

April 6, 2020

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

Robert E. Feldman, Executive Secretary
Attention: Comments RIN 3064-AF22
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

RE: Community Reinvestment Act Regulations, Notice of Proposed Rulemaking [OCC Docket ID OCC-2018-0008, FDIC Docket ID RIN 3064-AF22]

To Whom It May Concern:

Thank you for the opportunity to comment on the Notice of Proposed Rulemaking (NPRM) entitled "Community Reinvestment Act Regulations," which was published in the Federal Register on January 9, 2020 by the Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation (collectively, "the Agencies"). This is a critical rulemaking, and NeighborWorks has serious concerns about the proposed changes to the regulations governing examinations under the Community Reinvestment Act.

Please note that these comments have not been submitted to or approved by NeighborWorks America's board and do not necessarily represent the views of its board members, either collectively or as individuals. These comments have been formed based on the ongoing work of NeighborWorks America with our network of nearly 250 NeighborWorks-chartered local and regional nonprofits.

For over 40 years, the Neighborhood Reinvestment Corp. (doing business as NeighborWorks America), a Congressionally-chartered, national, nonpartisan nonprofit, has created opportunities for people to improve their lives and strengthen their communities by providing access to homeownership and safe, affordable rental housing, increasing financial capability, and promoting community and economic development. NeighborWorks America traces its origins to the same era and circumstances that drove enactment of the Community

Reinvestment Act, and it is with this shared history in mind that we offer our perspective on the Notice of Proposed Rulemaking (NPRM).

NeighborWorks is deeply concerned about the framework that the Agencies have proposed for revising the Community Reinvestment Act (CRA). CRA is a critical framework for ensuring that the low- and moderate-income (LMI) people that NeighborWorks organizations serve have access to safe, sustainable banking and financial products, and that the neighborhoods in which they live are able to attract and retain investment from homeowners, small businesses, and others. CRA also provides incentives for banks to partner with NeighborWorks organizations and other community-based organizations to increase their reach and enhance access to safe and responsible financial products and services. NeighborWorks and the organizations that make up the NeighborWorks network have a vested interest in ensuring that CRA is preserved and the regulatory structures strengthened to meet the needs of LMI people and communities in a changing banking environment. This proposed rule puts this all at risk.

While over forty years have passed since the Community Reinvestment Act was signed into statute, the law remains vital today to ensure that banks meet the credit needs of the communities that they serve, particularly in low- and moderate-income neighborhoods. Since its enactment, the legislation and accompanying regulations and guidance have been updated periodically, but additional changes are still needed to reflect the realities of the modern financial system, community needs, and the regulatory environment. To that end, NeighborWorks is conceptually supportive of efforts to revise the CRA regulations.

Despite the passage of four decades, however, there is still evidence that redlining continues in communities across the country. To be successful, this opportunity to modernize the CRA regulations should result in standards that are as strong or stronger than current standards. While NeighborWorks supports improving the framework in keeping with the goals we share with the Agencies, great care must be taken to ensure that no changes result, intentionally or otherwise, in the weakening of CRA. Now more than ever, we must harness the power of this important statute to ensure credit and investment flow to all communities to stabilize markets, create economic opportunities, and realize the full potential of this tool. In times of economic upheaval, partnership and collaboration between banks and community development organizations has been critical, most recently exemplified by the response to the foreclosure crisis in the Great Recession. Without an infrastructure like CRA, we risk losing this important lesson and tool.

In response to the Advanced Notice of Proposed Rulemaking published by the OCC in 2018, 108 NeighborWorks organizations submitted comments. In addition to expressing nearly universal opposition to the concept of a single metric, a large number of network organizations also commented on the importance of maintaining CRA's focus on local communities and expanding incentives for banks to serve other areas. Many of the letters also emphasized the

importance of encouraging partnerships with local organizations, with many of them recommending that work undertaken in partnership with a NeighborWorks organization be deemed automatically eligible for CRA consideration. Finally, many of the letters underscored the importance of retaining a meaningful role for public input in the CRA evaluation process.

