# 180+ Ways to Shape the Future of the Community Reinvestment Act

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Linda Ezuka | www.cratoday.com

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Here are the key questions the regulators are contemplating regarding CRA modernization. They did our work, it's time to do ours.

Comments are due on: August 5, 2022

Pick a least 3-5 questions that matter the most to you and your bank. Formulate your feedback with a heavy emphasis on **proposed solutions.**

# Community Development Definitions

## Primary Purpose of Community Development

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

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?

## Affordable Housing

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?

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?

5. 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?

6. 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?

7. Should the proposed approach to consider-

ing 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?

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?

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?

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?

## Economic Development

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?

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?

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?

## Redefining Revitalization & Stabilization Activities

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?

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 low or moderate-income residents be reflected in the proposed definitions?

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?

**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?

**18.** Should the agencies consider any additional criteria to ensure that recovery of disaster areas benefits low- or moderate-income individuals and communities?

**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?

**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?

**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?

**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?

**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?

**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?

## Activities With MDIs, WDIs, LICUs, and CDFIs

**25.** Should the agencies also include in the MDI definition insured credit unions considered to be MDIs by the National Credit Union Administration?

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

## Financial Literacy

**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?

## Activities in Native Land Areas

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

**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?

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?

# Qualifying Activities Confirmation and Illustrative List of Activities

## Qualifying Activities Confirmation and Illustrative List of Activities

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

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

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.

# Impact Review of Community Development Activities

## Impact Review Factors

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?

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

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?

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?

38. For the proposed factor to designate activities benefitting or serving Native communities, should the factor be defined to include activities benefiting 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?

# Assessment Areas and Areas for Eligible Community Development Activity

## Facility-Based Assessment Areas

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?

**40.** Do the proposed definitions of "remote service facility" and "branch" include sufficient specificity for the types of facilities and circumstances under which banks would be required to delineate facility based assessment areas, or are other changes to the CRA regulations necessary to better clarify when the delineation of facility-based assessment areas would be required?

**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.

**42.** Should the proposed "accepts deposits" language be included in the definition of a branch?

### Retail Lending Assessment Areas

**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?

**44.** Should a bank be evaluated for all of 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?

**45.** The agencies' proposals for delineating retail lending assessment areas and evaluating remaining outside lending at the institution level for large banks are intended to meet the objectives of reflecting changes in banking over time while retaining a local focus to CRA evaluations. What alternative methods should the agencies consider for evaluating outside lending that would preserve a bank's obligation to meet the needs of its local communities?

**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?

### Areas for Eligible Community Development Activity

**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?

**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?

## Performance Tests, Standards, and Ratings in General

### Performance Tests, Tailoring to Bank Size, and Asset Thresholds

**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?

**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?

**51.** Should the agencies adopt an asset threshold for small banks that differs from the SBA's size standards of $750 million for purposes of CRA regulations? Is the proposed asset threshold of $600 million appropriate?

### Affiliate and Other Considerations

**52.** The agencies propose to require that the activities of a bank's operations and operating subsidiaries be included as part of its CRA evaluation, as banks exercise a high level of ownership, control, and management of their subsidiaries, such that the activities of these subsidiaries could reasonably be attributable directly to the bank. What, if any, other factors should be taken into account with regard to this requirement?

**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?

**54.** When a bank chooses to have the agencies consider retail loans within a retail loan category that are made or purchased by one or more of the bank's affiliates in a particular assessment area, should the agencies consider all of the retail loans within that retail loan category made by all of the bank's affiliates only in that particular assessment area, or should the agencies then consider all of the retail loans made by all of the bank's affiliates within that retail loan category in all of the bank's assessment areas?

### Performance Context Information Considered

**55.** The agencies request feedback on the proposed performance context factors in § __.21(e). Are there other ways to bring greater clarity to the use of performance context factors as applied to different performance tests?

## Retail Lending Test Product Categories and Major Product Lines

### Retail Lending Test Product Categories

**56.** Should the agencies aggregate closed-end home mortgage loans of all purposes? Or should the agencies evaluate loans with different purposes separately given that the factors driving demand for home purchase, home refinance, and other purpose home mortgage loans vary over time and meet different credit needs?

**57.** Should the agencies exclude home improvement and other purpose closed-end home mortgage loans from the closed-end home mortgage loan product category to emphasize home purchase and refinance lending? If so, should home improvement and other purpose closed end home mortgage loans be evaluated under the Retail Lending Test as a distinct product category or qualitatively under the Retail Services and Products Test?

**58.** Should the agencies include closed-end non-owner-occupied housing lending in the closed-end home mortgage loan product category?

