August 5, 2022

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

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

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

From:
National Alliance of Community Economic Development Associations (NACEDA)
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Re: Regulations implementing the Community Reinvestment Act of 1977 (CRA), Federal Reserve Board of Governors, Docket No. R-1769 and RIN 7100-AG29 and FDIC RIN 3064-AF81

The National Alliance of Community Economic Development Associations (NACEDA) appreciates the opportunity to comment on the Notice of Proposed Rulemaking for the Community Reinvestment Act. We also respect the open approach regulators have taken the last several years, carefully considering feedback from NACEDA and a wide range of stakeholders. Now is absolutely the time to bring CRA into the 21st Century.

In summary, the proposed rule is a marked improvement over the status quo. However, it's far from ambitious [s/t to the effect of: when the moment calls for ambition].

This letter offers responses to the NPR that NACEDA considers to be in alignment with our values, interests, and expertise. As such, we focused our responses on questions that touch our community development experience and expertise. Also, we focus on questions that impact our values related to equity and justice for low- and moderate-income people and places and neighborhoods of color.

The letter is broken into two parts:
- **Part A** offers a summary of our highest priority comments, suggestions, and areas for improvement.
- **Part B** offers our responses to specific questions in the NPR. We chose to respond directly to about a third of the 180 questions.

We hope you find our responses helpful.

Part A

Summary of Priority Recommendations

1) **The NPR does not go far enough to explicitly consider race and ethnicity of bank customers and communities.**

   NACEDA was disappointed about the absence and focus on race in the NPR. Regulators dedicated substantial space in the 2021 ANPR inquiring how race can be considered as part of CRA exams. What happened to the responses? Did regulators abandon that path of inquiry? If so, why? What was learned during the ANPR process that caused them to back away? The Community Reinvestment Act was passed in direct response to racism in banking. It's an issue CRA has never fully addressed, and this NPR represents another major instance in almost five decades worth of shortcomings. We ask regulators to please collect data related to race in the retail and community development tests, make that data public, and use it consequentially in CRA exams.

   Specifically, we ask regulators to:
   - Add racial data to the list of factors considered when creating assessment areas.

- Compare lending data by race to peer-banks within assessment areas.
- Formally incorporate HMDA and 1071 data by race into examinations.
- Severely punish banks that are found to have violated civil rights, fair lending, or fair housing laws.
- Add an impact review factor to the community development finance test that considers investments made in historically redlined communities and areas in which the residents are predominantly people of color.

2) **The asset categories as proposed (large, intermediate, small) will notably reduce community development financing, particularly in rural areas and small cities.** The proposed bank asset sizes move about 900-1000 banks into a lower asset category than they would occupy under the status quo. And regulators have chosen to reduce community development responsibilities for banks in smaller asset categories. Research from NCRC estimates that well over $1 billion in community development financing could be lost as a result. If that estimate proves to be anywhere close to accurate, it would be a significant failure for the regulating agencies.

3) **The newly formed "Retail Lending Assessment Areas (RLAA)" must be subject to a community development test.** We strongly urge regulators to reconsider community development responsibilities in RLAAs. The NPR outlines how RLAAs would be formed in entire MSAs or the non-MSA area of a state. Those area sizable chunks of geography for which banks should have some level community development responsibility, even if only a version of the status quo community development test.

   Relatedly, NACEDA was disappointed regulators chose not to delineate facility-based assessment areas (FBAAs) around loan production offices (LPOs). We ask regulators to reconsider.

   However, if regulators choose not to delineate FBAAs around loan production offices, NACEDA maintains that loan production offices should automatically trigger at least one retail lending assessment area, which would include a required community development test. LPOs are too often the only lending or banking-related presence in rural areas and small towns. The NPR gives banks the opportunity to claim credit for banking services provided at their LPOs. That opportunity should come with responsibilities.

4) **Regulators should give more consideration and acknowledgement to banks that utilize effective, creative, and exemplary local community engagement strategies.** NACEDA proposes that exemplary community engagement strategies in low- and moderate-income (LMI) areas be recognized as a standalone impact review factor when regulators are considering CRA credit for an eligible community development activity. In past CRA commenting opportunities, NACEDA has been very critical of how little attention regulating agencies have paid to local community engagement strategies banks employ

to identify community needs in LMI areas. We maintain that criticism and offer a potential solution that fits within the framework offered by the NPR.

5) **We encourage regulators to begin thinking *now* about how to roll out a new rule to stakeholders, in addition to banks.** Few people in the community development field remember how the last set of CRA changes were implemented over 25 years ago. Regulators must make a significant effort to reach community-based development nonprofit organizations such as those in NACEDA's network, as well as other stakeholders. The Federal Reserve Bank System, for example, has a dedicated CRA education function that has served the field well for years. However, NACEDA fears that that function (and related functions in the other regulating entities) will provide woefully insufficient levels of education to the field. This is particularly important because this process has become so complicated and technical that many community-based organizations currently feel ill-equipped to meaningfully participate. NACEDA is happy to play any partnership role regulators would find valuable.

6) **The community development financing test for intermediate banks must be required, not optional.** Under the proposal, intermediate banks are subject to a status quo community development test or the option for the new community development finance test. NACEDA urges regulators to make all intermediate banks subject to the community development finance test. Subjecting both large and intermediate banks to the new test creates consistency among banks and examiners, and it provides others in the community development industry (non-bank investors, funders, community development nonprofits, public officials, researchers, and others) with a consistent understanding of how banks are regulated on their community development activity.