The central issue going forward should be to preserve the foundations of CRA – the community-based focus, the reliance on community input, and the consideration of discriminatory and other illegal credit practices in the CRA evaluation - while modernizing the regulations to reflect the current banking landscape. For example, online and mobile technologies have fundamentally altered the opportunities for access to and delivery of financial services. At the same time, community development organizations have also matured and specialized. While the evolution of institutions and the landscape in which they operate is undeniable, we are concerned that the NPRM prioritizes simplifying the mechanics of CRA evaluations at the expense of maintaining a core emphasis on meeting the credit needs of LMI people and places.

NeighborWorks' concerns about the proposed framework are manifold. The proposed rule adheres to a strictly quantitative mechanism for evaluating banks' activities to meet the credit needs of their communities, a structure which NeighborWorks believes is fundamentally flawed. The framework requires that all bank activity be converted and measured in dollars, with the assumption that each dollar is as valuable as the next. Simply put, it would be impossible to design a system of multipliers and other adjustments that could adequately compensate for the nuance that this structure lacks. When evaluated through the lens of community needs, the value of a dollar deployed as an equity investment is not the same as the value of a dollar used to purchase a mortgage-backed security, and no multipliers or adjustments could consistently and accurately compensate for this incongruity.

Such a rigid quantitative assessment would necessarily drive stark shifts in bank behaviors as they adjust their business to the new model. Activities that have traditionally been mainstays of CRA portfolios would no longer be given significant consideration and would therefore be likely to be reduced or eliminated. As banks shift their resource allocations to fit the CRA evaluation model, communities will lose access to much-needed capital and service. Rural communities and markets with low property values will suffer most, as obtaining smaller loans and investments, which are less profitable for banks, is a serious and chronic challenge for communities. The proposed framework would only exacerbate the problem, further devaluing these loans relative to their larger counterparts typical of higher cost areas.

The comments that follow are intended to offer the Agencies specific feedback regarding various elements of the NPRM. NeighborWorks respectfully requests that the Agencies carefully examine these comments, along with all others submitted, and reconsider their proposals to dramatically reinvent the framework by which the Community Reinvestment Act is applied. We do not believe that the proposed framework offers a viable pathway to meet

the Agencies' goals while remaining faithful to the spirit and purpose of CRA. Rather, we urge the Agencies to use the input offered to reexamine the existing regulations and propose a rule that offers improvements where necessary rather than a complete reimagining of the system.

General Comments

While much of the banking landscape has evolved in recent years, and notwithstanding explosive growth in online banking, bank branches retain a critical role in serving the needs of communities, particularly for low-income and elderly populations. These populations often lack adequate access to internet-based services or do not have a sufficient level of digital proficiency in order to meaningfully and safely take advantage of these tools. CRA must be structured to incentivize maintaining a physical presence in communities where it is most needed—including LMI neighborhoods, rural communities, Native lands, and distressed communities. While the NPRM does include a de minimis adjustment factor for the share of a banks' branches that are located in these geographies, it is simply too small and too limited to be impactful.

In addition to ensuring inclusion of these groups, the presence of brick-and-mortar bank branches facilitates deeper engagement with local communities and small businesses. NeighborWorks is deeply concerned that, with the transition to an entirely numerical formula, the specific expertise of CRA officers and bankers located within communities would no longer be valued. These on-the-ground personnel are best equipped to identify true community needs on the basis of their firsthand knowledge of the community and their relationships with community stakeholders.

CRA regulations are one of the most powerful tools that the federal government has for incentivizing and rewarding certain bank behaviors. Historically, CRA has been structured so as to give additional weight to certain activities on the basis of the value that they bring to the community. Unfortunately, the metrics-based approach proposed in the NPRM does not account for this nuance. As rational actors, not to mention corporations with a fiduciary duty to their shareholders, banks would be incentivized only to engage in those activities which are most profitable, i.e., activities that would likely already take place in the normal course of business. With a mathematical model that allows each institution to know exactly when it has achieved its desired rating, the proposed regulations would push each bank to focus only on the most profitable activities, and only to the minimum extent necessary. CRA has long been the “thumb on the scale” that pushes more challenging deals or projects (within the confines of safe and sound lending) across the finish line, and it must remain that way.