**59.** Should open-end home mortgage loans be evaluated qualitatively under the Retail Services and Products Test rather than with metrics under the Retail Lending Test?

**60.** Should multifamily lending be evaluated under the Retail Lending Test and the Community Development Financing Test (or the Community Development Test for Wholesale or Limited Purpose Banks)? Or should multifamily lending be instead evaluated only under the Community Development Financing Test?

61. Should banks that are primarily multifamily lenders be designated as limited purpose banks and have their multifamily lending evaluated only under the Community Development Financing Test?

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

63. Should the agencies' current small business loan and small farm loan definitions sunset on the compliance date of the definitions proposed by the agencies?

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

65. Would it be appropriate to consider information indicating that retail loan purchases were made for the sole or primary purpose of inappropriately influencing the bank's retail lending performance evaluation as an additional factor in considering the bank's performance under the metrics or should such purchased loans be removed from the bank's metrics?

66. Do the benefits of evaluating automobile lending under the metrics-based Retail Lending Test outweigh the potential downsides, particularly related to data collection and reporting burden? In the alternative, should the agencies adopt a qualitative approach to evaluate automobile lending for all banks under the proposed Retail Lending Test?

67. Should credit cards be included in CRA evaluations? If so, when credit card loans constitute a major project line, should they be evaluated quantitatively under the proposed Retail Lending Test or qualitatively under the proposed Retail Services and Products Test?

68. What data collection and reporting challenges, if any, for credit card loans could adversely affect the accuracy of metrics?

69. Should the agencies adopt a qualitative approach to evaluate consumer loans? Should qualitative evaluation be limited to certain consumer loan categories or types?

### Major Product Line Approach

70. Should the agencies use a different standard for determining when to evaluate closed-end home mortgage, open-end home mortgage, multifamily, small business, and small farm lending? If so, what methodology should the agencies use and why? Should the agencies use a different standard for determining when to evaluate automobile loans?

71. Should the agencies use a different standard for determining when to evaluate multifamily loans under the Retail Lending Test? If so, should the standard be dependent on whether the lender is a monoline multifamily lender or is predominantly a multifamily lender within the geographic area? Relatedly, what should a "predominantly" standard be for determining whether multifamily loans constitute a major product line entail?

## Retail Lending Test Evaluation Framework for Facility-Based Assessment Areas and Retail Lending Assessment Areas

### Retail Lending Volume Screen

72. For calculating the bank volume metric, what alternatives should the agencies consider to the proposed approach of using collected deposits data for large banks with assets of over $10 billion and for other banks that elect to collect this data, and using the

FDIC's Summary of Deposits data for other banks that do not collect this data? For calculating the market volume benchmark, what alternatives should the agencies consider to the proposed approach of using reported deposits data for large banks with assets of over $10 billion, and using the FDIC's Summary of Deposits data for large banks with assets of $10 billion or less?

**73.** Should large banks receive a recommended Retail Lending Test conclusion of "Substantial Noncompliance" for performance below a threshold lower than 30 percent (e.g.,15 percent of the market volume benchmark) on the retail lending volume screen?

## Bank Geographic Distribution Metrics and Borrower Distribution Metrics

**74.** Should the geographic distribution evaluations of banks with few or no low- and moderate-income census tracts in their assessment areas include the distribution of lending to distressed and underserved census tracts? Alternatively, should the distribution of lending in distressed and underserved census tracts be considered qualitatively?

**75.** Is the choice of $250,000 gross annual revenue an appropriate threshold to distinguish whether a business or farm may be particularly likely to have unmet credit needs, or should the threshold be lower (e.g., $100,000) or higher (e.g., $500,000)?

## Methodology for Setting Performance Ranges

**76.** Should the community benchmarks be set using the most recent data available at the time of the examination? Would an alternative method that establishes benchmarks earlier be preferable?

**77.** Should the bank volume metric and distribution bank metrics use all data from the bank's evaluation period, while the market volume benchmark and distribution market benchmarks use only reported data available at the time of the exam? Would an alternative in which the bank volume metrics and distribution bank metrics were calculated from bank data covering only the same years for which that reported data was available be preferable?

**78.** Are the proposed community benchmarks appropriate, including the use of low-income and moderate-income family counts for the borrower distribution of home mortgage lending? Would alternative benchmarks be preferable? If so, which ones?

**79.** Should automobile lending for all banks be evaluated using benchmarks developed only from the lending of banks with assets of over $10 billion?

**80.** Are the proposed market and community multipliers for each conclusion category set at appropriate levels? If not, what other set of multipliers would be preferable? In general, are the resulting thresholds set at an appropriate level for each conclusion category?