7) **The NPR does not do enough to clarify the role of community-based development organizations (CBDOs) in CRA.** NACEDA acknowledges that the NPR sometimes recognizes the important role community development corporations (CDCs) and CBDOs play, such as in the eligible activities section in which a qualifying housing activity has a 'primary community development purpose,' if developed by one of these organizations.

   NACEDA outlines a currently active federal definition of a CDC (from the Office of Community Services within the Department of Health and Human Services) that we ask regulators to adapt and adopt to identify organizations that qualify as a CDC for CRA purposes.

   In addition, there are several places in the NPR in which the role of these organizations can be clarified and, at the same time, help regulators and banks achieve their stated CRA-related objectives. For example, a similar 'primary purpose' standard could be applied to economic development activities that include a CBDO.

8) **Maximize the amount of data that will be publicly available as part of the CRA examination and pre-approval process.** We appreciate the level of detail agencies

propose to publish as part of CRA exams. We also urge transparency and published determinations as part of the bank-accessible pre-approval process proposed (outlined in more detail below).

We urge the agencies to also make public all data associated with a CRA exam to further the agencies' stated goals of making CRA exams more consistent and transparent. NACEDA thinks this is particularly important for the gathering and publication of community development finance-related data. This type of data has the potential to be transformative for the community development field by quantifying what types of community development financing (loans, investments, grants) is going to which geographies; what types of community development projects banks are financing and where; which populations (by income, race, age, etc.) is being supported by CRA-related dollars, among many other purposes. NACEDA would like to use that type of data and combine it with sets or our own data on the financial health, production, and barriers of CBDOs. We encourage regulators to play a leadership role in this regard and we offer NACEDA's partnership in making the effort impactful.

And whenever possible, the agencies should use plain language in these publications to make the information accessible to community members. This information would benefit all stakeholders – fellow regulators, financial institutions, and community advocates.

Part B

NACEDA's responses to the NPR's enumerated questions

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

NACEDA supports the standard put forth in the proposal that full credit is provided to a community development activity if a majority of the investment or loan is put toward an eligible community development project and has a 'primary purpose' of community development. Or if the activity is performed by a community-based development organization with a history of serving the needs of low- and moderate-income people and places.

Partial credit should be limited to only housing investments *not* invested with CBDOs. Housing-related activities that are performed by a community-based development organization with a history of serving the needs of low- and moderate-income people and places, should be considered for full credit regardless of the housing activity's income targeting. Such organizations have the mission and experience to consider the mixed income housing needs of communities and neighborhoods. A bank's CRA-related investment should be considered for full credit if such an organization is performing the activity.

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

Partial credit should be limited to housing-related activities. The agencies correctly point out, that extending partial credit to other community development activities is likely to water-down the availability of community development resources and too dramatically expand the number of eligible activities.

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

income? Should these activities be required to include verification that at least a majority of occupants of affordable units are low-or moderate-income individuals?

NACEDA is aligned with an NCRC recommendation that affordable housing can qualify under a stated purpose or bona fide intent standard if it is funded under a federal state or local housing program with documented income guidelines. In cases where local or public guidelines are unclear, documentation that rent does not exceed 30% of 80% of median income is appropriate. NACEDA would add that another indicator that should qualify under a stated purpose or bona fide intent standard is if the development of affordable housing is being performed by a community-based development organization with a history of serving the needs of low- and moderate-income people and places.

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

In general, NACEDA is not in favor of qualifying activities that supply housing to middle-income borrowers in high opportunity areas. However, an exception may be appropriate in non-metro and rural areas, where median income measurements can distort market characteristics in a way that is unique to rural areas. NACEDA would suggest providing at least partial credit for housing development benefiting middle-income people if the housing is developed and/or maintained by a community-based development organization with a history of serving the needs of low- and moderate-income people and places.

Question 5 & 6. Are there alternative ways to ensure that naturally occurring affordable housing activities are targeted to properties where rents remain affordable for low-and moderate-income individuals, including properties where a renovation is occurring? What approach would appropriately consider activities that support naturally occurring affordable housing that is most beneficial for low-or moderate-income individuals and communities? Should the proposed geographic criterion be expanded to include census tracts in which the median renter is low-or moderate-income, or in distressed and underserved census tracts, in order to encourage affordable housing in a wider range of communities, or would this expanded option risk crediting activities that do not benefit low-or moderate-income renters?

The agencies proposed to consider naturally occurring affordable housing (NOAH) as rental housing whose rent does not exceed 30% of 60% of the area median income of the metropolitan area or non-metropolitan county. NACEDA thinks the 30/60 standard along with the “Additional Eligibility Standards” for NOAH proposed by regulators is acceptable. In particular, we find the ‘additional standard’ that recognizes the role of nonprofit housing developers to be particularly insightful and appropriate. However, the private market response to any NOAH development that receives CRA credit, NACEDA believes, is unpredictable, especially when comparting market activity in large metropolitan areas compared to smaller metro areas. Regulators would likely agree that this issue is tricky. NACEDA would recommend implementing the qualified NOAH standards as proposed, then revisiting the proposal after 5 years of implementation, to evaluate whether the standards put forward are meeting CRA goals.

Question 7. Should the proposed approach to considering naturally occurring affordable housing be broadened to include single-family rental housing that meets the eligibility criteria proposed for multifamily rental housing? If so, should consideration of single-family rental housing be limited to rural geographies, or eligible in all geographies, provided the eligibility criteria to ensure affordability are met?