Another major concern is the one-size-fits-most approach ingrained in the NPRM. Given the range in bank business models, new CRA regulations must be sufficiently flexible to recognize the different ways in which banks work, allowing banks and communities to partner in the

ways that are most appropriate to address the community's credit needs within the scope of the bank's lines of business. Likewise, CRA regulations must also recognize that community credit needs vary from place to place and must encourage banks to be responsive to those local needs. Again, NeighborWorks is concerned the NPRM strips the regulations of the ability to be calibrated to reflect these variations.

NeighborWorks shares several of the Agencies' stated goals. We support efforts to refine CRA regulations in a manner that provides clarity and certainty, both for banks and their communities. Predictable regulations could clear the way for many projects which sit on the margin to proceed. If done properly, amended regulations could catalyze additional investments in communities, serving community needs as well as supporting bank business. We also support the goal of redistributing investment to address the issue of "hot spots" and "deserts." By reducing artificial incentives to concentrate investments in certain geographies and constraints against receiving credit for investments in others, capital could be better distributed across the country. This resulting allocation could be far more efficient and effective than that which is currently in place.

Despite these shared goals, we are concerned that neither banks, stakeholders, nor the Agencies themselves have enough data to fully understand the implications of the proposal, let alone the ability to evaluate it. Ironically, this rule which was intended to address uncertainty within CRA examinations would actually increase uncertainty, introducing a host of unknown or unintended consequences. A broad range of stakeholders, including community voices as well as the banking industry, have expressed alarm about moving forward with a final rule given the degree of uncertainty that its implementation would create. Community groups simply do not have enough information to assess how any particular bank would be rated, nor can they reliably foresee the changes in business behaviors that this rule would likely spark.

At the same time, it is not clear that the Agencies can accurately assess the issues on the basis of the limited information available to them. The proposal includes a set of thresholds and benchmarks against which banks would be measured. However, it is not possible for stakeholders to assess these standards without an understanding of how they were developed, which the Agencies have declined to share. Further, NeighborWorks is concerned that the Agencies published a Request for Information asking banks to voluntarily provide much of the data that would go into this analysis only after the NPRM was published. If this information was not available to the Agencies at the time the rule was crafted, how can stakeholders have confidence that the Agencies understand the impacts of the proposal?

What Counts

NeighborWorks is supportive of several aspects of the NPRM's approach to adding transparency and clarity around the activities that are eligible for CRA consideration. In particular, we support the Agencies' proposal to maintain and publish an ongoing list of CRA-eligible activities. New activities should be added to the list as innovations in the banking industry emerge, and activities should also be removed or refined as circumstances warrant. NeighborWorks also supports an established pathway for banks to seek pre-approval of activities prior to fully underwriting a project. This pre-approval mechanism will provide added certainty that can allow banks and nonprofits to work together more efficiently and effectively.

These process improvements notwithstanding, NeighborWorks has grave concerns about the NPRM's approach to expanding the list of eligible activities. While some flexibility is needed to allow banks to tailor their activities to meet the needs of local communities, we believe that many of the proposed changes to eligible activities are inconsistent with the fundamental purposes at the heart of CRA, and we strenuously urge the Agencies to reconsider the likely impact that these changes would have on the CRA landscape. Several of the proposed additions would subordinate the interests of LMI populations in favor of simplicity, allowing activities that have only minimal or ancillary LMI benefit to receive consideration. Furthermore, these impacts would be exacerbated by the mathematical framework that treats each dollar of lending, investment, or service the same as the next.

CRA credit should be limited to activities that truly serve LMI community needs. We were encouraged to see this position affirmed in NPRM's discussion of limiting credit for mortgages, and we urge the Agencies to reconsider several other elements of the proposal with an eye towards adhering to this principle. An overly broad definition of eligibility, as proposed in the NPRM, would siphon dollars away from more impactful activities. The following specific limitations should be included:

- In general, we support limiting CRA consideration to only those mortgages that are made to LMI borrowers. However, in distressed communities where an intentional revitalization strategy is underway, mortgages for households up to 120% should be eligible activities. While limits are still needed to ensure that this policy does not incentivize rapid gentrification and/or displacement of LMI households, it is important that credit flow to neighborhoods that have seen historic disinvestment.
- The proposed increases to the revenue and loan size limitations for small businesses and farms would have a negative impact on the availability of credit for the small businesses and farms that face the greatest challenges in accessing credit. The focus should remain on truly small enterprises, and credit availability for small loans is much more limited. Because of their scale, these loans are relatively more labor intensive to underwrite and generate less revenue than larger ones. NeighborWorks anticipates that increasing eligibility thresholds would result in capital moving away from these products when banks can get more credit per transaction for larger loans, further exacerbating the credit challenges that CRA is intended to address.

