

November 19, 2018

Legislative and Regulatory Activities Division
Office of the Comptroller of the Currency
400 7th Street, S.W. Suite 3E-218
Washington, D.C. 20219

Re: Docket ID OCC-2018-0008

To Whom It May Concern:

Thank you for the opportunity to comment on the Advance Notice of Proposed Rulemaking entitled “Reforming the Community Reinvestment Act Regulatory Framework,” which was published in the Federal Register on September 5, 2018.

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 roughly 245 local and regional nonprofit-affiliated NeighborWorks organizations.

For 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. In the last five years, NeighborWorks organizations have leveraged more than \$34 billion in reinvestment in their communities. In FY 2017, the NeighborWorks network created 22,700 homeowners, owned or managed 165,500 high-quality rental homes, provided home-ownership education and counseling for 181,400 customers, and issued 17,000 training certificates.

The Community Reinvestment Act (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.

Forty years have passed since the Community Reinvestment Act was passed but 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 (LMI) 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.

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 CRA to reflect the current banking landscape. For example, online and mobile technologies have changed 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 by the ANPR’s focus on concepts that would radically alter the CRA process—potentially at the expense of its core emphasis on LMI people and places—rather than simply updating it for today’s world. Consideration should be given to how CRA could be adapted to include communities in which banks do substantial business but do not fall within existing assessment areas. Additionally, the regulators should consider opportunities to provide transparency and certainty in the assessment process. It is essential, however, that these worthwhile objectives be pursued in a manner consistent with the foundations on which CRA is based, not in a wholesale rewrite of the regulations.

As you contemplate changes to the regulations, LMI people and places must continue to be the main focus of CRA. Although the institutional redlining that CRA was intended to combat is ostensibly a thing of the past, LMI communities continue to struggle with access to credit and safe financial tools, and the core mission of CRA must never stray from serving these needs. Changes should be made with an eye toward expanding the reach of CRA to places that currently are underserved while continuing to serve current assessment areas. According to a study by [economists at the Federal Reserve of Philadelphia](#), home purchase lending declines by about 20 percent in low- and

moderate-income census tracts when these tracts lose CRA eligibility.¹ Changes should also be made to recognize the expanded universe of community development activities in which banks participate

Research has also demonstrated that not only does the presence of a CRA assessment area improve access to credit, it also improves the quality of loans made. According to a [study by the Federal Reserve Bank of San Francisco](#), loans made by banks in their CRA assessment areas were about half as likely to end up in foreclosure as loans issued by independent mortgage companies.² Additional studies show that lending scrutinized by CRA exams is far less likely than lending of non-CRA covered independent mortgage companies to be high-cost and exhibit risky features. For example, Federal Reserve economists calculated that during 2006 – a year of heavy subprime lending – only 6 percent of all high-cost loans were issued by banks to low- and moderate-income borrowers and communities evaluated as part of CRA exams.³

CRA is one of the key drivers behind the development of successful partnerships among banks, government entities, and both nonprofit and for profit developers. Most federal housing production and other community development policies now depend on these partnerships to leverage limited public funds to develop and sustain affordable housing. As players in these partnerships, banks have instilled business discipline in the community development process, greatly increasing the success of public subsidy programs providing opportunities for people to access safe and affordable housing.

Challenges of the ANPR

While the regulations implementing CRA have tremendous impact on many stakeholders, not all stakeholders are equally positioned to evaluate and respond to the ANPR. Banks are acutely aware of their CRA obligations and have systems and

¹ Leonard Nakamura, Federal Reserve Bank of Philadelphia, “Don’t Know What You Got Till It’s Gone’—The Effects of the Community Reinvestment Act (CRA) on Mortgage Lending in Philadelphia,” Working Paper 17-15, June 2017.