Yes, NOAH eligibility should be broadened to include single-family rental housing. However, eligibility should be limited to the confines of the CD financing test provided it meets the NOAH criteria and the units are certified to be affordable and in decent physical condition. The certification could include confining this option to nonprofit developers committed to affordable housing or for-profit owners that commit in writing to complying with any government guidelines to ensure affordable, fair and decent affordable housing. If eligibility is limited to the CD financing test and meet other NOAH criteria as described, NACEDA would support eligibility in all geographies.

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

The agencies proposed to include activities that support LMI homeownership as part of community development. This would include construction loans for a single-family development or bank down payment assistance. The agencies' proposal is appropriate. It emphasizes activities that will expand homeownership for first time buyers and other underserved populations. It also avoids double counting activities in different tests (Retail Lending and Community Development).

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?

NACEDA's opinion on the treatment of mortgage-backed securities has not changed since the Federal Reserve ANPR in 2021. NACEDA feels the practice referred to as loan churning should no longer receive the kind of CRA credit it currently receives. However, the ability of banks to purchase loans originated by another lender provides liquidity that is, ultimately, important for the ability of lenders to serve LMI people and places. NACEDA leans toward an alternative that only counts loan purchases directly from originating lenders. And only the dollar amount of LMI mortgages should count. That policy alternative provides liquidity to the mortgage market, prevents churning, and is relatively simple to evaluate for CRA purposes.

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

NACEDA is supportive of innovative financing that includes community land trusts and shared equity models. Financing of manufactured housing must be accompanied by rigorous due diligence to avoid abusive landowners and lenders. Any community development financing of manufactured housing likely should be confined to resident-owned or nonprofit organizations that provide land for manufactured housing. In addition, banks could collaborate with the Government Sponsored Enterprises (GSEs) to finance reputable manufactured housing as part of their Duty-to-Serve requirements.

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

Under the current CRA regulations, consideration of economic development activities (including small business/farm investment/TA, job creation efforts, and workforce development) desperately needs to be revisited. NACEDA applauds the regulators for attempting to address a CRA-related challenge that has vexed local community economic development organizations (and others) for quite some time.

Moving small business lending under qualitative consideration of the Retail Lending test is an innovative idea. It makes sense for many of the reasons stated in the NPR. However, if regulators proceed in this regard, special attention/coaching/training/outreach must be provided to nonprofit community economic development organizations to adjust to the new approach. These organizations that utilize small business and traditional economic development activities, are very accustomed to their work being considered a community development activity. The proposal could potentially split consideration of a complex local economic development/small business initiative across multiple tests and across multiple banks. Over time, NACEDA believes all the institutions involved (banks, regulators, community organizations) will likely settle on a productive approach. But in the short term, this approach could be bureaucratically complicated. Regulator patience and guidance will likely be necessary and would certainly be appreciated.

In addition, here is another place where race and the collection of demographic data is important. Small business lending under the Retail Lending test has real impact if race data is collected per Section 1071. The Small Business Administration has been collecting this data and it has driven greater loans to African American and Latino owned small business.

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

Yes. Keep it simple and familiar in the interim.

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?

In the NPR, regulators suggest a three-pronged approach to qualifying economic development activities, 1) aligning with a government program, 2) Supporting through CED intermediaries, and 3) qualifying TA for businesses under $5m. Regulators propose targeting prongs 2 and 3 to businesses under $5m, which NACEDA applauds, and thinks is a terrific approach and consistent with other parts of the rule.

However, NACEDA also feels very strongly that the first prong should also be targeted to businesses under $5m and/or be an SBDCs, SBICs, CDFIs, New Markets Venture Capital Company, qualified Community Development Entity, or U.S. Department of Agriculture Rural Business Investment Company. Regulators suggest in the NPR that a $5m business size limit isn't necessary and size limits can be aligned with the targets set in local/state government plans.

"This prong of the proposed definition would not specify a gross annual revenue threshold of $5 million or under for the businesses or farms supported through these government plans, programs, or initiatives, or through the specified entities. Instead, this prong of the definition would leverage the size standards used by the respective government plans, programs, or initiatives." https://www.federalregister.gov/d/2022-10111/p-283

NACEDA strongly disagrees. In NACEDA's experience, local and state government, as well as financial institutions, far too often do a poor job at targeting economic development activity to low and moderate-income businesses and a size limit set by regulators is absolutely necessary. $5m is the maximum limit that could be applied consistently across the regulation. We would also encourage regulators to consider the race of the business owner(s) when considering CRA credit, particularly for businesses under $5m, given that minority-owned businesses commonly hire from within their communities.

Further, to ensure activities are not qualified simply because they offer low wage jobs, NACEDA would point to an existing federal program that sets standards and qualifications for economic development activities within the community development field. The Community Economic Development Program within the Office of Community Services at the Department of Health and Human Services has provided job creation and economic development grants to community development corporations (CDCs) for over 40 years. Standards from this program have been used successfully by CDCs for decades and could inform CRA's approach.

From their website: https://www.acf.hhs.gov/ocs/programs/ced

Community Economic Development (CED) is a federal grant program funding Community Development Corporations (CDCs) that address the economic needs of low-income individuals and families through the creation of sustainable business development and employment opportunities. CED awards funds to private, non-profit organizations CDCs, including faith-based organizations and Tribal and Alaskan Native organizations. CED-funded projects create or expand businesses, create new jobs for individuals with low incomes, and leverage funding investments in communities.

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?