- NeighborWorks shares the concern that many other have raised that the NPRM would codify eligibility for projects such as stadium scoreboards and other investments that do not directly benefit LMI communities, regardless of current practice. NeighborWorks feel strongly that credit should only be allocated for Qualified Opportunity Fund (QOF) investments in projects that would otherwise qualify for CRA credit. Simply being located in an Opportunity Zone does not mean that LMI people or communities directly benefit from the activity, and NeighborWorks is deeply troubled by the notion that QOFs could become a loophole to allow for CRA credit to be allocated to luxury hotels, sports stadiums, or other investments that do not directly benefit LMI communities. In addition to being well outside of the spirit of CRA, these projects tend to be of a very large scale and would thus dramatically contribute to the dilution of value of credit for smaller activities. In comments filed directly with the IRS, NeighborWorks has expressed its concerns about the risks of Opportunity Zones fomenting gentrification and displacement, and the allocation of CRA credit as another layered incentive with no controls would further increase these risks.
- Similarly, the proposed expansion of eligibility for infrastructure financing may have significant negative consequences by drawing investment away from investments that more directly benefit LMI communities. Such projects should only be eligible CRA activities when they address critical infrastructure needs (roads, sewer, etc.) in LMI places. While NeighborWorks recognizes the challenges of determining the specific population of people who benefit from a public infrastructure investment, it is still possible to identify a set of characteristics or parameters to describe these projects and distinguish them from those where financing would be readily available at reasonable terms notwithstanding CRA eligibility. For example, the Agencies could define eligible projects as those undertaken with applicable federal or state programs designed to spur infrastructure investments in places where they might not otherwise be able to secure financing. While rural and distressed communities often struggle to secure financing for infrastructure projects, these resources are more readily available in urban and suburban areas. This limitation could ensure that LMI communities are the beneficiaries of these activities and encourage credit to flow to projects where it may not otherwise be available.
- CRA credit should be allocated to activities that provide borrowers access to wealth-building products, not just any kind of credit. In particular, credit products with terms unfriendly to consumers should not be eligible. NeighborWorks encourages the Agencies to exclude consumer lending from CRA eligibility. While some consumer loan products such as credit cards and auto loans may be important, they do not speak to the fundamental purposes of CRA. These credit products are often associated with onerous (and sometimes even predatory) terms and should not be eligible for consideration.
- Credit should be given for homebuyer education and counseling and financial capability services only for LMI customers or communities. While NeighborWorks is

supportive of ensuring all homebuyers have access to appropriate information and guidance when navigating the homebuying process, it is not necessary to offer CRA credit to ensure access to these services for higher-income households or neighborhoods. In addition to homebuyer education and counseling services that are provided directly by banks, the regulations should explicitly list grants and loans to nonprofit organizations to support these purposes as eligible activities.

NeighborWorks is supportive of the additional clarity the NPRM brings to eligibility for affordable rental housing, particularly around unsubsidized housing affordable to lower-income households. We applaud the requirement that rent affordability requirements apply to both current/initial rents and to future rents projected at the time of the loan or investment, a necessary safeguard to ensure that the housing continues to provide benefit to LMI populations.

The existing CRA regulations suffer from an approach that counts loans only at the time of origination but fails to capture the ongoing value of the credit. This approach creates perverse incentives for banks to lend for unnecessarily short terms, with the intention of periodically re-issuing the loan to again receive credit. Regrettably, the NPRM approach goes too far in the opposite direction, looking exclusively at balance sheets without regard to number of originations. A revised CRA must strike a better balance between counting only new originations and being predicated exclusively on a bank's balance sheet. While the balance sheet approach does incentivize long-term credit, using it alone could jeopardize incentives to ensure that banks provide continuous service. NeighborWorks supports providing some credit to banks for the purchase of mortgage-backed securities (MBS), but with careful controls in place on the extent to which such instruments can satisfy CRA requirements. Liquidity in the market is important, but MBS purchases should not be allowed to take the place of, or completely overtake, deeper, more impactful efforts.