**81.** How should the agencies use the calibrated market benchmark and calibrated community benchmark to set performance thresholds? Should the agencies set thresholds based on the lower of the calibrated market benchmark or calibrated community benchmark?

**82.** How should the agencies address the potential concern that the proposed approach may set performance expectations too low in places where all lenders, or a significant share of lenders, are under-serving the market and failing to meet community credit needs? Should the agencies consider an alternative approach to setting the performance thresholds that would use a weighted average of the calibrated market benchmark and calibrated community benchmark?

## Developing Product Line Scores in Each Assessment Area

**83.** Should the agencies weigh the two distribution results equally? Should the borrower distribution conclusion be weighted more heavily than the geographic distribution conclusion to provide an additional incentive for lending to low and moderate-income borrowers in certain areas ? Are there circumstances under which the geographic distribution conclusion should be weighed less heavily, such as in rural areas with few low- and moderate-income census tracts or where the number of investor loans is increasing rapidly?

### Using Weighted Average of Product Line Scores To Create Recommended Retail Lending Test Conclusion

**84.** Should the agencies use loan count in conjunction with, or in place of, dollar volume in weighting product line conclusions to determine the overall Retail Lending Test conclusion in an assessment area?

### Additional Factors Considered for Retail Lending Test Conclusion

**85.** Would identifying underperforming markets appropriately counter the possibility that the market benchmarks might be set too low in some assessment areas? If so, what data points should be used to set expectations for the market benchmark? How far below this expectation should an observed market benchmark be allowed to fall before the market is designated as underperforming?

**86.** Should the agencies consider other factors, such as oral or written comments about a bank's retail lending performance, as well as the bank's responses to those comments, in developing Retail Lending Test conclusions?

## Retail Lending Test: Evaluation Framework for Retail Lending Test Conclusions at the State, Multistate MSA, and Institution Level

### Overview

**87.** Should all large banks have their retail lending in their outside retail lending areas evaluated? Should the agencies exempt banks that make more than a certain percentage, such as 80 percent, of their retail loans within facility-based assessment areas and retail lending assessment areas? At what percentage should this exemption threshold be set?

### Outside Assessment Area Lending

**88.** Does the tailored benchmark method proposed above for setting performance ranges for outside retail lending areas achieve a balance between matching expectations to a bank's lending opportunities, limiting complexity, and setting appropriate performance standards? Should the agencies instead use less tailored benchmarks by setting a uniform outside retail lending areas benchmarks for every bank? Or should the agencies use a more tailored benchmarks by setting weights on geographies by individual product line?

### Calculating Retail Lending Test Conclusions at the State, Multistate MSA, and Institution Level

**89.** Should assessment area and outside retail lending area conclusions be weighted by the average of a bank's percentage of loans and deposits there? Is the proposed approach for using FDIC's Summary of Deposits data for banks that do not collect and maintain deposits data appropriate? Should the agencies use another method for choosing weights?

## Retail Services and Products Test

### Delivery Systems Evaluation

**90.** Should the agencies use the percentage of families and total population in an assessment area by census tract income level in addition to the other comparators listed (i.e., census tracts, households, and businesses) for the assessment of branches and remote service facilities?

**91.** Are there other alternative approaches or definitions the agencies should consider in designating places with limited branch access for communities, such as branch distance thresholds determined by census tract population densities, commuting patterns or some other metric? For example, should the agencies not divide geographies and use the more flexible, second alternative approach?

**92.** How should geographies be divided to appropriately identify different distance thresholds? Should they be divided according to those in the proposed approach of urban, suburban, and rural areas; those in the alternative approach of central counties, outlying counties, and nonmetropolitan counties; or some other delineation?

**93.** How narrowly should designations of low branch access and very low branch access be tailored so that banks may target additional retail services appropriately?

**94.** Is a fixed distance standard that allows the concentration of low and very low branch access areas to vary across regions, such as that in the proposed approach, or a locally determined distance threshold that identifies a similar concentration of low and very low branch access areas within each local area, such as that in the alternative approach, most appropriate when identifying areas with limited branch access?

**95.** Should the agencies take into consideration credit union locations in any of the proposed approaches, or should the analysis be based solely on the distribution of bank branches? For example, in the proposed or local approach, having a credit union within the relevant distance of a census tract population center would mean that the census tract would not be a very low branch access census tract (if there were no bank branch present).

**96.** If the local approach were adopted, how frequently should the local distances be updated?

**97.** What other branch-based services could be considered as responsive to low- and moderate income needs?

**98.** Should branches in distressed or underserved middle income nonmetropolitan census tracts receive qualitative consideration, without documenting that the branch provides services to low- or moderate income individuals?

