRA violations, even after the agency's clarification. The double downgrades also occurred even when a bank's products were not part of its CRA performance evaluations.

²² *Id.*

²³ *Id.* at pg. 20.

²⁴ Office of the Comptroller of the Currency, Impact of Evidence of Discriminatory or Other Illegal Credit Practices on Community Reinvestment Act Ratings, pg. 3, (Aug. 18, 2018), [OCC PPM 5000-43, Impact of Evidence of Discriminatory or Other Illegal Credit Practices on CRA Ratings](#).

Finally, ICBA recommends that the Agencies should clarify whether they would exclude consumer protection laws from a downgrade in CRA rating levels, given that the Agencies previously acknowledged that the CRA is not a consumer protection law.

Improvements to the Presentation of the Public File

The current rules require banks to maintain a physical CRA public file containing information related to their CRA performance, such as branch locations and services, assessment area information, public comments, and the most recent performance evaluation, with the full file available at the main office and portions available at each branch. The Proposal would modernize this requirement by requiring banks to maintain the public file on the bank's website or on a website maintained on the bank's behalf, eliminating the requirement to keep paper files at the main office and branches, and allowing banks to satisfy their public notice obligations by identifying the website where CRA information is posted.

ICBA supports this approach. Most banks already maintain websites where customers can find information about their products, staff, operations, and regulatory status, and moving the public file online simply aligns the CRA with the way the public now accesses information. The Agencies note that approximately 96 percent of U.S. adults use the internet, and community banks' adoption of websites has followed the same trajectory. In a 1999 Federal Reserve Bank of Minneapolis survey of Ninth District community banks, only 22 percent reported having a website, although 66 percent planned to develop one within two years.²⁵ Today, nearly all South Dakota banks maintain a website, according to the FDIC's BankFind database.²⁶

To ensure the transition delivers its intended burden reduction, ICBA recommends several clarifications. First, the Agencies should develop a model public file or standardized template illustrating the required content and organization. Many community banks will be posting this information online for the first time, and some bank websites today offer little guidance on what CRA public disclosures should look like. A model would promote consistency, help the public navigate files across institutions, and reduce the risk of technical violations.

Second, the Proposal would require banks to provide a means of viewing the online public file at their branches, such as a computer or other device. The Agencies should clarify that this requirement may be satisfied through staff-assisted access on an existing branch device or by providing a copy upon request, rather than through a dedicated public terminal that could raise cybersecurity concerns and impose unnecessary costs on small branches.

Third, for the small number of banks that do not maintain a website, the Agencies should confirm that a simple page hosted by a third-party vendor satisfies the requirement, consistent with the Proposal's allowance for a website maintained on the bank's behalf, and should consider offering an FFIEC-hosted option. Finally, the Agencies should provide a reasonable transition period and confirm that minor formatting or posting errors will be treated as matters for correction rather than as deficiencies affecting a bank's CRA rating. Under this approach, a small agricultural bank with three branches could comply at minimal cost by posting a single, template-based public file on its existing website and directing branch visitors to that page on a lobby tablet.

²⁵ Toby Madden, Community Bank Web sites: The Current Picture, (Jul. 1, 1999), [Community bank Web sites: The current picture | Federal Reserve Bank of Minneapolis](#).

²⁶ Federal Deposit Insurance Corporation, [FDIC: BankFind Suite - Find Insured Banks](#) (the FDIC database for South Dakota banks covers roughly 300 banks).

ICBA Stresses the Need for Harmonization Across all the Federal Banking Agencies

If finalized, this Proposal would dramatically improve the CRA framework from its current state. However, in many respects, this dramatic improvement is only achievable if every federal banking agency promulgates a harmonized rule. ICBA urges the Agencies to finalize the rule jointly with the Federal Reserve Board (FRB), and to consider providing extended period of time between finalization and the rule's effective date so FRB might have additional time to adopt the Agencies final rule through its own interim final rule.

The CRA was designed to work as a single interagency framework, and for most of its history, the banking agencies have jointly issued regulations, examination procedures, and the Interagency Questions and Answers.

Unfortunately, FRB has not joined the Proposal. If the Agencies finalize the rule without FRB's involvement, state member banks would stay under the existing regulations while national banks and state nonmember banks move to a new framework. Asset thresholds, product-line evaluation, assessment area rules, and the definition of a qualifying community development activity would then depend on a bank's primary federal regulator rather than on its size, business model, or service to its community.

This split would undercut the clarity, consistency, proportionality and overall benefit that the Proposal is meant to deliver. If the Agencies decide to proceed without FRB involvement, ICBA recommends the Agencies institute a longer effective date than they would otherwise adopt. This added time would let FRB adopt the final rule on an interim final basis or through an expedited rulemaking before the new framework takes effect.

Banks, examiners, and communities would then move to a single set of standards at the same time rather than through a period of divergent treatment that could prove disruptive and hard to unwind. It would also ensure that the reforms the Agencies have carefully developed reach every community bank, whatever its regulator.

Conclusion

The Proposal marks a significant and welcome turn toward a CRA framework that is faithful to the statute, focused on lending, and proportionate to the size and business model of the institutions it governs. By modernizing bank category thresholds that inflation and consolidation have left behind, grounding assessment areas in a bank's physical presence, clarifying how major product lines and community development activities are evaluated, and giving banks optional flexibility to support underserved areas beyond their footprints, the Agencies would preserve every bank's obligation to serve its community while relieving community banks of requirements designed for the largest institutions.

ICBA's recommendations would build on that foundation. Setting the small bank threshold at \$10 billion, or at a minimum \$5 billion, would align the CRA with the line Congress and the banking regulators have long used to identify community banks. Adopting major product lines, with modest safeguards, replacing the ambiguous language, codifying the physical-presence requirements, and recognizing the distinctive role of MDIs, CDFIs, mutual banks, and locally owned community banks throughout country will provide substantial benefit to this country's community banks and the towns and cities they serve.

ICBA thanks the Agencies for undertaking this thoughtful rulemaking and for their attention to the concerns community bankers have raised over many years. ICBA appreciates the opportunity to comment and stands ready to work with the Agencies as they finalize the rule.

Sincerely,

/s/

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Jonathan Dixon
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