² Elizabeth Laderman and Carolina Reid, Federal Reserve Bank of San Francisco, “CRA Lending during the Subprime Meltdown in Revisiting the CRA: Perspectives on the Future of the Community Reinvestment Act,” a Joint Publication of the Federal Reserve Banks of Boston and San Francisco, February 2009,

³ Randall Kroszner, former Federal Reserve Governor and currently at Booth School of Business, University of Chicago, The Community Reinvestment Act and the Recent Mortgage Crisis, in Revisiting the CRA: Perspectives on the Future of the Community Reinvestment Act, A Joint Publication of the Federal Reserve Banks of Boston and San Francisco, February 2009

staffing in place to ensure to implement and monitor their CRA book of business. These institutions view their work through the lens of CRA, and are therefore very well-positioned to evaluate how any of the myriad proposed changes may affect their organization.

On the other hand, organizations serving LMI people and places rarely view their work in the context of CRA. While many are aware that CRA may have an impact on their efforts to serve these communities, they do not have the same visibility into the inner workings of banks' decision making, overall book of business, or strategic direction. Communities that are not currently part of CRA assessment areas, in particular, are at a disadvantage to effectively advance their interests through this process.

We are concerned that these asymmetries of information, as well as capacity and awareness of the issue, may result in a skewed body of public comments that does not paint a full and complete picture of the interests of LMI people and places. NeighborWorks encourages the OCC and its fellow regulators to consider the barriers and challenges to representation that are inherent in a formal rulemaking process and consider appropriate adjustments, such as community hearings or meetings, to balance these limitations.

Goals, Priorities, and Approach

The notice identifies the goal of updating the regulatory framework of CRA to better reflect how banks and consumers engage in the business of banking today by enhancing the clarity, consistency, and certainty of the regulations in order to “encourage more local and nationwide community and economic development—and thus promote economic opportunity—by encouraging banks to lend more to LMI areas, small businesses, and other communities in need of financial services.” NeighborWorks wholeheartedly supports this objective, but is concerned about the potential for unintended consequences that could result from restructured incentives and requirements. While changes to CRA to better reflect the current banking environment are desirable, the overriding principle must be to do no harm. Any changes must serve to strengthen CRA's commitment to its original purposes.

NeighborWorks is concerned by the ANPR's proposal to dramatically reimagine the CRA assessment paradigm. While certainly there is room for improvement in the current assessment framework, incremental changes to modify the existing system would be a safer, more productive approach. A wholesale revision to the assessment system unnecessarily risks upheaval that will advantage none of the players. Given that 98%

of banks already receive a satisfactory or above rating, the potential harm far outweighs the intended benefits. Rather than pursuing a transformational approach, NeighborWorks encourages the regulators to focus on modernizing and streamlining the existing tests to enhance clarity, create additional certainty, and foster an environment in which banks are incentivized to increase lending, investment and service to LMI communities, in accordance with the principles of safety and soundness.

Changes to CRA Assessments

Performance Context

NeighborWorks America relies heavily on data to evaluate the outcomes and operation of our programs and to understand the performance of our affiliated network organizations. Just in the past few years alone, great strides have been made in software development and in geo-coding software that allow deeper and better analysis of trends, geospatial distributions, and other key indicators that produce a more nuanced understanding of our communities. This modernization of data evaluation creates the potential for assessments that provide a more sophisticated understanding of performance.

Similarly, these advancements can be applied to improving the measurement of bank performance. Bank CRA assessments must be based on relevant contextual information, particularly an assessment of the community's needs. Rather than relying on individual agencies to compile this information, NeighborWorks recommends that the regulatory agencies work together on an interagency assessment for each metropolitan area. These performance contexts could be developed by staff from the regulatory agencies or by contracting the responsibility to a qualified, independent third party such as a research firm or an academic institution. Public input should be a crucial part of this assessment. Bank performance could then be judged against an independent third party assessment of metro demographics, economic trends and community needs. It would be a great improvement over the current system if the assessments were uniform across agencies and were used for all of the institutions in the region that were examined.