NACEDA is aligned with other national partners on this question. We urge agencies to reconsider the requirement that the place-based activities be conducted in conjunction with a government, plan, program or initiative. The agencies had a laudable goal of encouraging collaboration among banks and local government agencies, which is not as common as it should be. Combining public subsidies and support with bank financing would generally make community development activities more effective in targeting LMI populations, particularly lower income populations. However, local governments across a country as large as ours may not always have a program, plan or initiative for the targeted census tracts with which a bank can combine forces. Thus, when banks are unable to find a government partner, some community development activities would not be undertaken, contrary to the goals of CRA. NACEDA suggests that collaboration with public agencies should bolster a bank's performance on the impact reviews of the proposed CD tests. The proposal to collect CD data can include data fields indicating whether the project included collaboration and the extent of collaboration such as whether it was consistent with an initiative or also used public sector subsidies. More extensive collaboration resulting in impactful CD would earn higher points on the impact reviews.

As the NPR does in other areas, certainly aligning geographically based activities with a local community based development organization makes a lot of sense since these organizations very commonly have missions to serve low and moderate income places and the LMI people who live there.

Regarding standards, NACEDA again suggests looking to the CED Program at HHS. To ensure activities are not qualified simply because they offer low wage jobs, NACEDA would point to an existing federal program that sets standards and qualifications for economic development activities within the community development field. The Community Economic Development Program within the Office of Community Services at the Department of Health and Human Services has provided job creation and economic development grants to community development corporations (CDCs) for over 40 years. Standards from this program have been used successfully by CDCs for decades and could inform CRA's approach.

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

Data on the number of LMI residents benefiting from the revitalization activities should be part of Community Development (CD) data submissions and considered on impact reviews. In order to demonstrate anti-displacement, the bank can document that the activities did not displace LMI residents and that any new large-scale CD projects did not reduce affordable housing units or displace small businesses or farms. In its documentation, the bank could include attestations from public sector or nonprofit partners that displacement did not occur.

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

All affordable housing activities should be in the housing section, not revitalization. An exception could be made when housing is being removed or demolished as part of a broader community revitalization effort. But acquisition and development should be in the housing test.

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

NACEDA generally supports the NPR's approach to the financing of essential community facilities, if the investment is deemed CRA eligible.

However, NACEDA is wary of qualifying the activities illustrated under the community infrastructure section, such as broadband, water, sewage, etc. Qualifying such activities would greatly expand the number and types of eligible activities without a clear benefit to LMI people and places. However, if regulators wish to qualify infrastructure projects as outlined in the NPR, the activities should have a clear and demonstrable benefit (or primary purpose) to serve LMI people and places. NACEDA does not support partial credit for any activity other than housing. In short, we ask regulators to set a high bar for qualifying infrastructure activities. Banks must make a very strong case that LMI people and places are the primary beneficiaries in order to receive credit.

NACEDA also wishes to align with a good suggestion from NCRC. NACEDA thinks ensuring that financing grocery stores/supermarkets is part of the definition of community development. The revised definition of economic development would focus more on assisting small business development than attracting larger businesses to LMI and other disadvantaged communities. In general, this is appropriate since CRA should be targeted to financing that may not occur were it not for the incentive supplied by CRA. Financing larger businesses is a market-based activity that is often accompanied by local or state public subsidies. A CRA incentive is not needed in those instances. In contrast, food deserts are a pressing problem in LMI and other disadvantaged communities. In cases in which financing grocery stores involves those larger than the revenue sizes in the retail lending test or in the economic development prong of community development, perhaps this can be considered essential community facilities.

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

The NPR documents that LMI individuals and communities are more vulnerable to disasters. It expands community development activities to include proactive activities related to protection against floods and other natural disasters in addition to the current definition that focuses on recovery from natural disasters. The agencies contemplated that climate resiliency activities include energy efficiency improvements or renewable energy projects that benefit affordable housing, small businesses and community facilities. NACEDA agrees that an expansion of climate resiliency activities in this manner - to benefit LMI individuals and communities - is appropriate. The agencies proposed that these activities must benefit LMI tracts and distressed and underserved nonmetropolitan middle-income census tracts. This is appropriate targeting to ensure that LMI individuals benefit from these activities. The agencies also decided these activities would not be targeted to designated disaster areas, which is appropriate considering these areas may include several non-LMI tracts that generally would have more resources for financing these activities.

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

Activities that promote energy efficiency are well suited for the disaster preparedness and climate resiliency definition. Clearly, there will be instances in which energy efficiency improvements will benefit affordable housing and community facilities. When the benefits are multiple, benefits should boost a bank's performance in the impact review of the community development finance test.

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

Projects that deal with water run-off and water table shifts and amelioration can be distinct from energy-efficiency improvements and are an example of activities that should be included in the climate resiliency definition. Similar to NACEDA's previous suggestions on infrastructure, banks should only receive CRA credit if the primary purpose of the investment is to serve LMI people and places. They should not receive partial credit but could receive full credit if it meets the primary purpose standard.

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

A city-wide utility scale project generally should not receive CRA consideration. However, like NACEDA's previous suggestions on infrastructure, banks should only receive CRA credit if the primary purpose of the investment is to serve LMI people and places. They should not receive partial credit but could receive full credit if it meets the primary purpose standard.

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

NACEDA assumes disaster preparedness and climate resiliency activities for LMI individuals would take the form of a home improvement or open-ended loan. Or a loan to a small business. In either case, the individual investment should be considered as part of the qualitative consideration of the Retail Lending Test. The Retail Service and Products test can consider the qualitative aspects of home lending that incudes climate resiliency. Examples of loans to LMI homeowners or qualified small businesses that would fit under the climate resiliency category (and could be considered qualitatively) would be energy efficiency improvements to a home or business, renewable energy investments such as solar panels, or water/sewage management needs such as a redesigned/repaired well or septic system. Individual homeowners or small business investments should not be limited to a targeted geography, only limited to LMI borrowers.