When used to its full potential, CRA is a powerful tool for incentivizing partnerships between banks and local communities and leveraging investments across those communities, including the nonprofits that serve them, to achieve their shared goals. In designating any activity undertaken in partnership with a Community Development Financial Institution (CDFI) automatically eligible, the Agencies have recognized this potential. NeighborWorks recommends extending this status to partnerships between banks and nonprofit organizations that hold a charter from NeighborWorks America. These mission-driven organizations undergo rigorous financial and management assessments prior to receiving their charters and on an ongoing basis thereafter. Furthermore, membership in the NeighborWorks network is only available to organizations that demonstrate a commitment to resident leadership, ensuring that the organization continues to represent the interests of the communities in which it works. Activities relating to partnerships with NWOs, including loans and grants, should be explicitly included in the regulations describing qualified activities.

Finally, the proposed rule neglects to maintain economic development and neighborhood revitalization as broadly eligible activities. NeighborWorks network organizations' work to improve the lives of people includes investment in economic development. We encourage the Agencies to reconsider eligibility for job-creating activities and develop a standard for including them in the overall calculation.

Where it Counts

Given the changes to the banking landscape since CRA regulations were last revised in the mid-1990s, it would be impossible to consider appropriate reforms without also revisiting issues involving geography. With the growth of online banking and branchless institutions, NeighborWorks agrees with the Agencies that traditional assessment areas (AAs) no longer reflect the full geographic landscape of banking. While existing AAs should be preserved, additional ones should be demarcated to more appropriately define the universe of communities to which banks have a responsibility. In keeping with the spirit of CRA, these additional AAs should be defined by the places where banks do business and where their customers are located.

The Agencies' proposal to create deposit-based AAs, however, does not adequately capture where new AAs should be. Simply identifying concentrations of deposits will not address the issue of CRA "hot spots" and "deserts." First, geographic disparities in deposit sizes make it unlikely that concentrations of deposits can serve as a proxy for concentrations of actual depositors. In wealthy communities, it is likely that individual deposits would be much larger than in communities facing higher economic strain. These larger deposits could lead to an overrepresentation of high-income communities in AAs, while low-income communities, even those with a substantial number of depositors, may be invisible. And, of course, the unbanked cannot be represented at all, a number that, according to the FDIC's 2017 Annual Survey, totals 8.4 million households without a checking or saving account.

Second, the deposit-based AAs will likely be concentrated in areas that are already well served by financial institutions, and where other banks already have AAs. "Deserts" would remain underserved, while "hot spots" would see consistent—or perhaps even increased—competition for CRA activity. NeighborWorks is particularly concerned about rural and Native American CRA deserts. A November 2019 report of the Federal Reserve System, [*Perspectives from Main Street: Bank Branch Access in Rural Communities*](#), found that between 2012 and 2017, there was a substantial increase in the number of communities with no bank headquarters, the majority of which were rural. Over the same five-year period, over 40% of rural counties lost branches, with some rural counties experiencing "considerable declines." These are the deserts where residents and small businesses face increased costs and access challenges and inconveniences that are magnified by a lack of transportation or digital channels. The deposit-based AA structure would not bring these communities into the fold.

Per the question contained within the NPRM, NeighborWorks encourages the Agencies to explore a market-share based AA system, whereby AAs would be defined in places where a bank captures a significant portion of the local market. Flipping the analysis to evaluate the extent to which a bank is a significant player in a community—rather than whether the community is significant in the overall scheme of a bank’s business—could address varying issues of scale. A study of this concept would assess whether deposits, loans, or some combination are the most appropriate indicator, as well as what appropriate thresholds might be. Following this analysis, the Agencies should re-propose regulations to allow the public to comment on this approach.