Metrics-Based Assessment

NeighborWorks is deeply concerned about the proposal to base assessments on a single ratio intended to reflect the total universe of a bank's CRA-related activities as a percentage of some larger whole. Even if the proposal were to be scaled back to include several different metrics instead of the single ratio, it would still be extremely problematic. While the concept is clearly motivated by efforts to provide simplicity and clarity, the risks, as discussed below, far outweigh these goals. Put simply, ensuring that CRA continues to meet the needs of communities must be prioritized over reducing regulatory burden.

Given the complexity inherent in the CRA landscape, an effective assessment system must be sophisticated, flexible, and leave room for subjectivity. A system built entirely on strict metrics cannot address these needs, and would quickly prove unworkable. First, it would be an impossible task to devise "correct" metrics and targets for the widely heterogeneous universe of regulated banks. Even if separate metrics were established for different types of institutions, variations in their business models, geographies served, size, etc. would be a barrier to determining appropriate thresholds. Some banks would likely find themselves in the position of being measured against a threshold that is too low, while others would find an unworkably challenging assessment. While NeighborWorks concurs with the ANPR's suggestion that it would be necessary to establish a system of relative values and weights for different activities, we are wary of the inherently arbitrary nature of such a project. Indeed, the very nature of this exercise runs counter to simplification and may further increase confusion and regulatory burden. Furthermore, there is the issue of ever-changing environmental forces—any changes to the assessment system need to be enduring, and must stand the test of time.

National and regional economic cycles could make target ratios either unachievable or too easily achievable. There is no "Goldilocks" ratio that will fit all situations for all banks. Further, a system based on numerical targets would be particularly vulnerable to manipulation based on the whims of political forces, with the potential for disruptive instability in the form of changes to the targets any time there is a change in governance. Ironically, in an effort to create a system that fits all, the more likely outcome would be a system that fits none.

Second, a strictly numerical system would encourage rational actors to do the bare minimum to achieve their desired rating. In the current system, uncertainty around the margins leads many institutions to “overachieve” in order to ensure that they secure their desired rating. As such, the current uncertainty in the assessment system yields positive investments in LMI communities, which would be lost under a fully metrics-based system. In policy conversations with various partners, NeighborWorks consistently heard that knowing that a proposed activity would get CRA credit often tipped the scales on a bank’s decision to move forward. Without the “sweetener” of CRA credit, banks would allocate their capital strictly on the basis of expected returns, pursuing only those activities with the highest rates of return. While many community development deals are profitable, they may no longer be competitive without the extra incentive that CRA credit offers. If there is no longer a benefit to earning additional CRA credit, banks that have met their annual targets may cut off production when goals are met for the year, leaving LMI communities without access to credit until the start of the new year.

Finally, and perhaps most importantly, banks would be incentivized to game a numerical system, not only by pursuing the minimum scores necessary but also by doing so in the easiest possible manner. Focusing solely on the dollar volume of CRA activity disfavors rural, non-coastal and other markets with low home prices, as well as the banks that serve these areas. A home mortgage in a low-cost market requires the same level of effort as that in a high-cost area, but would offer comparably less CRA credit. Similarly, a community development loan for a large project would be far more attractive than for a smaller one. Under a system focused on dollar values, it is likely that markets where credit access is already a challenge will be further marginalized.

Although NeighborWorks does not support the proposal to revise the assessment protocol to comprise only one or more ratios, there is ample opportunity to improve the process with more quantitative certainty. Our own work has been enhanced by robust data analytics, and exploring new tools should be a part of the regulatory review and improvement of the CRA regime. CRA examiners should certainly continue to use data as part of the assessment, but these data should continue to be understood and interpreted through the more complete lens of a holistic analysis.

Community Development Test

To recognize and encourage community development investment and activities in both large metropolitan areas as well as in other communities which may not receive sufficient attention currently, we propose a revision in the way community development needs are determined and community development activities are examined. What is needed is a more manageable, consistent and predictable approach to community development that includes all communities and recognizes local needs under a separate test.