**99.** Should the agencies provide favorable qualitative consideration for retail branching in middle-income and upper-income census tracts if a bank can demonstrate that branch locations in these geographies deliver services to low- or moderate-income individuals? What information should banks provide to demonstrate such service to low- or moderate-income individuals?

**100.** How could the agencies further define ways to evaluate the digital activity by individuals in low-, moderate-, middle-, and upper-income census tracts, as part of a bank's digital and other delivery systems evaluation?

**101.** Should affordability be one of the factors in evaluating digital and other delivery systems? If so, what data should the agencies consider?

**102.** Are there comparators that the agencies should consider to assess the degree to which a bank is reaching individuals in low- or moderate-income census tracts through digital and other delivery systems?

**103.** Should the evaluation of digital and other delivery systems be optional for banks with assets of $10 billion or less as proposed, or should this component be required for these banks? Alternatively, should the agencies maintain current evaluation standards for alternative delivery systems for banks within this tier?

## Credit and Deposit Products Evaluation

**104.** Are there additional categories of responsive credit products and programs that should be included in the regulation for qualitative consideration?

**105.** Should the agencies provide more specific guidance regarding what credit products and programs may be considered especially responsive, or is it preferable to provide general criteria so as not to discourage a bank from pursuing impactful and responsive activities that may deviate from the specific examples?

**106.** Should special purpose credit programs meeting the credit needs of a bank's assessment areas be included in the regulation as an example of loan product or program that facilitates home mortgage and consumer lending for low- and moderate-income individuals?

**107.** Are the features of cost, functionality, and inclusion of access appropriate for establishing whether a deposit product is responsive to the needs of low- and moderate-income individuals? What other features or characteristics should be considered? Should a minimum number of features be met in order to be considered 'responsive'?

**108.** The agencies wish to encourage retail banking activities that may increase access to credit. Aside from deposit accounts, are there other products or services that may increase credit access?

**109.** Are the proposed usage factors appropriate for an evaluation of responsive deposit products? Should the agencies consider the total number of active responsive deposit products relative to all active consumer deposit accounts offered by the bank?

**110.** Should the agencies take other information into consideration when evaluating the responsiveness of a bank's deposit products, such as the location where the responsive deposit products are made available?

**111.** Should large banks with assets of $10 billion or less have the option of a responsive deposit products evaluation, as proposed, or should this component be required, as it is for large banks with assets of over $10 billion?

## Retail Services and Products Test Performance Conclusions and Ratings

**112.** For all large banks, the agencies propose to evaluate the bank's delivery systems (branches and remote service facilities) at the assessment area level, and the digital and other delivery systems at the institution level. Is this appropriate, or should both subcomponents be evaluated at the same level, and if so, which level?

**113.** The agencies propose weighting the digital and other delivery systems component relative to the physical delivery systems according to the bank's business model, as demonstrated by the share of consumer accounts opened digitally. Is this an appropriate approach, or is there an alternative that could be implemented consistently? Or, should the weighting be determined based on performance context?

**114.** How should the agencies weight the two subcomponents of the credit and deposit products evaluation? Should the two subcomponents receive equal weighting, or should examiner judgment and performance context determine the relative weighting?

**115.** Should the credit and deposit products evaluation receive its own conclusion that is combined with the delivery systems evaluation for an overall institution conclusion? Or should favorable performance on the credit and deposit products evaluation be used solely to upgrade the delivery systems conclusion? For large banks with assets of $10 billion or less that elect to be evaluated on their digital delivery systems and deposit products, how should their performance in these areas be considered when determining the bank's overall Retail Services and Products Test conclusion?

**116.** Should each part of the Retail Services and Products Test receive equal weighting to derive the institution conclusion, or should the weighting vary by a bank's business model and other performance context?

# Community Development Financing Test

## Allocation of Community Development Financing Activities

**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?

**118.** What methodology should be used to allocate the dollar value of activities to specific counties for activities that serve multiple counties? For example, should the agencies use the distribution of all low and moderate-income families across the applicable counties? Or, should the agencies use an alternative approach, such as the distribution of the total population across the applicable counties? Should the agencies consider other measures that would reflect economic development activities that benefit small businesses and small farms or use a standardized approach to allocate activities?

## Facility-Based Assessment Area Community Development Financing Evaluation

**119.** The agencies are seeking feedback on alternatives to determining the denominator of the bank assessment area community development financing metric. What are the benefits and drawbacks, including data challenges, of implementing an alternative approach that bases the denominator of the metric on the share of bank depositors residing in the assessment area (described above) in contrast to the proposed approach of relying on dollar amounts of deposits?