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

NACEDA does not support qualifying these activities in designated disaster areas.

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

CRA credit for financial education and counseling must be limited to activities that have a primary purpose of benefiting low-or moderate-income individuals or families.

The agencies should also clarify that the proposal to open up financial literacy to all income levels does not apply to housing or homeownership counseling.

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

Regulators should consider a more flexible definition of “Native Land Areas” than what is proposed.

Some populations captured within the Native Land Area definition have access to credit and successful economic development opportunities, while others have no access to capital to improve livelihoods of families in their community - particularly Native communities in rural and remote areas. A tight geographic framework that determines CRA credit areas is not the sole way that banks should be allowed to direct their activity towards Native communities. NACEDA recommends the agencies, in conjunction with Native-led organizations and CDFIs, consider a metric-based determination that considers capital access in Native American communities and include an additional weighting factor for banks investing in rural and remote Native American communities which may not have any credit or capital access at all.

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

The agencies proposed that community development activities such as revitalization and essential community infrastructure would count on CRA exams if targeted to Native Land Areas. As previously stated, NACEDA is wary of infrastructure projects receiving credit for CRA purposes unless the investment has a clear primary purpose of benefiting LMI people and places. With investments made in Native Land Areas, NACEDA supports presuming the investment meets the primary purpose standard and therefore would be eligible for full credit. NACEDA would encourage economic development activities to be subject to the same standard.

NACEDA recommends against low- or middle-income (LMI) benefit requirements for CRA credit activities in Native Land Areas. A presumption of full credit for Native Land Areas is necessary to prevent further neglect of native communities. While LMI targeting is an effective method of community development in other instances, when serving Native American communities, income averages are far lower, especially for Native communities in remote areas with little-to-no access to credit. Datapoints relating to income of Native Americans on and off reservations are imperfect, so a flexible approach allowing CRA credit for community and economic development activities in any Native American community will bolster the capital and quality of life for all members of this community and, in turn, LMI residents.

NACEDA also strongly encourages regulators to recognize the importance of Tribal Designated Housing Entities (TDHEs) in Native Land Areas. TDHEs are community anchors that can assist in appropriate targeting of affordable housing and community development activities under CRA. In some Native areas, they are the ONLY housing or community development capacity that exists.

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

NACEDA agrees with others that, as long as tribal associations and tribal designee plans, programs or initiatives can be shown to be largely Native-led and endorsed by the tribal government - or at least not actively opposed by a tribal government - the agencies should consider such activities.

Relatedly, in NACEDA's experience, community development organizations and native associations in native areas can occasionally assume a legal structure that is unfamiliar to banks as well as local, state, and federal governments. In other words, they don't always take the form of a 501(c)(3). Regulators should be prepared to allow banks to invest in native organizations and their activities even though the organizations may have an unfamiliar legal structure.

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?

NACEDA is generally supportive of the 'pre-approval' process proposed in the NPR and think that responses to bank inquiries as part of that process should be made public (with some level of anonymity given to the inquiring bank), *including* inquiries that are deemed to be ineligible for CRA credit. NACEDA thinks that making public any activities that are 'denied' as part of the pre-approval process is the most practical way to accomplish what's proposed as part of Question 31. NACEDA does not see the utility in making yet another list of ineligible activities.

Additionally, NACEDA will take this opportunity to remind regulators that NACEDA is not supportive of a non-exhaustive list of *approved* activities. As stated in previous comment letters, a modern CRA that serves the law's original intent to end redlining and ensure local access to basic financial services would start with the question, "What does the community need?" not "What does the regulator approve of?"

However, regulators seem to disagree with NACEDA and are likely to proceed with some sort of list. In that case, NACEDA would recommend developing and maintaining a somewhat more general list of activities that will be considered. We find NCRC's approach of a 'principles-based list' is a good compromise, which would be shorter than the previous OCC's list of qualified CRA activities. We share NCRC's concern that an extensive list like the OCC's would evolve into an ad hoc listing of numerous CRA activities that would end up deluging readers rather than enlightening them. A principles-based list would explain complex issues and illustrate how the definition of CD would work in practice. The agencies must develop a non-exhaustive list of qualified activities carefully and explain the list in order to avoid banks not engaging in activities that are not included in the list. The banks could develop a tendency to refrain from activities that are not on the list for fear of not receiving credit on CRA exams, which could ironically reinforce the challenge the list is trying to solve by inserting uncertainty in banks' minds as to what activities count or don't.

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

NACEDA is generally supportive of the pre-approval process proposed in the NPR with some emphases. NACEDA supports making any determinations public, likely with some level of anonymity provided to the inquiring bank. As part of its pre-approval request, NACEDA would also like to see the bank demonstrate how the proposed investment serves a community need.

And NACEDA would ask regulators - in their formal response to the pre-approval request – to comment on the extent to which the request documents and serves that need.

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

As the new rule is being implemented in early years, NACEDA would recommend regulators forming regional and national community advisory boards/committees (or tasking existing community advisory boards/committees) to play two overarching functions: 1) To communicate with regulators any challenges communities are facing with the new rule. And 2) To help regulators with outreach and communication to communities about the new rule. Relatively few people in the community development field know or remember what implementing a new CRA rule entails. 1995 was over 25 years ago.