Finally, we support giving credit for all eligible activities in Indian country, distressed areas, places with disaster declarations, and underserved communities, regardless of whether they are located in a bank’s AA, as long as an institution can demonstrate that it has made reasonable efforts to meet the needs of each of their own assessment areas. As these areas disproportionately represent the deserts that we all wish to better serve, it is imperative that CRA embraces and catalyzes a virtuous circle of investment and service that can bring economic development and opportunities to communities outside of current AAs.

How it Counts

While the NPRM does acknowledge the uniformity of commenters arguing against the “single metric” proposed in the ANPR, it retains some of the fatal flaws that made the original proposal unworkable. The CRA framework must be calibrated to value both large and small transactions, but the proposed CRA test fails to do so. By focusing exclusively on total volume and adding all activities together, smaller loans simply get swamped by larger ones, becoming invisible in the calculation. Financing for large projects effectively erases small mortgages, giving banks a significant incentive to direct resources only towards large transactions, purchases of MBS, and other large-scale activities. The metric gives no consideration to creativity, level of difficulty, or any of the other nuances that make current CRA activity so valuable. At a minimum, an appropriate framework must account for the number of loans made, not just the total dollar volume, so as not to disincentivize small loans. As proposed, only the retail lending test, not the primary CRA metric, would reflect this important indicator.

As previously discussed, the proposed framework also has several technical features which could undermine the fundamental purpose of CRA as an anti-redlining measure. In any new paradigm, banks must not be allowed to pick and choose which of their AAs they serve. The proposal that a bank need only meet the needs of a “significant” share of its AAs, be that defined as 50% or 80% as suggested in the NPRM, is alarming, as it would essentially sanction the redlining of entire communities. Any revision to CRA must continue to require banks to demonstrate a reasonable effort to meet the credit needs of all their AAs/communities. Put

simply, a bank should not be eligible for an overall rating of Satisfactory or Outstanding if it is not meeting its obligations to some of its AAs.

The proposal to employ a pass/fail system to evaluate retail lending and community development does not adequately measure these efforts. In addition to our global concerns about the appropriateness of the proposed thresholds, NeighborWorks believes that a pass/fail system would not capture the full scope of a bank's performance. In some instances, banks that do not achieve the threshold may be able to show that, despite reasonable efforts on behalf of the bank, circumstances outside of their control prevented them from meeting these benchmarks. A pass/fail system would not provide a venue for such a demonstration. Another concern is the potential that a pass/fail system would incentivize banks only to do the bare minimum to reach a passing rating but would then eliminate all further incentives.

The Agencies' proposal offers multipliers to boost the value of some activities. In so doing, the Agencies highlight the inherent shortcomings of an approach that simply adds all activities together, as well as the fact that dollar amounts are not a perfect proxy for value. However well-intentioned, multipliers are far too blunt a tool to overcome these flaws. The Agencies' recognition that these types of adjustments must be made is further evidence that a strictly quantitative calculation cannot suffice. NeighborWorks is also concerned by the lack of transparency regarding how the Agencies determined the appropriate value of the multiplier. Without additional information about the modeling and analysis used to develop the proposal, stakeholders simply cannot evaluate its effectiveness at addressing the scale disparities between certain types of activities. The need for such a measure underscores the fundamental flaw with the framework, whereby dissimilar activities are simplified into strictly quantitative structures that do not fully capture their true value, but the proposed mechanisms are insufficient to solve this problem.

In particular, cash contributions in the form of grants to nonprofit organizations would be undervalued, and therefore under-incentivized, by the NPRM. This direct funding is a critical source of support for many of the community development activities that organizations in the NeighborWorks network and beyond provide to their communities. As proposed, however, it would have only a de minimis impact on CRA ratings and would likely be significantly curtailed going forward.

Bank service would be another likely casualty of the proposed rule. The NPRM suggests valuing bank service simply as the product of the hourly wage rate of the person providing the service and the number of hours served. However, this calculation evinces a misunderstanding of the true nature of bank service to community organizations. For nonprofits, partnerships with banks can bring a level of connection, professionalism, and expertise to their work that may not be available elsewhere. For example, many NeighborWorks organizations have bank representatives on their boards. The value of the

service that these individuals contribute is far greater than would be reflected in the proposed calculation. Without proper recognition of the value of service, and with far less resource-intensive alternative ways to earn credit, banks may reduce their commitment to service. While this is certainly not the intention of the proposed rule, it would be a very significant consequence.