**120.** For large banks with assets of $10 billion or less, under the proposed Community Development Financing Test, is it appropriate to use the FDIC's Summary of Deposits data instead of deposits data that is required to be collected and maintained by the bank to tailor new data requirements, or would it be preferable to require collected deposits data for all large banks?

**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?

**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?

## Multistate MSA Community Development Financing Test Conclusions

**123.** When calculating the weighted average of facility-based assessment area conclusions and assessment area community development financing benchmarks, is it appropriate to weight assessment area metrics and benchmarks by the average share of loans and deposits, as proposed?

**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?

**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?

**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?

# Community Development Services Test

## Community Development Services Test Evaluation

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

**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?

**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?

**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?

# Wholesale and Limited Purpose Banks

## Conclusions for Wholesale and Limited Purpose Bank Evaluations

**131.** How could the agencies provide more certainty in the evaluation of community development financing at the facility-based assessment area level? Should a bank assessment area community development financing metric be used to measure the amount of community development financing activities relative to a bank's capacity? If so, what is the appropriate denominator?

**132.** Should a benchmark be established to evaluate community development financing performance for wholesale and limited purpose banks at the institution level? If so, should the nationwide community development financing benchmark for all large banks be used, or should the benchmark be tailored specifically to wholesale and limited purpose banks?

**133.** For wholesale and limited purpose banks that wish to receive consideration for community development services, should these banks be required to opt into the proposed Community Development Services Test, or should they have the option to submit services to be reviewed on a qualitative basis at the institution level, without having to opt into the Community Development Services Test?

# Strategic Plans

## Strategic Plan Improvements

**134.** Should the strategic plan option continue to be available to all banks, or do changes in the proposed regulation's assessment area provisions and the metrics approach reduce the need for the strategic plan option for banks with specialized business strategies?

**135.** Large banks electing to be evaluated under a strategic plan would have activities outside of facility-based assessment areas considered through retail lending assessment areas and then outside retail lending assessment areas. Should small and intermediate banks electing to be evaluated under a strategic plan be allowed to delineate the same types of assessment areas? What criteria should there be for choosing additional assessment areas? Could such banks have the ability to incorporate goals for facility-based assessment areas and goals for outside of assessment areas?

136. In assessing performance under a strategic plan, the agencies determine whether a bank has "substantially met" its plan goals. Should the agencies continue to maintain the substantially met criteria? If so, should it be defined and how? For example, as a percentage (e.g., 95 percent) of each measurable goal included in the plan, the percentage of goals met, or a combination of how many goals were not met and by how much?

137. The agencies are considering announcing pending strategic plans using the same means used to announce upcoming examination schedules or completed CRA examinations and CRA ratings. What are the potential advantages or disadvantages to making the draft plans available on the regulators' websites?

138. In addition to posting draft plans on a bank's website and the appropriate Federal banking agency's website, should approved strategic plans also be posted on a bank's website and the appropriate Federal banking agency's website?

## Assigned Conclusions and Ratings

### Combining Test Performance Scores To Determine Overall Ratings

139. The agencies request feedback on whether it would be more appropriate to weight retail lending activity 60 percent and community development activity 40 percent in deriving the overall rating at the state, multistate MSA or institution level for an intermediate bank in order to maintain the CRA's focus on meeting community credit needs through small business loans, small farm loans, and home mortgage loans.

### Limitations on Overall Ratings

140. What are the advantages and disadvantages of the proposal to limit the state, multistate MSA, and institution-level ratings to at most a "Needs to Improve" for large banks with ten or more assessment areas unless 60 percent or more of the bank's assessment areas at that level have an overall performance of at least "Low Satisfactory"? Should this limitation apply to all assessment areas, or only facility-based assessment areas? Is ten assessment areas the right threshold number to prompt this limitation, and is 60 percent the right threshold number to pass it? If not, what should that number be? Importantly, what impact would this proposal have on branch closures?

## Performance Standards for Small Banks and Intermediate Banks

### Small Bank Performance Standards

141. The agencies propose to continue to evaluate small banks under the current framework in order to tailor the evaluation approach according to a bank's size and business model. What are other ways of tailoring the performance evaluation for small banks?

142. Should additional consideration be provided to small banks that conduct activities that would be considered under the Retail Services and Products Test, Community Development Financing Test, or Community Development Services Test when determining the bank's overall institution rating?

### Intermediate Bank Performance Standards

143. The agencies' proposal to require intermediate banks to be evaluated under the proposed Retail Lending Test is intended to provide intermediate banks with increased clarity and transparency of supervisory expectations and standards for evaluating their retail lending products. The agencies propose tailoring the application of this test by limiting data reporting requirements for intermediate banks. Are there other ways of tailoring the Retail Lending Test for intermediate banks that should be considered?