A revised CRA must be sure to maintain incentives for banks to stretch to participate in complex projects with significant impact, rather than focusing solely on simple transactions. For example, the dollar value of a loan on a supportive housing project that requires involvement of state and local government and a CDC can be dwarfed by a bank's volume of conventional home mortgage lending in low-and moderate income neighborhoods, yet that community development loan can have a larger impact on the neighborhood. Banks must be incentivized to continue to pursue these kinds of projects—an incentive that could easily be lost in a move to a ratio-based system.

In assessing community development activities, volume is undoubtedly important, but so is an understanding of how they address community needs. The time and complexity required by community development projects needs to be recognized by a separate test that looks at community development as an integrated whole. The dollar value of the activity should be considered as well as how far the institution has stretched to meet community development needs, consistent with safe and sound lending. If not considered separately, CD activities could lose attention, even if an adjustment is made in the scoring system. With a single ratio approach, a bank may be able to meet its CRA obligations without undertaking highly impactful activities that are complex, high-touch, less liquid, more capital intensive, longer-term, smaller, or not maximally profitable. CRA assessments should place additional value on activities that are especially responsive to local, regional or national needs, complex, innovative, feature non-standard terms, or involve multiple financing sources. Such qualitative factors are particularly important to evaluating CD activities.

A separate community development test would include all forms of participation including loans, investments, credit enhancements, services and support for nonprofit partners. If a bank is serving their assessment areas satisfactorily, community development activities benefiting LMI people should be eligible for CRA credit regardless of whether they are located in a banks' assessment area, opening up the possibility for banks to engage in community development efforts in communities across the country. A particular benefit of this approach could be channeling community development investment to areas of great need, including rural communities and areas of persistent poverty, which are often outside of banks' assessment areas.

Assessment Areas

NeighborWorks is concerned that the ANPR, as a result of its intent to modernize CRA regulations, overstates the extent to which banking has changed since the last round of revisions to CRA. Although much has changed about the way in which many Americans bank, bank branches continue to play a key role in bringing financial services to many populations, including LMI people. As Federal Reserve Governor Lael Brainard said, "branches and deposit-taking ATMs remain an important way that banks engage with a community. Branches and ATMs are still necessary for depositing and withdrawing cash. Branches also provide personal service and assistance to consumers and business customers. They provide a presence for lenders to get to know borrowers and the communities in which they live, lend, and invest."⁴

To the extent that a bank has branches, they should be accessible to LMI area residents on an equitable basis. Particularly in LMI communities, the physical presence of a bank, and by extension the safe, regulated financial products that it offers, is a necessary counteroffering to the title lenders, payday lenders, and other similar enterprises that frequently appear in these neighborhoods that offer unsafe or predatory products. Personal interactions, such as the chance to ask questions about unfamiliar lending or banking procedures, cannot be duplicated by mobile banking or ATMs. According to the FDIC, use of bank tellers as the primary means of account access remains "quite prevalent among certain segments of the population, including

⁴ Speech at the Association of Neighborhood and Housing Development Eighth Annual Community Development Conference Build.Community.Power, New York, New York, May 18, 2018.

lower-income households, less-educated households, older households, and households in rural areas.”⁵

And while bank branches continue to play a key role, so, too, does the service they provide to the community. Community based organizations are able to build meaningful banking relationships at branches that are less probable with remote banking. For this reason, NeighborWorks continues to support the use of assessment areas that include the area around each branch, as required by the CRA statute. All banks with branches should be required to serve their AA(s) at a satisfactory level in order to achieve an overall satisfactory CRA rating. In addition, given the current activities and structure of banks operating across broad geographies, banks should be assessed on their CRA investments in areas where the institution does business and delivers services, not just deposit taking, in a concentrated manner. Implementing CRA in the digital environment warrants an evaluation that captures business activities beyond a bank’s AA. A threshold or minimum percentage of market share could be established beyond which an institution would have an obligation to meet CRA tests.

True community banks that operate within one state should have community development responsibilities where they have branches. Larger institutions with branches in multiple states should have community development responsibilities where they have physical presence, but should also receive CRA consideration for lending and investments in nonprofit mission-oriented community development conduits like CDFIs or community development credit unions that operate outside of their geography, as long as these institutions are meeting legitimate community development needs.

