# Statement by the Bank Policy Institute

Before the U.S. House Committee on Financial Services Subcommittee on Consumer Protection and Financial Institutions

"Better Together: Examining the Unified Proposed Rule to Modernize the Community Reinvestment Act"

July 13, 2022

Chair Perlmutter, Ranking Member Luetkemeyer and members of the U.S. House Subcommittee on Consumer Protection and Financial Institutions:

The Bank Policy Institute thanks the House Financial Services Committee Subcommittee on Consumer Protection and Financial Institutions for holding a hearing to hear views on proposed changes to regulations implementing the Community Reinvestment Act. BPI and our member banks are actively investing in communities to address economic inequality and advance economic opportunity. The banking industry supports the goals of CRA and will continue to invest in the communities they serve, including low- and moderate-income (LMI) areas, to sustain and increase economic development and to support consumers and small businesses living and operating in those communities.

BPI appreciates the coordinated interagency proposal to implement CRA reform recently proposed by the Federal Deposit Insurance Corporation, the Federal Reserve Board, and the Office of the Comptroller of the Currency.[1] We also appreciate the three banking agencies' willingness to explore innovative ways to ensure that the CRA remains relevant and effective in encouraging banks to meet the credit needs of the communities they serve as the banking industry continues to evolve in light of technological advancements and changes in consumer demand for different types of banking products and services.

We are concerned, however, that certain aspects of the agencies' proposal would stray from the core mission of the CRA and risk undermining, rather than strengthening, the goals of the CRA.

As an initial matter, the proposed rule is unnecessarily complex and would impose multiple new tests, subtests, and factors on banks, and the agencies have not explained why they did not offer more straightforward, clear alternatives that would achieve similar objectives.

Second, the agencies propose to recalibrate certain tests under the CRA so stringently that it could lead to widespread downgrades of banks' performance, a result that the agencies do not rationalize or adequately explain. Critically, by imposing significant barriers to many large banks receiving "outstanding ratings," there could be *reduced* incentives to strive for such ratings, and thus, undermine the goals of the CRA.

Of significant concern, certain tests under the proposal would compare banks' performance to benchmarks that they would never know in advance, raising due process and fairness concerns. Banks should be able to know the benchmarks against which they will be evaluated in advance of the applicable performance period.

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1 Community Reinvestment Act, 87 Fed. Reg. 33,884 (June 3, 2022).

Banks also would be evaluated outside of their facility-based assessment areas, which would be inconsistent with the agencies' statutory authority under the CRA, which requires the federal banking agencies to prepare written evaluations of banks' CRA performance in geographies where banks have domestic branch offices, and does not refer to areas where banks provide loans.[2] The text is consistent with the underlying purposes of the CRA, which include ensuring that banks serve any community where they have branches that take deposits from that community.[3] Moreover, it takes time and dedicated resources to build meaningful CRA infrastructure in a given geography – especially to meet expectations regarding the *geographic* distribution of retail loans in that geography. Unfortunately, if making retail loans outside a bank's facility-based assessment areas could give rise to a stringent distribution analysis in new, separate geographies, banks may have a strong disincentive to offer lending products in many places outside their facility-based assessment areas where they lack these resources. As a result, underserved communities could suffer from a constriction in the availability of credit, frustrating further the very purpose of the CRA.

In addition, several elements of the proposal appear to serve as a *de facto* requirement to offer specific deposit services, products, and features, which indicates that the agencies have ventured far from their statutory mandate of encouraging a bank to meet the *credit needs* of its entire community. In particular, certain aspects of the proposal would appear to have the effect of regulating the cost of certain products and services. The agencies have no authority to impose price controls by capping these costs and fees, much less indirect authority within the CRA.

Although we are concerned with certain aspects of the proposal, importantly, we believe that the shortcomings described above are avoidable, and we look forward to engaging further with the agencies to collectively work towards a simpler, more flexible rule that allows banks to fulfill the goals of the CRA while recognizing the ongoing innovation occurring in the financial services marketplace.

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[2] *See, e.g.*, 12 U.S.C. § 2906(b)(1)(B).

[3] *See, e.g.*, 123 Cong. Reg. S8932 (daily ed. June 6, 1977) (Senator William Proxmire, the bill's sponsor in the Senate, stated in a floor debate that the statute was intended to solve the problem that "banks and savings and loans will take their deposits from a community and instead of reinvesting them in that community, they will invest them elsewhere . . ..").