144. The agencies propose to provide continued flexibility for the consideration of community development activities conducted by intermediate banks both under the status-quo community development test and the proposed Com-

munity Development Financing Test. Specifically, intermediate banks' retail loans such as small business, small farm, and home mortgage loans may be considered as community development loans, provided those loans have a primary purpose of community development and the bank is not required to report those loans. Should the agencies provide consideration for those loans under the Community Development Financing Test?

**145.** Should intermediate banks be able to choose whether a small business or small farm loan is considered under the Retail Lending Test or, if it has a primary purpose of community development, under the applicable community development evaluation, regardless of the reporting status of these loans? Should the same approach be applied for the intermediate bank community development performance standards in § __.29(b) and for intermediate banks that decide to opt into the Community Development Financing Test in § __.24?

## Effect of CRA Performance on Applications

### Proposed Approach for CRA Consideration in Applications

**146.** Are the agencies' current policies for considering CRA performance on applications sufficient? If not, what changes would make the process more effective?

## Data Collection, Reporting, and Disclosure

### Deposits Data

**147.** What are the potential benefits and downsides of the proposed approach to require deposits data collection, maintenance, and reporting only for large banks with assets of over $10 billion? Does the proposed approach create an appropriate balance between tailoring data requirements and ensuring accuracy of the proposed metrics? Should the agencies consider an alternative approach of requiring, rather than allowing the option for, large banks with assets of $10 billion or less to collect and maintain deposits data? If so, would a longer transition period for large banks with assets of $10 billion or less to begin to collect and maintain deposits data (such as an additional 12 or 24 months beyond the transition period for large banks with assets of over $10 billion) make this alternative more feasible?

**148.** Should large banks with assets of $10 billion or less that elect to collect and maintain deposits data also be required to report deposits data? Under an alternative approach in which all large banks with assets of $10 billion or less are required to collect and maintain deposits data, should these banks also be required to report the data, or would it be appropriate to limit new data burden for these banks by not requiring them to report the data?

**149.** What are alternative approaches to deposits data collection and maintenance that would achieve a balance between supporting the proposed metrics and minimizing additional data burden? Would it be preferable to require deposits data collected as a year- or quarterly-end total, rather than an average annual deposit balance calculated based on average daily balances from monthly or quarterly statements?

**150.** Should deposits sourced from commercial banks or other depository institutions be excluded from the deposits data that is reported or optionally maintained by banks? Should other categories of deposits be included in this deposits data?

**151.** For what types of deposit accounts, such as pre-paid debit card accounts, and Health Savings Accounts, might depositor location be unavailable to the bank? For these account types, is it appropriate to require the data to be reported at the institution level? Should brokered deposits be reported at the institution level as well?

**152.** What is the appropriate treatment of non-brokered reciprocal deposits? Should a non-brokered reciprocal deposit be considered as a deposit for the bank sending the non-brokered reciprocal deposit, but not be considered as a deposit for the bank receiving the reciprocal deposit?

**153.** Do bank operational systems permit the collection of deposit information at the county-level, based on a depositor's address, or would systems need to be modified to capture this information? If systems need to be modified or upgraded, what would the associated costs be?

**154.** In order to reduce burden associated with the reporting of deposits data, what other steps can the agencies take or what guidance or reporting tools can the agencies develop to reduce burden while still ensuring adequate data to inform the metrics approach?

**155.** Should the agencies consider an alternative approach of publishing a data set containing county level deposits data in order to provide greater insight into bank performance?

## Retail Lending Data

**156.** Should banks collect and report an indicator for whether the loan was made to a business or farm with gross annual revenues of $250,000 or less or another gross annual revenue threshold that better represents lending to the smallest businesses or farms during the interim period before the CFPB Section 1071 Rulemaking is in effect?

**157.** Would the benefits of requiring home mortgage data collection by non-HMDA reporter large banks that engage in a minimum volume of mortgage lending outweigh the burden associated with such data collection? Does the further benefit of requiring this data to be reported outweigh the additional burden of reporting?

**158.** Should large banks with assets of $10 billion or less be required to collect, maintain, and report automobile lending data? If so, would a longer transition period for large banks with assets of $10 billion or less to begin to collect, maintain, and report automobile lending data (such as an additional 12 or 24 months beyond the transition period for large banks with assets of over $10 billion) make this alternative more feasible? Does the added value from being able to use these data in the construction of metrics and benchmarks outweigh the burden involved in requiring data collection and reporting by these banks?

**159.** Should the agencies streamline any of the proposed data fields for collecting and reporting automobile data? If so, would it still allow for constructing comprehensive automobile lending metrics?