Limited purpose, credit card, and wholesale banks should be in a different category. They also should be evaluated on the basis of their national community development partnerships and not just on limited markets where they take deposits, which is not reflective of the communities from which the deposits are drawn. For these institutions, CRA performance should be judged more broadly in the context of their national financial presence. Assessments should be devised to incentivize these institutions to work in areas of need, not just in CRA “hot spots” where most of their investment is currently concentrated. To help meet the needs of currently underserved communities, including areas of persistent poverty, areas recovering from disaster,

⁵ FDIC, 2017 FDIC National Survey of Unbanked and Underbanked Households.

and many other rural and urban areas, CRA credit should be given for CD activities without regard to the bank's assessment area.

The design of CRA assessments can help to ensure that banks stretch and engage in creative partnerships rather than simply engaging in high-dollar, low-effort activities. For example, CRA credit can incentivize banks to support investments to close the digital divide.

Automatic Credit

One way to enhance the clarity and certainty of CRA would be to define categories of activities that are eligible for automatic credit. In particular, banks should receive credit for any activity, regardless of location, undertaken in partnership with an organization subject to third-party verification whose mission is to serve LMI people and communities. Such organizations include NeighborWorks America chartered organizations, Treasury Department certified CDFIS, HUD designated CHDOs, and HUD-approved housing counseling organizations. Investments in projects funded with LIHTC and NMTC, as well as investments and services to provide financial capability coaching and housing counseling to LMI consumers, should automatically be eligible for CRA credit. This automatic credit feature could incentivize lending and investment in areas without bank branches that are nonetheless being served by these validated organizations.

Implementation

In addition to regulatory changes, NeighborWorks encourages the regulators to focus on the implementation of CRA. Improvements to the ways in which assessments are conducted could have a significant impact in the operationalization of CRA, reducing burdens for banks and increasing the benefits for LMI people and places. First, and most importantly, is the issue of timing. Performance evaluations should be timelier, ideally taking place within the 12-month period following the close of an examination period. Delays in assessments pose severe challenges for both banks and communities and this is eminently solvable without any change to the current CRA requirements.

Enhancements to the CRA regime could also focus on examiner training. Effective administration of the CRA requires well-trained examiners with the necessary expertise in community development. The agencies should jointly develop comprehensive examiner training to ensure consistency and support well-informed judgements about topics such as performance context, innovation, and community needs. NeighborWorks, in its capacity as the leading provider of training for the community development field, would be pleased to offer our technical expertise and capacity to assist in developing and delivering a curriculum to train and support CRA examiners through our [NeighborWorks Training Institutes](#) or Place-Based-Trainings.

Next Steps

In developing this letter, NeighborWorks engaged in extensive outreach to our network organizations, internal experts in a range of subject areas, industry colleagues, partner organizations, and other professional associations. Throughout these myriad conversations, one theme became unequivocally clear: CRA reform is an inherently complicated and difficult task that must be undertaken with extreme caution.

Given the importance of ensuring that any changes do not harm CRA and the level of concern caused by the OCC's proposals, another ANPR should be issued to allow for public comment on a revised proposal before formal rulemaking begins. As they proceed to consider changes to the CRA, regulators should conduct community meetings and field hearings across the country in areas served and underserved by CRA-regulated institutions.

Finally, the OCC should not move forward with a proposed rule without the concurrence of the Federal Reserve Board and FDIC. It is critical that the OCC, Federal Reserve, and FDIC adopt and maintain consistent CRA policies in order to foster consistency and clarity in the banking regulatory universe.

Conclusion

NeighborWorks is grateful for the opportunity to offer our comments as the OCC considers changes to the Community Reinvestment Act. While we have serious concerns about some of the reforms proposed in the Advance Notice of Proposed Rulemaking, we stand ready to work with the OCC, as well as the Federal Reserve and FDIC, on a process to modernize the Community Reinvestment Act to ensure that it meets the needs of communities for many years to come.

Sincerely,



Marietta Rodriguez
President and CEO