In addition to advisory bodies, NACEDA recommends regulators form a very proactive implementation strategy to help community organizations adapt to the new rule. And we recommend regulators engage communities and organizations both formally and informally on what that implementation strategy entails.

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

NACEDA is supportive of regulators giving banks special qualitative recognition for eligible community development investments in these three geographical categories. We think this feature of the NPR is particularly laudable and we thank regulators for including it. The NPR does not offer or acknowledge that a given geography may fall in or out of these categories at a given time. For example, if this review factor attracts community development financing to an area that has low levels of community development financing, would the geography be removed, now that it has financing? If so, when? And at what threshold?

Regarding the seventh Impact Review Factor: "Activities That Are a Qualifying Grant or Contribution", NACEDA asks that regulators consider recognizing the unique role and needs community-based development organizations (also known as CDCs) play in low- and moderate-income communities and in partnership with financial institutions. We ask regulators to give additional qualitative consideration under this Factor to grants and donations to those organizations. An existing federal definition of a "CDC" exists within the Office of Community Services (OCS) at the Department of Health and Human Services. NACEDA would support regulators adopting OCS's CDC definition (cited below) in recognizing bank grants/donations to these organizations.

Community Development Corporation (CDC) - As outlined in Section 680(a)(2) of the Community Services Block Grant (CSBG) Act of 1981, as amended by the Community 8 of 99 Opportunities, as amended, 42 U.S.C. § 9921(a)(2), to be a qualified CDC, an organization must meet three conditions:

· The organization must be a private nonprofit with 501(c)(3) status;

· The organization must have articles of incorporation or bylaws demonstrating that the CDC has a principal purpose of planning, developing, or managing low-income housing or community development projects; and

· The Board of Directors of the organization must have representation from community residents, business leaders, and civic leaders.

Further, regarding the impact review process, NACEDA asks the agencies to include consideration, not only for how a bank *meets* a local community development need, but also how it *identifies* a local need. *Meeting* a community development need – at least for banks – is often a relatively technical challenge: create a new loan product, put financial or human resources here instead of there, count the resources in this way or that, etc. But in order to *meet* the need, the bank has to *identify* it first. How is the bank engaging with the community in which it does business and identifying its needs? In any community development activity, the product obviously matters. So does the process by which the bank uses to get to that product or investment. NACEDA would ask regulators to consider a bank's community engagement *process* as an additional impact factor to consider.

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

Given that this review factor is qualitative, NACEDA would recommend providing special recognition for businesses at $500,000 or below, with some level of additional recognition as the business size decreases from $500,000.

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

NACEDA is supportive of the approach to provide qualitative consideration of affordable housing development in high opportunity areas. Within this qualitative consideration, homeownership opportunities for LMI people in high opportunity areas should receive exceptional levels of consideration.

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

NACEDA supports the inclusion of all areas where Native American populations are present, including those served by tribal organizations and other Native-led organizations. As stated elsewhere in this letter, defining "Native-led organizations" will likely require a flexible approach, potentially even allowing organizations to self-certify as "tribal-led," in order to lessen the administrative burden on the bank, regulators, and most importantly, the community organization.

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

Small and intermediate banks should not have the option to delineate partial county assessment areas. Partial county delineation too easily leads to actual or perceived redlining by the bank, either intentionally or unintentionally. Moreover, making assessment area formation consistent across most/all bank sizes sends a clear signal to local officials, advocates, and the public what any given bank's assessment area is for CRA purposes.

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

If a facility involves customers on-site receiving instructions from bank staff about making deposits, this facility should constitute a branch for purposes of establishing FBAAs. The bank staff will be acquiring knowledge of community needs at such a facility and should be held accountable for serving those needs.

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

The bank should be required to expand the facility-based assessment area to the entire MSA or non-MSA area. The bank should be acquainted with the credit and capital needs of the entire MSA or non-MSA and should be required to serve those needs with the full large bank test: retail lending, retail service, community development finance and community development service subtests.

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

The bank should be examined in all its major product lines in each retail lending assessment area if it has exceeded the threshold in either home or small business lending. Meeting even one of those thresholds indicates the bank is a major lender in more than one of its product lines even if it does not hit a specific threshold in other of its product lines.

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

A large bank with a significant majority of its retail loans inside its facility-based assessment areas should not be exempt from designating retail lending assessment areas. A bank should be held accountable to meeting credit needs in all areas where it does a meaningful amount of lending.

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

NACEDA has previously been opposed to the concept of "nationwide assessment areas." In this NPR, however, NACEDA acknowledges the agencies have devised a workable compromise. The agencies seem to give appropriate consideration to the importance of community development activity within facilitate based assessment areas. Facility based assessment areas should be given utmost attention when considering a bank's community development financing activity. As such, NACEDA is receptive to banks receiving credit for financing activities outside its facility-based assessment areas, provided that examiners also consider qualitatively *where and under* *what circumstances* those outside activities take place. The agencies appropriately seem to direct examiners to consider several qualitative factors through the community development services test. That qualitative consideration makes the proposed approach acceptable in NACEDA's opinion.

NACEDA strongly objects to the absence of a community development finance test in retail lending assessment areas. Excluding a CD finance test in retail lending assessment areas misses an opportunity to help mitigate "CRA hotspots" and help address concerns related to CD financing in "CRA deserts." We ask the agencies to please reconsider.