**160.** Should the agencies consider publishing county-level automobile lending data in the form of a data set?

## Community Development Financing Activity Data

**161.** How might the format and level of data required to be reported affect the burden on those banks required to report community development financing activity data, as well as the usefulness of the data? For example, would it be appropriate to require reporting community development financing data aggregated at the county-level as opposed to the individual activity-level?

**162.** What other steps can the agencies take, or what procedures can the agencies develop, to reduce the burden of the collection of additional community development financing data fields while still ensuring adequate data to inform the evaluation of performance? How could a data template be designed to promote consistency and reduce burden?

## Retail Services and Products Data

**163.** Should the agencies require the collection and maintenance of branch and remote service availability data as proposed, or alternatively, should the agencies continue with the current practice of reviewing this data from the bank's public file?

**164.** Should the agencies determine which data points a bank should collect and maintain to demonstrate responsiveness to low- and moderate-income individuals via the bank's digital and other delivery systems such as usage? Alternatively, should the agencies grant banks the flexibility to determine which data points to collect and maintain for evaluation?

**165.** Are the proposed data collection elements for responsive deposit products appropriate, or are there alternatives to the proposed approach that more efficiently facilitate the evaluation of responsive deposit products? Should the agencies require collection and maintenance of specific data elements for the evaluation of responsive deposit products? Alternatively, should the agencies grant banks the flexibility to determine which data points to collect and maintain for evaluation?

**166.** Does the proposed retail services data exist in a format that is feasibly transferrable to data collection, or would a required template provided by the agencies be sufficient in the collection of retail services and products information?

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

**168.** Should large banks with assets of $10 billion or less be required to collect and maintain data on deposit product responsiveness and/or digital and other delivery systems? If so, would a longer transition period to begin to collect and report such data (such as an additional 12 or 24 months beyond the transition period for large banks with assets of over $10 billion) make this alternative more feasible? Does the added value from being able to use this data outweigh the burden involved in requiring data collection by these banks?

## Community Development Services Data

**169.** Should large banks with assets of $10 billion or less be required to collect community development services data in a machine readable form, as prescribed by the agencies, equivalent to the data required to be collected and maintained by large banks with assets of over $10 billion? Under this alternative, should large banks with assets of $10 billion or less have the option of using a standardized template or collecting and maintaining the data in their own format? If large banks with assets of $10 billion or less are required to collect and maintain community development services data, would a longer transition period for these banks to begin to collect and maintain deposits data (such as an additional 12 or 24 months beyond the transition period for large banks with assets of over $10 billion) make this alternative more feasible? Does the added value from being able to use this data in the construction of a metric outweigh the burden involved in requiring data collection by these banks?

**170.** Should large banks with assets of over $10 billion be required to collect, maintain, and report data on the number of full-time equivalent employees at the assessment area, state, multistate MSA and institution level in order to develop a standardized metric to evaluate community development service performance for these banks?

## Data for Delineating Assessment Areas

**171.** Should small banks that opt to be evaluated under the metrics-based Retail Lending Test be required to collect, maintain, and report related data or is it appropriate to use data that a small bank maintains in its own format or by sampling the bank's loan files?

**172.** Would a tool to identify retail lending assessment areas based on reported data be useful?

## Disclosure of HMDA Data by Race and Ethnicity

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

# Content and Availability of Public File, Public Notice by Banks, Publication of Planned Examination Schedule, and Public Engagement

## Public Engagement

**174.** Are there other ways the agencies could encourage public comments related to CRA examinations, including any suggested changes to proposed § __.46?

175. Is there additional data the agencies should provide the public and what would that be?

176. Should the agencies publish bank-related data, such as retail lending and community development financing metrics, in advance of an examination to provide additional information to the public?

177. Should the agencies ask for public comment about community credit needs and opportunities in specific geographies?

## Transition

### Strategic Plans

178. The agencies ask for comment on the proposed effective date and the applicability dates for the various provisions of the proposed rule, including on the proposed start date for CRA examinations under the new tests.

179. Would it be better to tie the timing of a change to the proposed small business and small farm definitions to when the CFPB finalizes its Section 1071 Rulemaking or to provide an additional 12 months after the CFPB finalizes its proposed rule? What are the advantages and disadvantages of each option?