Community development is one of the most important components of CRA, and the NPRM's approach would significantly weaken its role. A revised CRA framework must maintain a separate CD test for holistically measuring lending, investments, and services. As noted previously, we are unable to fully evaluate the proposed CD test requiring a 2% threshold of quarterly loans and investments because the Agencies have not shared the data and analysis used to generate this metric. Notwithstanding our concerns about the construction of this test as a pass/fail metric, we suspect that the proposed threshold does not represent an adequate commitment to the overall scale of CD activity. Furthermore, this test should not be strictly quantitative and should be flexible enough to allow for a more qualitative accounting of the true value of the activities. While some of the CD activity should be required within their AAs, banks should also be able to receive consideration for additional activities in other areas, particularly in underserved communities, if they can demonstrate the CD needs of their AAs have been addressed.

Additional Comments

The effective administration of CRA requires well-trained examiners to ensure consistency and support well-informed judgements about topics such as performance context, innovation, community needs, and CD practices. NeighborWorks would welcome the opportunity to partner with the Agencies to develop and deliver high-quality training and informational resources to support examiners carrying out this essential function.

As proposed, the NPRM relegates performance context to an afterthought, used only to make minor adjustments to presumptive ratings in the case of extreme circumstances such as illegal or discriminatory actions. Meaningful assessment of a bank's CD activities requires a prior understanding of community needs and opportunities, as well as how the bank uses its capacities to respond to them within its competitive context. The many banks that make the effort to understand and effectively address community needs deserve additional recognition for fulfilling the true spirit of CRA. Unfortunately, the NPRM's framing suggests the primary use of performance context in the future will be to excuse a bank that performs below normal expectations.

Community participation is a key element in the CRA assessment process, and robust opportunities for public participation must be preserved. A presumptive rating generated by a set of metrics cannot be viewed without the backdrop of community input and performance

context. We applaud the Agencies' recognition of these important adjustments and urge that the commitment to making these meaningful parts of the evaluation process be enshrined in clear language in the regulations.

Finally, we must note the impact of the present circumstances on the process and timeline for implementing new regulations. As a result of the COVID-19 pandemic, the global economy is in the throes of one of the largest economic shocks ever experienced. This public health crisis is affecting every component of the economy, and the impact cannot be underestimated. The pandemic has caused upheaval in financial markets and communities and there remains significant uncertainty regarding the myriad ways they will be impacted going forward. While CRA regulations should be designed to withstand fluctuations in the business cycle, we recognize it may be impossible to appropriately account for the abnormal nature of this situation in the regulations. That said, we encourage the Agencies to use this time to reconsider and re-propose a revised CRA NPRM for review and comment. Absent that, NeighborWorks urges the Agencies to delay implementation of a new CRA rule during this period of turmoil.

Conclusion

We appreciate the opportunity to engage with the Agencies as they seek to modernize the Community Reinvestment Act. NeighborWorks is deeply committed to ensuring the ongoing success of this landmark statute and recognizes the critical role of the regulatory framework. In evaluation science, it is often said that "you get what you measure," and nowhere is that truer than in the context of CRA. The framework outlined in the NPRM would, perhaps unintentionally, dramatically alter the landscape of financial activities that banks undertake, swiftly altering a relationship built to revitalize communities by shifting capital away from community needs and towards higher revenue generating endeavors.

The current proposal is too flawed to be the basis of a final rule. Given the level of concern coming from the full range of stakeholders, the Agencies should collect and incorporate the public comments from this rulemaking and re-propose a new iteration of the rule rather than finalizing the rule based on this proposal. Furthermore, we maintain the importance of consistent regulations for all banks regardless of their regulator and urge the Agencies to re-engage the Board of Governors of the Federal Reserve in these efforts. NeighborWorks looks forward to continuing to work with the Agencies to develop a framework that better meets the needs of both communities and banks under the Community Reinvestment Act.

Sincerely,

A handwritten signature in black ink that reads "Maritta Rodriguez". The signature is written in a cursive, flowing style.

Marietta Rodriguez
President & CEO, NeighborWorks America