NACEDA is supportive of allowing banks to designate additional assessment areas outside their required facility-based assessment areas, with two important caveats. Banks publicly and clearly designating assessment areas in advance of any activity sends an important signal to local community developers that a bank takes community development financing and services in their area seriously. And it makes clear to local community developers which banks are actively participating in a given assessment area's community development ecosystem.

However, NACEDA's caveats are that approving outside assessment areas should be transparent, applied consistently across banks AND should serve a clear purpose, such as to meet a high priority community need. NACEDA suggests adapting a qualitative "Impact Review" process prior to approving any outside assessment, similar to the "Impact Review Factors" proposed as part of the qualitative evaluation of community development activities under the Community Development Financing Test, the Community Development Financing Test for Wholesale or Limited Purpose Banks, and the Community Development Services Test. Prior to approving outside assessment areas, banks should a) tie the activity to a regulator-generated impact review factor, b) make clear how they are identifying a specific community need in that assessment area *and* how they plan to serve those needs. Also, a bank's focus on their facility-based assessment areas should not be neglected and should receive the bank's primary focus.

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

Yes, but subject to the same considerations outlined in question 47. "Optional" assessment areas should only be approved if the bank is proposing ways to meet a significant community need in the optional assessment area.

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?

NACEDA feels strongly that intermediate banks (in addition to all large banks) should be required to be subject to a right-sized community development finance test. Or at the very least, intermediate banks should be subject to a community development service test. Intermediate banks may not have access to the same volume of capital as large banks, but their community development investments and services are generally hyper-focused on local needs in areas that larger banks don't or won't service, such as non-MSA and rural areas.

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?

Relying on insightful research from NCRC, NACEDA is very concerned about the loss of community development financing and activity that is likely to occur with the proposed asset thresholds.

The agencies proposed to raise the small asset bank threshold from $346 million to $600 million. Likewise, the intermediate small bank (ISB) asset threshold would be adjusted and would range from $600 million to $2 billion. Currently, the ISB asset thresholds range from $346 million to $1.384 billon.

As a result of this proposal, 779 banks that are ISB banks now would be reclassified as small banks. These banks would no longer have community development finance responsibilities, resulting in a loss of considerable amounts of community development finance. Based on a NCRC study, we estimate that on an annual level, community development finance would decline by about $1.214 billion (in the study, 197 banks with assets between $346 million and $600 million made this amount of community development financing on an annual basis based on a sample of CRA exams conducted in 2016). Likewise, 217 banks would be re-classified from large banks to ISB banks. These banks would no longer have a service test requiring them to pay attention to the branching and service provision in LMI communities.

NCRC found that the change in classifications from ISB to small banks would disproportionately impact smaller cities and rural communities. NCRC estimated that 25% of the banks that would become small are located in rural counties. This is in contrast to 7% of the large banks that would become ISB under the proposal. Likewise, 22% of the ISB banks that would become small are located in small metropolitan areas while 16% of the large banks that would become ISB are headquartered in small metropolitan areas. A map of the bank classification changes shows that the change from ISB to small bank disproportionately affects less populated areas in the Midwest and South, parts of the country that can ill afford reductions in community development financing.

At the very least, the agencies' proposal should expect the same range of reinvestment activity as CRA currently does for all ISB and large banks. In this respect, the proposal goes backwards with no justification about how any reduction in burden for these banks would somehow offset the loss of reinvestment activity from a public benefits perspective. The banks impacted have been engaging in community development or service provision for several years without any apparent impacts.

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

NACEDA strongly supports the proposal to include subsidiaries automatically in CRA exams.

Community Development Finance Test General Comments

NACEDA would like to see additional clarity about the weight and process for the qualitative impact reviews as part of the CD Finance test. Other portions of the NPR discuss “impact reviews” of different kinds, and some have a good deal more detail, such as the Impact Review of Community Development Activities. NACEDA thinks this is a good basis to begin consideration of what qualitative components would be considered as part of the CD Finance Test impact review. As currently constituted in the NPR, however, that level of detail is almost entirely missing as it relates to the CD Finance Test.

NACEDA is generally supportive of what it assumes to be the impact review’s purpose and process, having the impact review provide context and balance to any limitations of strictly quantitative CD data. But the weight of the impact review – especially relative to the quantitative financing metric - should be clarified.

NACEDA is generally opposed to combining investments and loans in one CD test, fearing banks will gravitate toward easier to deploy CD loans as opposed to more challenging (and often more impactful) CD investments. However, we also acknowledge that we cannot predict the future and do not know how banks would direct resources under a combined metric.

We ask regulators to collect and consider the use of an additional metric which would be the percent of CD investments out of total CD financing. And in addition to using the percent of investments as a performance measure, the agencies should consider subtests within the CD Finance test that would separately consider CD investments and loans. Equal weights could be assigned to these subtests. It is imperative that the agencies devise a CD Finance Test that preserves the importance of both CD loans and investments.

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

NACEDA supports the proposal to allocate across multiple counties or states based on the distribution of LMI families across the geographic area.

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

The goal of the benchmarks should be to make this part of the CRA examination as quantitative as possible. Right now, it's just not possible. Regulators should use examiner judgement until more CD finance data can be collected and patterns identified. The recommendation here is to prioritize a system to comprehensively collect CD data.

NACEDA would strongly encourage, as part of that data collection, to include metrics and identifying characteristics (name, EIN, address, leadership, etc.) about any community-based development nonprofit organization that participated in the transaction.