180. When should the agencies sunset the agencies' small business loan and small farm loan definitions?

*— Courtesy: https://www.govinfo.gov/content/pkg/FR-2022-06-03/pdf/2022-10111.pdf*

## Next Steps

**The regulators did their work, now we need to do ours. It is imperative that all CRA professionals and executive management take the proposed rules and study the impact the provisions would have on the bank, if implemented. Most say, the majority of banks would be downgraded as a result of these regulatory changes.**

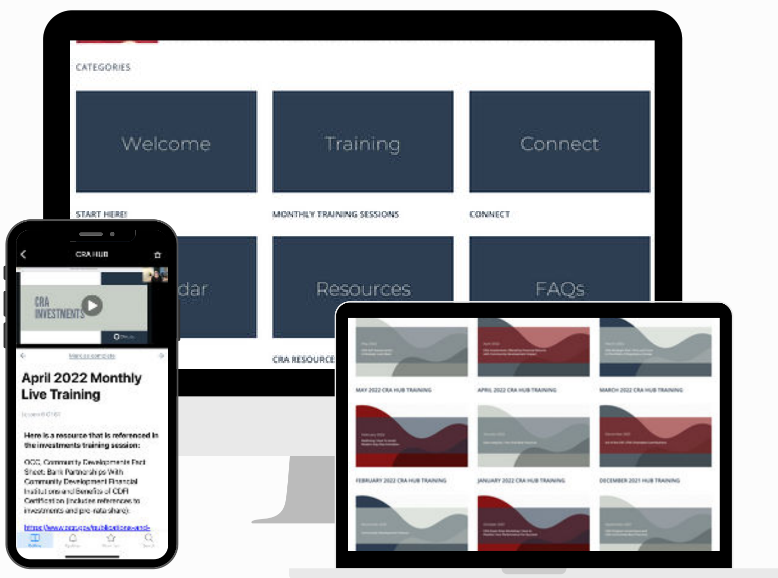
- [ ] Join the American Bankers Association CRA working group to get crystal clear on the key provisions of the proposed regulation.
- [ ] Brief your CRA committee and executive management and facilitate a conversation around the impact to your bank based on asset size, proposed assessment area delineations and performance measures.
- [ ] Identify 3-5 key provisions that your bank cares deeply about and propose alternative solutions. Be sure to demonstrate how the implementation of the provisions might have unintended consequences, if applicable.
- [ ] Identify 3-5 aspects of the current regulation that could use further clarification to further support your demonstrated commitment to your local communities.
- [ ] Join like-minded CRA and compliance professionals to discuss the proposed rules, to development solutions and eventually, support each other in the implementation of the new regulation. We've got this!

# Whatever the outcome,
# you don't have to do it alone.

"IN THIS WORLD, NOTHING IS CERTAIN
EXCEPT DEATH, TAXES AND REGULATORY CHANGE!"

~BEN FRANKLIN AND LINDA EZUKA

## CRA HUB MEMBERSHIP FOR CRA PROFESSIONALS




### About CRA Hub

CRA Today is home to the CRA Hub, a membership designed to offer structured guidance around running CRA programs. CRA Hub creates clarity around the technical aspects of the CRA, and builds a community of community development professionals across the nation.

Membership helps CRA professionals master the CRA, get exam ready and reinvest capital for the greater good.

Website: www.cratoday.com/hub

CRAtoday

# Linda Lewis Ezuka

FOUNDER, CRA TODAY & CRA HUB

Linda Lewis Ezuka is the Founder of ***CRA Today*** and the **CRA Hub**, an exclusive membership for bank professionals to master the art of the CRA and transform communities through economic development.

Linda also hosts the **CRA Podcast**, a podcast to elevate conversations around the Community Reinvestment Act.

Ms. Ezuka has over 28 years of community development experience, with emphasis on:

- CRA compliance
- CRA on-site and remote training
- Community development lending
- CDFI initiatives

She has led CRA programs for large banks and has spent the last 14 years consulting with banks of all sizes and regulators.

> "My mission is to inspire bankers to see CRA not as a regulatory burden, but as a tool for community empowerment and profitable business opportunities."

## HIGHLIGHTS

Ms. Ezuka currently serves on:

- The Board and Investment Committee of the HMSA Foundation
- The Advisory Board of the Patsy T. Mink Center for Business & Leadership.

She was previously Chairwoman for the Board for the YWCA of Oahu, Hospice Hawaii and HUGS. She has also served on various nonprofit boards, focusing her leadership efforts on serving CDFIs and disadvantaged communities.

She is a CDFI NMTC and CDFI Reader, a Pacific Century Fellow, an SBA Financial Services Advocate of the Year Awardee, and a Pacific Business News 40 Under 40 Honoree.

## Let's Connect

Website: www.cratoday.com

**Email**: linda@cratoday.com

**CRA Hub**: www.cratoday.com/hub

**Podcast**: www.cratoday.com/cra-podcast

**LinkedIn**: linkedin.com/in/linda-ezuka-cra-today/