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

The agencies proposed to combine present and past CD financing in the numerator of the CD ratio. NACEDA assumes regulators have anticipated how including long-term capital in the numerator could have an inflationary effect on the rating. And we assume regulators have a plan to address that either qualitatively or quantitatively. If not, we beg regulators to consider the inflationary effect this could have. However, as NACEDA and others have recommended in the past, part of that approach should be for regulators to not only consider the dollar volume of all the CD transactions of the bank, but also the *units* or number of transactions undertaken by the bank during any given year or exam cycle. Counting the number of units or transactions closed by the institution in any given cycle can be compared year to year and cycle to cycle to inform the picture of a bank's CD Finance performance.

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

Regulators should collect deposit data for all large banks. In general, US industries of all kinds are assertively headed in the direction of collecting more data than less. Putting all large banks under the same level of deposit data collection would get regulators ahead of this trend in the banking sector. Within ten years, NACEDA thinks regulators will regret undertaking a half-measure by drawing a somewhat arbitrary line between large banks above and below $10 billion.

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

NACEDA would weight both the quantitative and qualitative components of the CD Finance Test to produce a single conclusion. NACEDA would support a slightly heavier weight for the quantitative component of between 55-75%. NACEDA would apply a slightly lower weight for the impact review of between 25-45%. However, this question would be somewhat easier to answer (and NACEDA may answer it differently) if the NPR outlined exactly what a proposed impact review would look like as part of the CD Finance Test. The NPR doesn't do that.

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

The impact review criteria of Community Development Activities outlined earlier in the NPR offers a good basis to begin consideration of what qualitative components would be considered as part of the CD Finance Test impact review. In NACEDA's experience, bank CD transactions of either loans or investments made through a community-based development organization generally have greater impact if accompanied by a grant to support the organization's programming and operations. Coupling grants and loans/investments helps impact the immediate project while also strengthening the community organization over the long term to take on more projects/developments/programs. In short, grants should also be considered here in the CD Finance Test in addition to elsewhere in the evaluation process.

NACEDA will take this opportunity to again ask that regulators set criteria of what constitutes a community-based development organization, and therefore, will help clarify for regulators and banks which organizational investments may get additional consideration as part of an impact review. An existing federal definition of a "CDC" exists within the Office of Community Services (OCS) at the Department of Health and Human Services. NACEDA would support regulators adopting OCS's CDC definition (cited below) in recognizing bank grants/donations to these organizations.

Community Development Corporation (CDC) - As outlined in Section 680(a)(2) of the Community Services Block Grant (CSBG) Act of 1981, as amended by the Community 8 of 99 Opportunities, as amended, 42 U.S.C. § 9921(a)(2), to be a qualified CDC, an organization must meet three conditions:

· The organization must be a private nonprofit with 501(c)(3) status;

· The organization must have articles of incorporation or bylaws demonstrating that the CDC has a principal purpose of planning, developing, or managing low-income housing or community development projects; and

· The Board of Directors of the organization must have representation from community residents, business leaders, and civic leaders.

Further, grants to community-based development organizations are not the only way to build those organizations' long-term capacity. One factor to consider in the development of an impact review is the investments in the activities of state and regional networks and intermediaries, such as NACEDA's members. These state and regional network organizations for community development play an integral role in CRA related community development activity. They provide research, training, technical assistance, advocacy, and general promotion of the sector. Currently, these statewide organizations too often find a mismatch with banks in their footprint that have CRA assessment areas in some parts of the state but not others, creating artificial barriers between banks and statewide network organizations that have the same goal of meeting the credit, banking, and community development needs of LMI people and places. Regulators seem to partly address this challenge in the NPR's proposed statewide level community development financing test conclusion, which NACEDA applauds. As such, NACEDA would strongly encourage integrating an impact review into each level of the financing test local/MSA/state/multi-state/institution/national.

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

NACEDA is opposed to the proposal in the NPR that would provide CRA consideration for volunteer activities unrelated to the provision of financial services in non-MSA areas. NACEDA does not see the justification or need for making this aspect of the CD Services test more flexible. If it in fact were the case that too few eligible opportunities currently existed for banks in non-MSA (rural) areas, one would expect banks to consistently fail or get a needs to improve rating on the CD Services Test in those areas. That's not the case. Further, the need for financial and CD services is much more acute in these areas, given the lack of bank-presence relative to more urban areas.

Before expanding eligible activities to non-financial services or community development activities, NACEDA urges regulators to collect data (such as hours per employee) about the lack of opportunities in non-MSA areas (see below in question 130).

However, if regulators were to allow credit for activities unrelated to the provision of financial services or community development, they should be counted separately and designated to a separate metric. Further, the weight applied to those non-CD or financial services hours should be minimized relative to the weight for hours provided that are specialized for CD or financial services.

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

The metric of community development service hours per full time employee should be required for all large banks and intermediate small banks. The data collection required for this metric is not burdensome as it involves relatively few data points.

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

NACEDA doesn't really see what a bank employee's job title adds to the test. We would rather regulators focus on the quality, creativeness, and responsiveness of the service provided, not which individual at the bank provided it.

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

NACEDA appreciates the regulators' desire to develop metrics over time that will inform the qualitative piece of the CD Services Test. NACEDA also thinks comparing service-hour metrics to peer banks would provide examiners a basis understanding of how well a given institution is serving the communities in which it does business. This would be especially true in non-MSA areas in which regulators seem to think there are not enough CD service or financial service opportunities for banks to receive credit. If that is the case (which NACEDA highly doubts), regulators would see a lack of activity across all banks in the non-MSA area. Our guess, however, is that if such data were collected within non-MSA areas, regulators would find an uneven number of hours across financial institutions. Some will be doing a better job of seizing service opportunities than others.